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## The Devil in Recent American Law

L. Joe Dunman\*

### *Abstract*

*Despite its secular aspirations, the American legal system is permeated by Christian and other religious ideas. One of the religious ideas that frequently appears in recent American law is the devil—the unholy antithesis of all that is good in the world. Called by many names, such as Satan, Lucifer, or the Antichrist, the devil is no stranger to the United States court system.*

*The devil arises from the hot depths primarily in five contexts: (1) as a source of injury to reputation in defamation cases; (2) as a prejudicial invocation made during criminal trials to secure conviction, harshen sentences, or discredit witnesses; (3) as a symptom of mental illness or delusion severe enough to qualify criminal defendants for insanity pleas and incapacitate decedents in probate; (4) as a source of religious conflict between inmates and their wardens; and, sometimes (5) as a party to litigation.*

*This Article broadly surveys each of these five contexts, exploring how courts have adjudicated recent disputes that involve accusations or admissions of Satanism and associated rituals. Readers will learn how American courts have dealt with religious ideas that many people find distasteful, dangerous, or downright abhorrent. So far, no grand unifying theme or theory is evident, so hopefully this survey will be a springboard for further, more focused research and argument as to how the American legal system should handle disputes that implicate the “archvillain of world culture.”*

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## Introduction

In 1944, the Supreme Court declared that, in the United States, “Man’s relation to his God was made no concern of the state.”<sup>1</sup> The federal Constitution contains no mention of a supreme, supernatural being and religious tests are *verboten*.<sup>2</sup> American law “knows no heresy, and is committed to the support of no dogma, the establishment of no sect.”<sup>3</sup> However, even in this secular legal tradition, Americans’ religious beliefs—specifically Christian beliefs—are regularly a concern of judges, juries, and appellate panels.<sup>4</sup>

Consider the devil. In both the Catholic and Protestant Christian traditions, he is the evil and unholy opposite of the ultimate and infinitely good God. He is a failed usurper who defied the Holy Father then was banished from Heaven, eventually becoming the king of Hell, where the sinful writhe in torment for eternity.<sup>5</sup> He is known by the names Lucifer and Satan, and by the titles the Evil One, Prince of Darkness, “prince of this world, the great dragon, the old serpent, the prince of the devils, the prince of the power of the air . . . the Antichrist.”<sup>6</sup> He plays the cosmic role of “the temptor, the accuser, and the

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1. United States v. Ballard, 322 U.S. 78, 87 (1944).

2. U.S. CONST. art. VI. The only aspect of religion American courts are qualified to assess, at least according to long-standing Supreme Court doctrine, is the sincerity of the believer, not the veracity of the belief. See Nathan S. Chapman, *Adjudicating Religious Sincerity*, 92 WASH. L. REV. 1185, 1187–88 (2017).

3. *Ballard*, 322 U.S. at 86 (quoting *Watson v. Jones*, 80 U.S. 679, 728 (1871)).

4. See generally CHRISTOPHER MCCRUDDEN, *LITIGATING RELIGIONS: AN ESSAY ON HUMAN RIGHTS, COURTS, AND BELIEFS* (2015); Stuart Banner, *When Christianity was Part of the Common Law*, 16 L. & HIST. REV. 27 (1998); A.H. Wintersteen, *Christianity and the Common Law*, 3 AM. L. REG. 273 (1890); Sanja Zgonjanin, *Quoting the Bible: the Use of Religious References in Judicial Decision-Making*, 9 CUNY L. REV. 31 (2005).

5. *Isaiah* 14:12-15 (King James) (“How art thou fallen from heaven, O Lucifer, son of the morning! how art thou cut down to the ground, which didst weaken the nations! For thou hast said in thine heart, I will ascend into heaven, I will exalt my throne above the stars of God . . . Yet thou shalt be brought down to hell, to the sides of the pit.”).

6. PAUL CARUS, *THE HISTORY OF THE DEVIL AND THE IDEA OF EVIL* 166 (Lands End Press 1969). This Article will interchangeably refer to him as “the devil” or “Satan” for the sake of simplicity.

destroyer.”<sup>7</sup> He is “the archvillain of world culture.”<sup>8</sup>

In the culture of American law, the devil appears often. His dark unholiness arises from the hot depths primarily in five contexts: (1) as a source of injury to reputation in defamation cases; (2) as a prejudicial invocation made during criminal trials to secure conviction, harshen sentences, or discredit witnesses; (3) as a symptom of mental illness or delusion severe enough to qualify criminal defendants for insanity pleas and incapacitate decedents in probate; (4) as a source of religious conflict between inmates and their wardens; and, sometimes (5) as a party to litigation. This Article will broadly survey each of these five contexts in turn.<sup>9</sup>

The Article begins by describing how accusations of devil worship can spark claims for slander or libel, and also how common law and constitutional principles of religious freedom can close the courts to certain religious defamation plaintiffs. Part II then explores a similar reputational injury in the context

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7. Wendy Griswold, *The Devil's Techniques: Cultural Legitimation and Social Change*, 48 AM. SOC. REV. 668, 670 (1983).

8. T.J. WRAY & GREGORY MOBLEY, *THE BIRTH OF SATAN: TRACING THE DEVIL'S BIBLICAL ROOTS* xiii (2005).

9. This Article will not be an exhaustive survey of every case in which the devil is invoked since the founding of America, but will focus instead on key historical and contemporary cases that are representative of the above five contexts. Beyond the scope of this article are references to the devil in other types of cases, such as in criminal appeals by members of the Chicago-based street gang the Satan Disciples. *See, e.g.*, *People v. Roque*, 2013 IL App (1st) 112578-U (2013); *People v. Hernandez*, 840 N.E. 2d 1254 (Ill. App. Ct. 2005). Or in intellectual property disputes, between artists (for whom the Devil is the subject of their art) and alleged infringers. *See, e.g.*, *Porto v. Guirgis*, 659 F. Supp. 2d 597 (S.D.N.Y. 2009); Michelle Castillo, *The Satanic Temple Sues Netflix for \$150 Million for Using a Statue of a Demon God in 'The Chilling Adventures of Sabrina,'* CNBC.COM (Nov. 9, 2018, 11:35 AM), <https://www.cnbc.com/2018/11/08/the-satanic-temple-sues-netflix-warner-bros-for-150-million.html>. Or in cases where people religiously object to obtaining or disclosing Social Security numbers for fear they will carry the “mark of the beast” or be corrupted by the Antichrist. *See, e.g.*, *McKay v. Thompson*, 226 F.3d 752 (6th Cir. 2000); *Callahan v. Woods*, 736 F.2d 1269 (9th Cir. 1984); *Stevens v. Berger*, 428 F. Supp 896 (E.D.N.Y. 1977). Or in disputes between the government and companies with religious-sounding names. *See, e.g.*, *United States v. Devil's Hole, Inc.*, 747 F.2d 895 (3d Cir. 1984). Or in Establishment Clause challenges to school mascots. *See, e.g.*, *Kunselman v. W. Reserve Local Sch. Dist., Bd. of Educ.*, 70 F.3d 931, 933 (6th Cir. 1995) (“No reasonable observer would believe that the use of the [Blue] devil as a mascot is meant to . . . advocat[e] Satanism . . .”).

of prejudicial bias against defendants; that is, accusations of devilish doings in criminal trials. Subsequently, Part III will explain how demonic delusions (admitted or otherwise) can create questions of competence and capacity for defendants and decedents alike. Part IV probes the mostly one-sided free exercise battle between prison officials and incarcerated Satanists. Finally, the discussion ends on a humorous note as the devil and his minions become parties to lawsuits of varying levels of frivolity.

The author's ultimate goal is that this preliminary survey will spark additional research into one or more of the above contexts. The devil-related court rulings discussed, *infra*, raise serious questions about church/state separation, religious bias by judges and juries, and how American legal institutions discriminate among faiths. This Article does not present any grand, unifying theories about how the concept of the devil has shaped American law, nor does this Article make any prescriptive arguments about how courts should handle Luciferian litigation.

If there is one recurring theme here, however, it is that nearly all litigatory invocations of the devil create tangibly negative legal outcomes, and not just because one party always has to lose. In American law, accusations (and admissions) of Satanic loyalty cause damage to reputations, create civil liability, help to convict defendants, harshen sentences, constrain religious exercise, and get claims dismissed. The American legal system, ostensibly secular as it is, is not insulated from the bad religious baggage that Satan carries.

### I. The Defamatory Devil

*An ungodly man diggeth up evil: and in his lips there  
is as a burning fire. A froward man soweth strife: and a  
whisperer separateth chief friends.*

– Proverbs 16:27-28

Defamation is the devil's preeminent stalking ground in American law. This is fitting, because the shared root of the English words "devil" and "diabolic" is *διάβολος*, translated from

the Greek as *diabolos*, an adjective that means *slandorous*.<sup>10</sup>

The Bible describes the devil as the father of lying.<sup>11</sup> Satan exists as a dishonest foil to the absolute honesty of God, and to be in league with him is to be a bad, untrustworthy person, an “enemy of all righteousness.”<sup>12</sup> Thus, accusations of devil worship, demonic servitude, or diabolical sympathy can seriously injure a person’s reputation in any Christian community, or worse, injure the person herself because death is one of the Biblical punishments recommended for wizards, witches, and other devilish devotees.<sup>13</sup>

Defamatory insinuations of Satanic association are well documented in historical court records of England and its American colonies. In 1623, Colchester Borough courts in Essex, England heard claims arising from “the circulation of libel showing the devil taking tobacco with various of the town’s clergymen.”<sup>14</sup> Thirty-two years later, in the court of Essex County, Massachusetts, a man named Job Tyler was compelled to publicly post a hand-written apology to his neighbor Thomas Chandler for, in addition to making numerous other slanderous utterances, “wishing the devil had him.”<sup>15</sup>

That same century, rampant accusations of devilish dealings tore apart the “little theocracies” of colonial America like Plymouth and Salem in Massachusetts.<sup>16</sup> Dozens of people, mostly women, were convicted and severely punished for

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10. JAMES STRONG, *DICTIONARIES OF HEBREW AND GREEK WORDS TAKEN FROM STRONG’S EXHAUSTIVE CONCORDANCE 1228* (Christian Classic Reprints 2009) (1890).

11. *John* 8:44 (King James) (“Ye are of your father the devil, and the lusts of your father ye will do. He was a murderer from the beginning, and abode not in the truth, because there is no truth in him. When he speaketh a lie, he speaketh of his own: for he is a liar, and the father of it.”).

12. *Acts* 13:10 (King James).

13. *Leviticus* 20:27 (“A man also or a woman that hath a familiar spirit, or that is a wizard, shall surely be put to death; they shall stone them with stones: their blood shall be upon them.”).

14. J.A. SHARPE, *DEFAMATION AND SEXUAL SLANDER IN EARLY MODERN ENGLAND: THE CHURCH COURTS AT YORK* 5 (1980).

15. JULIET HAINES MOFFORD, “THE DEVIL MADE ME DO IT!” *CRIME AND PUNISHMENT IN EARLY NEW ENGLAND* 51 (2012).

16. LAWRENCE M. FRIEDMAN, *LAW IN AMERICA: A SHORT HISTORY* 26 (Modern Library ed. 2002) (cited for the description of colonial communities as “little theocracies”).

witchcraft.<sup>17</sup> Though thirteen women were executed in Salem alone, some colonial witchcraft suspects were ultimately cleared of wrongdoing. Acquitted women—or, more often, the husbands of acquitted women, outraged by meritless attacks on their wives' godliness—did not shrink into the shadows once the criminal proceedings were complete. At least thirty-eight common law slander claims, most seeking public retractions, were brought between the mid-1600s to the early-1700s in New England by women accused of witchcraft.<sup>18</sup> When the accusers were unable to prove the devil's explicit presence in the lives of the acquitted witches, they were held liable and forced to apologize.<sup>19</sup> Meanwhile, in Virginia beginning around 1650, "slanders and scandals Cast upon Women under the notion of

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17. Witches, after all, were people who, through various mysterious rituals and pacts, had "formally given themselves over to the Devil," and received magical powers in exchange for their devoted service. JEFFREY BURTON RUSSELL, *MEPHISTOPHELES: THE DEVIL IN THE MODERN WORLD* 28 (1986). In his influential book, *Wonders of the Invisible World* (1693), Massachusetts minister Cotton Mather argued that witchcraft actually triggers an elaborate legal process in which God grants the snitching Devil a license to smite "ungodly people" who "give their *Consents* in *witchcrafts* diabolically performed": "The Divil is called in 1 Pet. 5.8 *Your Adversary*. Tis a Law-term; and it notes, *An Adversary at Law*. The Divil cannot come at us, except in some sence according to *Law* . . . The Divil First *Goes up* as an *Accuser* against us [and] . . . charges us with manifold *sins* against the Lord our God . . . If our *Advocate* in the Heavens do not now take off his Libels, the Divil then with a Concession of God, *Comes down*, as a *Destroyer* upon us. . . . But such a *Permission* from God, for the Divil to *Come down*, and *Break in* upon mankind, oftentimes must be Accompanied with a *Commission* from some wretches of mankind it self." COTTON MATHER, *THE WONDERS OF THE INVISIBLE WORLD: OBSERVATIONS AS WELL HISTORICAL AS THEOLOGICAL, UPON THE NATURE, THE NUMBER, AND THE OPERATIONS OF THE DEVILS* 10–11 (Reiner Smolinski, ed. 1998) (1693) (emphasis in original).

18. RICHARD GODBEER, *THE DEVIL'S DOMINION: MAGIC AND RELIGION IN EARLY NEW ENGLAND* 15 (Cambridge Univ. Press 1994). Some of the women were repeat plaintiffs, having faced multiple false accusations of witchcraft. For example, Jane Walford of Portsmouth, New Hampshire was awarded damages for slander in both 1648 and 1669. CAROL F. KARLSEN, *THE DEVIL IN THE SHAPE OF A WOMAN, WITCHCRAFT IN COLONIAL NEW ENGLAND* 62 (First Vintage Books Ed. 1989). Defamation suits brought by men to vindicate women far outnumbered suits brought by women themselves, however, perhaps because "an attack on the virtue of a single woman put no husband's reputation at stake," and husbands had standing to pursue defamation remedies under the doctrine of coverture. Donna J. Spindel, *The Law of Words: Verbal Abuse in North Carolina to 1730*, 39 AM. J. LEGAL. HIST. 1, 33 (1995).

19. GODBEER, *supra* note 19, at 153–54.

Witches” had created such a glut of defamation cases that local courts began levying criminal fines (as steep as a thousand pounds) against spreaders of infernal falsehoods.<sup>20</sup>

By the early 1780s, the witch trials in England and America had petered out.<sup>21</sup> The rational influence of the Enlightenment had settled upon the Western world, and the Lockean idea of separating the spiritual dealings of church from the material workings of state was gaining popularity, especially in the newly-formed United States.<sup>22</sup> James Madison proposed a division between state and religious matters in his original draft of the First Amendment in 1789 and a variation of it was eventually ratified two years later.<sup>23</sup> In his popular 1794 book *The Age of Reason*, Thomas Paine ravaged Christianity (and its diabolology) as a tool of theocratic tyranny that should be rejected in favor of secular democracy.<sup>24</sup> As president in 1802, Thomas Jefferson wrote his famous *Letter to the Danbury Baptists*, describing the dual Religion Clauses as “building a wall of separation between Church & State.”<sup>25</sup> Meanwhile, back in England, “belief in the existence of the Devil had practically vanished,” at least among the literate classes, by 1800.<sup>26</sup>

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20. Richard Beale Davis, *The Devil in Virginia in the Seventeenth Century*, 65 VA. MAG. HIST. & BIOGRAPHY 133, 143–44 (1957).

21. ROBERT W. THURSTON, WITCH, WICCE, MOTHER GOOSE: THE RISE AND FALL OF THE WITCH HUNTS IN EUROPE AND NORTH AMERICA 79 (2001). By comparison, King Louis XIV had already decriminalized witchcraft in France a century earlier. JEFFREY BURTON RUSSELL, THE PRINCE OF DARKNESS: RADICAL EVIL AND THE POWER OF GOOD IN HISTORY 189 (1988).

22. NOAH FELDMAN, DIVIDED BY GOD 29 (2005).

23. How, exactly, Madison felt about secular government’s relationship to religion is still hotly debated, both by scholars and by Supreme Court justices. See, e.g., *Lee v. Weisman*, 505 U.S. 577, at 612–16, 622–26 (1992) (Souter, J., concurring); *Wallace v. Jaffree*, 472 U.S. 38, 91–103 (1985) (Rehnquist, J., dissenting); Vincent Phillip Muñoz, *James Madison’s Principle of Religious Liberty*, 97 AM. POL. SCI. REV. 1, 17–19 (2003) (summarizing the scholarly and judicial debate).

24. Peter A. Schock, *The Marriage of Heaven and Hell: Blake’s Myth of Satan and its Cultural Matrix*, 60 ELH 441, 444–45 (1993).

25. *Van Orden v. Perry*, 545 U.S. 677, 709 (2005) (Stevens, J., dissenting). Just as the debate about Madison’s views still rages, not all scholars and judges agree with the Jeffersonian interpretation of the Religion Clauses. See *id.* at 693–94 (Thomas, J., concurring) (“Original meaning” of the Establishment Clause prohibits only “actual legal coercion,” and does not require strict governmental neutrality of any sort) (internal quotations omitted).

26. Schock, *supra* note 25, at 441.



Serious belief in the devil's dark presence in the daily affairs of men had dissipated just as the newly-independent America was beginning to develop its own civil and criminal legal systems independent of England.<sup>27</sup> However, conservative Christian sects still held sway over most American communities throughout the first half of the nineteenth century. Though allegations of fiendish frolic had largely disappeared from criminal dockets, they had not vanished as a source of social strife and civil litigation. People still accused each other of being in league with the prince of darkness, and those accusations still harmed reputations within religious congregations and in wider communities.

Once witchcraft was no longer a crime, it became more difficult to recover damages for Satan-related insults, depending on how and where they were made. Speaking false claims of criminality triggered the common law cause of action now known as slander *per se*, but false claims of non-criminal deviance were not usually actionable. For example, in Pennsylvania in 1806, verbally calling someone "Devil," or "prince of darkness," or "brazen faced Belzebub," was not considered slander because such language "import[ed] passion, but no crime or discredit" to the average citizen.<sup>28</sup>

Such infernal name-calling *was* actionable, however, if it threatened the livelihood or professional standing of certain special members of the community, however, even if no actual crime was alleged. For example, falsely accusing a clergyman of being a "preacher of the devil" was actionable because "these words if believed, must deprive him of that respect, veneration, and confidence, without which he can expect no hearers as a

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27. RUSSELL, *supra* note 18, at 77.

28. M'Millan v. Birch, 1 Binn. 178, 180 (Pa. 1806) (stating "[i]n order to make words actionable, they either must contain an express imputation of some crime liable to punishment, some capital offence or other infamous crime or misdemeanor, or they must be spoken of one in an office of profit, which may probably occasion the loss of his office, or of persons touching their respective professions trades and business, and do or may probably tend to their damage" (citing Onslow v. Horne, 3 Wils. 177 (1771)). This is the same standard as what is now commonly known as "slander *per se*." See 50 AM. JUR. 2D *Libel & Slander* § 357 (2019). The Pennsylvania Court in 1806 did not acknowledge the availability of any alternative slander *per quod* claim, regardless of whether the plaintiff alleged special damages.

minister of the gospel.”<sup>29</sup>

Consistent with the English common law distinction between written and spoken defamation, claims in American courts for Luciferian libel were easier to prove than those for Satanic slander.<sup>30</sup> For example, in March 1819, Sherman Converse, editor of the New Haven newspaper *The Connecticut Journal*, published an accusation that Connecticut postmaster and statesman Joshua Stow had openly promoted devil worship while participating in the state’s constitutional convention.<sup>31</sup> Converse wrote in the *Journal* that Stow had had the audacity to suggest “that government had no more right to provide by law for the support of the worship of the Supreme Being, than for the support of the worship of the devil.”<sup>32</sup> According to Converse, Stow was not making a rational case for secular democracy; he was invoking the dark lord to challenge the authority of God.<sup>33</sup>

On appeal, Chief Judge Stephen Hosmer of the Connecticut Supreme Court of Errors considered whether Converse’s editorial could amount to actionable libel. The Court found that it could, even though Stow was accused of no crime. Writing any false accusation of devil worship was simply beyond the pale:

A sentiment so irreverent towards the Creator and Governor of the world, and so analogous to the modes of thinking, habitual to unbelievers and profligate men, would disgrace any person who was not a professed infidel. Taking it for granted, as we are bound to do, on the falsification of this charge, by the jury, that the plaintiff in his tenets is a [C]hristian, the

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29. *M’Millan*, 1 Binn at 184.

30. See *Nelson v. Musgrave*, 10 Mo. 648, 649 (1847) (explaining the traditional difference between libel and slander as both common law torts and criminal violations).

31. *Stow v. Converse*, 3 Conn. 325, 326–30 (1820).

32. *Id.* at 329. According to the trial testimony of defense witness Dr. Bela Farnham, Stow had made that comment, or something close to it, while arguing for a constitutional provision separating church and state, because even though “it was the duty of all men to worship the Supreme Being,” the “Government had no right to enforce this worship.” ROGER S. SKINNER, REPORT OF THE CASE OF JOSHUA STOW VS. SHERMAN CONVERSE FOR A LIBEL 11 (1822).

33. SKINNER, *supra* note 33, at 11.

injury accruing to him from the preceding imputation must necessarily be great. If believed, it can scarcely fail to deprive him of the esteem of mankind, exclude him from intercourse with men of piety and virtue, and render him odious and detestable. The evidence of this need not be laboured; it is intuitive; and every man, who has a common share of intellect and reputation, knows, that a charge against him of this description, would awaken all his resentment, and deprive him of peace until he had successfully repelled it.<sup>34</sup>

After this appeal and a second trial, Stow eventually prevailed against Converse. However, despite a fairly long road to a remedy, Stow actually had it easy compared to others. Converse was a newspaperman and his libelous insults had been published to the Connecticut public at large. His false charge of Satanism was not confined to any congregation, and thus the courts were open to Stow's claim.

The same philosophical, political, and constitutional progress that had phased out the prosecution of witches and similar heretics in American criminal courts raised serious hurdles for civil litigants fighting false accusations of demonic dealings levied at them in church. With legal matters of church and state now at least theoretically separated, defamation claims borne from congregational clashes created problems of jurisdiction.

In the 1871 case of *Watson v. Jones*, the Supreme Court declared that purely ecclesiastical disputes and adjudications within churches were totally outside the authority of secular state courts.<sup>35</sup> In the Court's view, secular courts could exercise

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34. *Stow*, 3 Conn. at 342 (emphasis in original).

35. 80 U.S. 679, 728–29 (1871) (stating “[t]he right to organize voluntary religious associations to assist in the expression and dissemination of any religious doctrine, and to create tribunals for the decision of controverted questions of faith within the association, and for the ecclesiastical government of all the individual members, congregations, and officers within the general association, is unquestioned. All who unite themselves to such a body do so with an implied consent to this government, and are bound to submit to it. But it would be a vain consent and would lead to the total subversion of such

no jurisdiction over matters which concerned “theological controversy, church discipline . . . or the conformity of members of the church to the standard of morals required of them.”<sup>36</sup>

Since *Watson*, this ecclesiastical abstention doctrine has “been absorbed into constitutional law as orthodox Establishment and Free Exercise Clause doctrine.”<sup>37</sup> The now-incorporated First Amendment mandates the same hands-off approach as the old common law doctrine, and thus all internal church conflicts must be considered beyond the jurisdiction of the secular courts if they involve any semblance of “religious doctrine and practice.”<sup>38</sup> This rule also applies to defamation actions.<sup>39</sup>

It may not surprise you that church elders sometimes lob accusations of devil worship or possession at parishioners they find troublesome (usually for more worldly reasons).<sup>40</sup> Because

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religious bodies, if any one aggrieved by one of their decisions could appeal to the secular courts and have them reversed”). In *Watson*, the Court imposed religious limits on state courts without reference to the Free Exercise or Establishment Clauses of the First Amendment, which were not incorporated to the states through the Fourteenth Amendment until 1940 and 1947, respectively. See *Everson v. Bd. of Ed.*, 330 U.S. 1 (1947) (establishment); *Cantwell v. Connecticut*, 310 U.S. 296 (1940) (free exercise).

36. *Watson*, 80 U.S. at 733.

37. Rodney A. Smolla, *Words “Which by Their Very Utterance Inflict Injury”: The Evolving Treatment of Inherently Dangerous Speech in Free Speech Law and Theory*, 36 PEPP. L. REV. 317, 329 (2009). This doctrine is also sometimes called the “church autonomy doctrine,” as originally used by Douglas Laycock. See Douglas Laycock, *Towards A General Theory of the Religion Clauses: The Case of Church Labor Relations and the Right to Church Autonomy*, 81 COLUM. L. REV. 1373 (1981).

38. *Presbyterian Church in U.S. v. Mary Elizabeth Blue Hull Mem’l Presbyterian Church*, 393 U.S. 440, 449 (1969); see also *Serbian E. Orthodox Diocese for U.S. & Can. v. Milivojevich*, 426 U.S. 696, 713 (1976). This same principle undergirds the so-called “ministerial exception” to Title VII discrimination suits, which arose in the Federal Circuit Courts of Appeals and was eventually affirmed by the Supreme Court. *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 188 (2012).

39. Michael A. Helfand, *Litigating Religion*, 93 B.U. L. REV. 493, 499, 517–19 (2013); see also 50 AM. JUR. 2D *Libel and Slander* § 117, at 420 (1995). (“Defamation actions are precluded by the First Amendment when an examination of the truth of the allegedly defamatory statements would require an impermissible inquiry into church doctrine and discipline”).

40. Congregational conflict can often become so severe that it gains local newsworthiness, and thus the risk of defamation increases. See Mike Stunson, ‘Notice of Trespass’: Critics Receive ‘Church Discipline’ Over Vote on Pastor Staying, LEXINGTON HERALD-LEADER (Jan. 26, 2018), <https://www.kentucky.co>

sincere, supernatural devil worship is statistically very rare,<sup>41</sup> the vast majority of accusations are probably false, and thus most Satan-smear church members could bring meritorious defamation claims against their congregational accusers. But that does not mean the courts are always willing to hear such claims.

Consider the case of Gregory Howard. Beginning in 1991, Howard and other members of the Covenant Apostolic Church of Cincinnati, Ohio sought access to the congregation's books during a financial dispute with church officials.<sup>42</sup> After the elders refused to turn over the records, the dispute devolved into litigation.<sup>43</sup> Three years later, once that lawsuit had finally been resolved, the Church retaliated, dismissing Howard as a member.<sup>44</sup>

Howard sued the Church again, this time for defamation. He alleged that church officials had justified his excommunication by concocting fiendish transgressions: "that he was in league with Satan, that he had been overtaken by a fall, that he was a defiler of the temple and an enemy of the Church . . ." <sup>45</sup> The way Howard saw it, these were slanderous insults tied to a secular dispute over money that had nothing to do with religious doctrine.

The Ohio Court of Appeals, citing *Watson*, disagreed. The decision to dismiss Howard as a member, the Court said, was a matter of church discipline.<sup>46</sup> Even though Howard's problems

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m/news/state/article196901624.html.

41. For example, only 1525 people self-identified their religion as "Satanism" on the 2001 British Census, a tiny fraction of the total population of over 50 million. More than 37 million people self-identified as Christian. Jonathan Petre, *Spiritual Britain Worships Over 170 Different Faiths*, TELEGRAPH (Dec. 13, 2004, 12:01 AM), <https://www.telegraph.co.uk/news/uknews/1478870/Spiritual-Britain-worships-over-170-different-faiths.html>. Considering the predominance of secular or "rationalist" versions of Satanism compared to theistic ones, it would probably be misleading to describe most of the respondents to the British Census as "sincere devil worshippers." ASBJØRN DYRENDAL ET AL., THE INVENTION OF SATANISM 3–7 (2016).

42. *Howard v. Covenant Apostolic Church, Inc.*, 705 N.E.2d 385, 386 (Ohio Ct. App. 1997).

43. *Id.*

44. *Id.*

45. *Id.* at 388.

46. *Id.*

with the Church were sparked by his criticism of its financial dealings, not its religious doctrine,<sup>47</sup> the Court concluded that the Church's discourteous statements were "inextricably intertwined with ecclesiastical or religious issues over which secular courts have no jurisdiction."<sup>48</sup> The lower court's dismissal of Howard's defamation claim was affirmed, and he was left with no legal remedy.

Contrast Gregory Howard's case to that of Jane Kliebenstein. Kliebenstein was a member of Shell Rock United Methodist Church in tiny Shell Rock, Iowa.<sup>49</sup> After receiving reports of conflict within the congregation, UMC supervising minister Jerrold Swinton visited the Church, where he discovered that Ms. Kliebenstein was a source of regular discord. Swinton then sent a letter, not only to members of the Church but also to nonmembers living in the local community, recommending that the congregation should eliminate the "spirit of Satan" working "in their midst" by stripping an unnamed troublemaker of her church offices, and perhaps ending her membership altogether if necessary.<sup>50</sup>

Kliebenstein then sued for libel, arguing that she was the obvious subject of the phrase "spirit of Satan," which falsely impugned her good moral character and wounded her reputation in the tight-knit community beyond the walls of the church.<sup>51</sup> Swinton and other church officials conceded in the lower court that Kliebenstein was in fact the subject of the "spirit of Satan" reference, but argued that the phrase was a "purely ecclesiastical term, deriving its meaning from religious dogma," and was therefore outside the jurisdiction of the state courts.<sup>52</sup> The trial court agreed and granted summary judgment.

The Supreme Court of Iowa did not agree, however, that this was a purely religious matter. First, the letter had been sent to

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47. See *Matthew 22:21* (King James) ("Render therefore unto Caesar the things which are Caesar's; and unto God the things that are God's").

48. *Howard*, 705 N.E.2d at 389.

49. *Kliebenstein v. Iowa Conf. of the United Methodist Church*, 663 N.W.2d 404 (Iowa 2003). The 2000 U.S. Census listed Shell Rock's population as 1298.

50. *Id.* at 405.

51. *Id.*

52. *Id.* at 406.

members of the community outside of the congregation.<sup>53</sup> Second, because Swinton's letter was published partially to a non-church audience, the dispositive question became whether "spirit of Satan" could have a secular meaning sufficient to hurt Kliebenstein's wider reputation.<sup>54</sup> Relying on four dictionary definitions, the Court concluded that "spirit of Satan" obviously had religious roots, but the phrase also carried "a common, and largely unflattering secular meaning" suggesting an impulse or tendency toward "innate wickedness."<sup>55</sup> The letter thus created sufficient grounds for a defamation claim, and the Iowa Supreme Court reversed summary judgment to allow Kliebenstein's case to proceed.<sup>56</sup>

Insinuations of infernal collusion do not always implicate sensitive questions of church/state separation, however. Like the 1819 case of *Converse v. Stow*<sup>57</sup> discussed previously within this Section, modern day devil-based defamation sometimes takes place outside of churches altogether, and thus litigation may proceed free from the First Amendment. Take, for example, the truly bizarre and protracted battle between two corporate behemoths: Procter & Gamble (P&G) and Amway.

In the early 1980s, rumors began to circulate among the public that P&G was in league with Satan.<sup>58</sup> While the true origins of the rumors are unknown, some Amway distributors helped to spread it.<sup>59</sup> For several years Amway management tried to suppress the rumors against its chief rival, but when the

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53. *Id.* at 407 ("The fact that Swinton's communication about Jane was published outside the congregation weakens [the] ecclesiastical shield").

54. *Id.*

55. *Kliebenstein*, 663 N.W.2d at 408.

56. See Chad Olsen, *In the Twenty-First Century's Marketplace of Ideas, Will Religious Speech Continue to Be Welcome?: Religious Speech as Grounds for Defamation*, 37 TEX. TECH. L. REV. 497 (2005).

57. 3 Conn. 325, 326–330 (1820).

58. *Procter & Gamble Co. v. Amway Corp.*, 242 F.3d 539, 542 (5th Cir. 2001).

59. *Id.* Amway has not always had a particularly secular internal culture. After all, it was co-founded by conservative Christian activist Richard DeVos. See *Our Story*, AMWAY, <https://www.amwayglobal.com/out-story/> (last visited Apr. 14, 2019); Ally Boghun, *The DeVos Family: Promoting Conservative Religious Values Through Political Donations*, REWIRE (Mar. 21, 2016), <https://rewire.news/article/2016/03/21/devos-family-promoting-christian-orthodoxy-political-donations/>.

accusations reemerged in 1995, the relationship between the companies fully deteriorated.

In April of that year, Amway distributor, Randy Haugen, internally circulated this account of P&G's supposedly Satanic dealings:

. . . [T]he president of Procter & Gamble appeared on the Phil Donahue Show on March 1, '95.<sup>60</sup> He announced that due to the openness of our society, he was coming out of the closet about his association with the church of satan. He stated that a large portion of the profits from [P & G] products go to support his satanic church. When asked by Donahue if stating this on television would hurt his business, his reply was, "There are not enough Christians in the United States to make a difference. . ."

. . . [I]f you are not sure about a product, look for the symbol of the ram's horn that will appear on each product beginning in April. The ram's horn will form the 666 which is known as satan's number. I'll tell you it really makes you count your blessings to have available to all of us a business that allows us to buy all the products that we want from our own shelf and I guess my real question is, if people aren't being loyal to themselves and buying from their own business, then whose business are they supporting and who are they buying from. Love you. Talk to you later. Bye.<sup>61</sup>

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60. *But see* David Mikkelson, *Procter & Gamble and Satanism Rumor*, SNOPE (June 21, 2013), <https://www.snopes.com/fact-check/trademark-of-the-devil/> (claiming that other versions of the rumor put the date of his appearance on the show one year earlier; however, no P&G executive ever appeared on any episode of the Phil Donahue Show).

61. Ty Tribble, *Randy Haugen, Amway, Quixtar, Procter & Gamble and Satan*, MLMBLOG (Mar. 21, 2007), [https://mlmblog.net/site/randy\\_haugen\\_am/](https://mlmblog.net/site/randy_haugen_am/); *see also* *Procter & Gamble Co. v. Haugen*, 222 F.3d 1262, 1268 (10th Cir. 2000). Haugen's message specifically listed forty-three P&G products by name which would supposedly bear the ram's horn symbol.



The rumor then snowballed through the company:

Some Amway distributors printed fliers containing the rumor, circulating them to consumers, with a message saying, “We offer you an alternative.” The fliers also gave contact information for Amway distributors. Although P&G has received complaints and inquiries about this rumor for the last twenty years . . . the number of complaints and inquiries increased substantially in the states in which the majority of Haugen’s distributors live.<sup>62</sup>

Despite several subsequent retraction attempts by Haugen, the rumor continued to spread among Amway’s many clients. In response, P&G filed federal lawsuits in both Utah and Texas against Amway, Haugen, and other distributors, alleging that the false Satanism rumor had damaged its reputation, interfered with its business dealings, and cost it customers.<sup>63</sup> P&G argued in both lawsuits that Amway’s promotion of the rumor violated the Lanham Act.<sup>64</sup> The Lanham Act, though primarily concerned with trademark infringement, also protects businesses from misrepresentations by competitors “in commerce” regarding the “nature, characteristics, or quality” of their “goods, services, or commercial activities.”<sup>65</sup> It is essentially a statutory ban on corporate defamation.<sup>66</sup>

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62. *Procter & Gamble Co. v. Amway Corp.*, 242 F.3d 539, 543 (5th Cir. 2001).

63. *Id.* at 544–545.

64. *See id.*; *see also* *Procter & Gamble Co. v. Amway Corp.*, 280 F.3d 519 (5th Cir. 2002); *Haugen*, 222 F.3d 1262.

65. 15 U.S.C. § 1125(a)(1)(B) (2018). Common law remedies for corporate defamation and disparagement may also be available to some plaintiffs. *See generally* Fred T. Magaziner, *Corporate Defamation and Product Disparagement: Narrowing the Analogy to Personal Defamation*, 75 COLUM. L. REV. 963, 1008 (1975).

66. P&G also made a Utah state common law slander *per se* claim against Amway which was dismissed by the District Court. The Tenth Circuit affirmed. Citing the Restatement (Second) of Torts § 573, the appeals Court noted that slander *per se* requires specific harm to a plaintiff’s trade or profession, and the devil worship rumor was simply too general in its disparagement: “Although offensive to many, an allegation of Devil worship,

Amway countered that Haugen had only listed the names of P&G products in his internal message and had not misrepresented anything about their nature, characteristics, or quality.<sup>67</sup> The District Court agreed, and dismissed P&G's Lanham Act claims.

Upon appeal, the Tenth Circuit disagreed:

The subject message linking P & G to Beelzebub clearly concerned the “nature, characteristics, [or] qualities . . . of . . . [P & G's] commercial activities,” under the plain meaning of that phrase. In particular, the subject message asserted that “a large portion of the profits from [P & G] products go to support [the church of Satan].” Given the common association of Satan and immorality, a direct affiliation with the church of Satan could certainly undermine a corporation's reputation and goodwill by suggesting the corporation conducts its commercial activities in an unethical or immoral manner.<sup>68</sup>

Amway then argued that Haugen's message to other distributors was not actually “commercial speech,” and thus not subject to the Lanham Act, which prohibits misrepresentations “in commerce.”<sup>69</sup> Relying on Supreme Court precedent defining commercial speech under the First Amendment, the Tenth Circuit ruled against Amway, concluding that the “theological component” of the Satanism rumor was insufficient to strip it of its commercial nature.<sup>70</sup> The Lanham Act claim was allowed to

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like drunkenness . . . does not pertain to a quality that is peculiarly valuable in plaintiffs' professional activities of manufacturing and selling household consumer goods.” *Haugen*, 222 F.3d at 1277 (citing comments (c) and (e) to the Restatement (Second) of Torts § 573. It appears the authors of the Restatement used the facts and holding of *McMillan v. Birch* (discussed above) to illustrate the Restatement's slander *per se* standard).

67. *Haugen*, 222 F.3d at 1270.

68. *Id.* at 1272 (internal citations omitted).

69. *Id.* at 1273.

70. *Id.* at 1275.

move forward in Utah.<sup>71</sup>

Back in the District Court on remand, litigation of the Lanham Act claims dragged on further for several years, until 2007, when a jury finally awarded \$19.25 million to P&G for Hagen's and other distributors' spread of the rumor.<sup>72</sup> The distributors appealed the verdict, but ultimately settled with P&G in November 2008.<sup>73</sup>

While all of this was unfolding out west, Amway filed suit in Michigan for tortious interference against P&G and its law firm, as well as against a man named Sidney Schwartz. Schwartz had posted a copy of P&G's Texas complaint (along with dozens of allegedly defamatory statements) on his web site, which he named "Amway: The Untold Story."<sup>74</sup> P&G's law firm had retained Schwartz as a "non-testifying consultant" and given him documents from P&G's ongoing litigation against Amway.<sup>75</sup> Schwartz quickly settled, but Amway persisted against P&G and its counsel.<sup>76</sup> Unfortunately for Amway, though, the federal District Court in Michigan dismissed the suit

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71. The Fifth Circuit also remanded P&G's Lanham Act Claim to the District Court in Texas that had dismissed it, but on somewhat different grounds. Rather than concluding, as the Tenth Circuit did, that Hagen's message to other distributors was definitely commercial speech, the Fifth Circuit remanded for fact-finding on his motivation for sending it. If his motivation was economic, the message would qualify as commercial speech and the Lanham Act claim could proceed. *Procter & Gamble Co. v. Amway Corp.*, 280 F.3d 519, 567 (5th Cir. 2002).

72. Associated Press, *Procter & Gamble Awarded \$19.25 Million in Satanism Lawsuit*, FOX NEWS, <http://www.foxnews.com/story/2007/03/20/procter-gamble-awarded-125-million-in-satanism-lawsuit.html> (last updated Jan. 13, 2015). On remand, the Utah District Court had dismissed the Lanham Act claims against Amway due a lack of vicarious liability, a ruling the Tenth Circuit affirmed. *See generally* *Procter & Gamble Co. v. Hagen*, 317 F.3d 1121 (10th Cir. 2003). The Fifth Circuit followed the Tenth Circuit's lead, ruling that *res judicata* precluded identical claims against Amway in Texas once the Utah claims had been dismissed. *Amway Corp.*, 376 F.3d at 496. The Tenth Circuit reversed, however, a second attempt by the Utah District Court to dismiss the Lanham Act claims against Hagen and the other distributors. *Procter & Gamble Co. v. Hagen*, 427 F.3d 727 (10th Cir. 2005).

73. Matthew Heller, *P&G Satan Rumors Case Settles After Epic Battle*, ONPOINT NEWS (Dec. 16, 2008), <http://www.onpointnews.com/NEWS/pag-satan-rumors-case-settles-after-epic-battle.html>.

74. *Amway Corp. v. Procter & Gamble Co.*, 346 F.3d 180, 181–182 (6th Cir. 2003).

75. *Id.* at 182.

76. *Id.* at 181.

based on the Michigan Fair Reporting Privilege.<sup>77</sup>

Affirming that dismissal, the Sixth Circuit colorfully prefaced its account of the “long history of corporate warfare” between P&G and Amway:

Recitation of the extensive and hate-filled history between P&G and Amway would take a writing as long as both the Old and New Testaments and involve at least one of the Good Book’s more prominent players. Although each side would likely argue, if given the chance, that its opponent was in the garden advising the serpent when Eve took her first bite of the apple, for our purposes we need only go back to the 1970s and Satan’s rumored more recent activity with and interest in soap products. For more than twenty years, rumors of a relationship between Lucifer and the soap manufacturer P & G-some spread by Amway’s distributors-have circled the globe, dogging P & G like a hound of hell . . .<sup>78</sup>

After explaining why Amway could not prevail on its claims against P&G and its law firm, the Court pleaded with the crusading combatants to call off their holy war, hoping that they would “consider the impact of their continuing legal battle on the scarce resources of the courts.”<sup>79</sup>

The battle between the two companies occurred during a strange time in America. Many of the diabolic rumors swirling against P&G coincided with a larger phenomenon: the so-called “Satanic Panic” of the 1980s and early 1990s.<sup>80</sup>

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77. *Id.* at 188. Under Michigan law, “[d]amages shall not be awarded in a libel action for the publication or broadcast of a fair and true report of matters of public record, a public and official proceeding, or of a governmental notice, announcement, written or recorded report or record generally available to the public . . .” Mich. Comp Laws § 600.2911(3) (2018).

78. *Amway Corp.*, 346 F.3d at 182.

79. *Id.* at 188.

80. “Satanic Panic is a term used to describe a phenomenon which occurs with alarming regularity in areas with deeply rooted Christian traditions. Various forms of Satanic Panic have been observed since the beginning of time, and although the specific details may change with the times, the roots and

In 1980, Canadian psychiatrist Lawrence Pazder published a book called *Michelle Remembers*. The book told the story of a patient who was ritualistically abused as a child by the “Church of Satan” during the mid-1950s.<sup>81</sup> These were the first public charges of satanic ritual abuse in the United States and the book ultimately triggered a wide-scale moral panic that lasted more than a decade.<sup>82</sup> The surrounding hysteria fueled several high profile criminal cases, including the Kern County and McMartin Pre-School child abuse trials in California and the West Memphis Three murder trials in Arkansas. Ultimately, some defendants were acquitted, and most of those convicted for devil-related crimes had their convictions reversed as new evidence emerged or old witnesses recanted.<sup>83</sup> Some of the exonerated

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results are the same as they have been throughout history. Satanic Panics occur when superstitious people in power choose to explain events that are difficult for them to comprehend by blaming demons and witches.” Dan Stidham, Haley Fitzgerald & Jason Baldwin, *Satanic Panic and Defending the West Memphis Three: How Cultural Differences Can Play a Major Role in Criminal Cases*, 42 U. MEM. L. REV. 1061, 1068 (2012).

81. MICHELLE SMITH & LAWRENCE PAZDER, *MICHELLE REMEMBERS* (1980).

82. DEBBIE NATHAN & MICHAEL SNEDEKER, *SATAN’S SILENCE: RITUAL ABUSE AND THE MAKING OF A MODERN AMERICAN WITCH HUNT* 45 (2001); *see also* Friedman v. Rehal, 618 F.3d 142, 155–57 (2nd Cir. 2010) (summarizing the relevant events of “the late-1980’s and early-1990’s, a period in which allegations of outrageously bizarre and often ritualistic child abuse spread like wildfire across the country . . .”); PHILIP JENKINS, *MORAL PANIC: CHANGING CONCEPTS OF THE CHILD MOLESTER IN MODERN AMERICA* 166 (Yale Univ. Press 2004).

83. *See* Samuel R. Gross, *Exonerations in the United States 1989 Through 2003*, 95 J. CRIM. L. & CRIMINOLOGY 523, 539–40 n.40 (2005); Clyde Haberman, *The Trial that Unleashed Hysteria Over Child Abuse*, N.Y. TIMES (Mar. 9, 2014), <https://www.nytimes.com/2014/03/10/us/the-trial-that-unleashed-hysteria-over-child-abuse.html> (regarding the McMartin and Wee Care Nursery School cases); Maggie Jones, *Who Was Abused?*, N.Y. TIMES MAG. (Sept. 19, 2004), <https://www.nytimes.com/2004/09/19/magazine/who-was-abused.html>; Campbell Robertson, *Deal Frees ‘West Memphis Three’ in Arkansas*, N.Y. TIMES (Aug. 19, 2011), <https://www.nytimes.com/2011/08/20/us/20arkansas.html>; *30 Years Later, Key Figures Reflect on McMartin Preschool Case*, CBS L.A. (Aug. 4, 2014), <https://losangeles.cbslocal.com/2014/08/04/30-years-later-key-figures-reflect-on-mcmartin-child-abuse-case/0>. Not all of those convicted have been released, however, including Frank Fuster, convicted for ritualistic child abuse in 1984. Aja Romano, *The History of Satanic Panic in the US—and Why It’s Not Over Yet*, VOX (Oct. 30, 2016, 10:30 AM), <https://www.vox.com/2016/10/30/13413864/satanic-panic-ritual-abuse-history-explained>.

later sued.<sup>84</sup>

Ironically, perhaps, *Michelle Remembers* may have also triggered legal action from the unlikeliest of all devil-related defamation plaintiffs. After publication of the book, Anton LaVey, a self-styled Satanist and the founder of the real Church of Satan, sued, or at least threatened to sue, Pazder for libel.<sup>85</sup> It is not clear whether he actually filed a complaint or not. Author Mary de Young claims that Pazder retracted his factually impossible allegations about the Church's abusive rituals (which allegedly occurred before the Church ever existed) after LaVey merely threatened a lawsuit.<sup>86</sup> However, the Church of Satan itself claims LaVey did in fact file a complaint in 1981, and in an affidavit LaVey disputed Pazder's claim that he was unaware of LaVey's organization when *Michelle Remembers* was published.<sup>87</sup>

Clearly, Satan is no stranger to American tort law. Accusations of devil worship can lead to serious social penalties for the accused (and thus great liability for the accusers). The dark lord is no stranger to criminal law, either, even though witch trials have long been a relic of the past. It makes sense—if an allegation of antichrist allegiance can damage a person's social reputation, certainly the same could be used as a

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84. For example, Jeffrey Modahl, convicted for molestation during the Kern County panic of 1983, was granted habeas relief in 1999. He subsequently sued the prosecutor and investigating officers in his case for civil rights violations, but the Ninth Circuit ultimately affirmed the dismissal of his claims on immunity grounds. *Modahl v. County of Kern*, 61 Fed. Appx. 394 (9th Cir. 2003). John Stohl, whose conviction in the Kern County cases was overturned, settled a civil rights suit against the county for \$5 million. *Kern to Pay \$5M Settlement to 'Witch Hunt' Man*, BAKERSFIELDNOW.COM (Sept. 15, 2009), <https://web.archive.org/web/20100807001433/http://www.bakersfieldnow.com/news/59395087.html>.

85. Truth being the ultimate defense to any defamation action, LaVey's self-claimed status as a Satanist would normally have disqualified him as a devil-related defamation plaintiff. But LaVey's Church of Satan was founded in 1966, and thus could not possibly have been the source of ritualistic child abuse in the 1950s.

86. MARY DE YOUNG, *THE DAY CARE RITUAL ABUSE MORAL PANIC* 23–24 (2004).

87. Peggy Nadramia, *From the Church of Satan Archives*, <http://www.churchofsatan.com/from-the-cos-archives.php> (last visited July 2, 2019). The author of this Article could not locate any corroborating court documents to confirm whether LaVey actually filed suit, and if so, what the ultimate outcome may have been.

prosecutorial weapon against those accused of crimes. The next Section explores how prosecutors have tried to turn their community's disapproval of the devil into a weapon against criminal defendants.

## II. The Prejudicial Devil

*Ye are of your father the devil, and the lusts  
of your father ye will do. – John 8:44*

Witchcraft may not be a crime in America anymore, but devotion to the dark lord can still result in criminal sanction. Just as accusations of Satanic collusion can damage a person's public reputation, so too can those accusations harm defendants in criminal court. Despite the general ban on character and unfairly prejudicial evidence, criminal courts sometimes allow juries to consider a defendant's devil worship.

It is a pillar of American criminal law that defendants should not be convicted by unfairly prejudicial evidence, such as character evidence that the defendant is simply a bad person regardless of the specific bad acts for which he is accused. Long before the Federal Rules of Evidence formally codified this principle in 1975,<sup>88</sup> most courts followed the common law rule that “[t]he State may not show defendant's prior trouble with the law, specific criminal acts, or ill name among his neighbors, even though such facts might logically be persuasive that he is by propensity a probable perpetrator of the crime.”<sup>89</sup> “The inquiry is not rejected because character is irrelevant; on the contrary, it is said to weigh too much with the jury and to so overpersuade [sic] them as to prejudice one with a bad general record and deny him a fair opportunity to defend against a particular charge.”<sup>90</sup> Such evidence tends to be unfairly prejudicial because juries may convict on an emotional basis, rather than on the weight of the factual evidence alone.<sup>91</sup>

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88. FED. R. EVID. 403, 404.

89. *Michelson v. United States*, 335 U.S. 469, 475 (1948).

90. *Id.* at 475–76.

91. FED. R. EVID. 403 (advisory committee's note to 2017 amendment). However, that same evidence is admissible as, among other things, “proof of motive.” FED. R. EVID. 404(b). For a thorough discussion of how criminal courts

Similarly, the Supreme Court has long recognized a First Amendment right to “join groups and associate with others holding similar beliefs.”<sup>92</sup> Evidence of membership in rebellious, hateful, or anti-social groups should only be admitted as evidence when directly relevant to the crime for which the defendant is accused or was convicted.<sup>93</sup> Defendants should only be convicted for their criminal acts, not for their socially distasteful beliefs or associations. Evidence of constitutionally protected beliefs, such as religious beliefs, must be admitted for some other purpose than to depict a defendant as “morally reprehensible.”<sup>94</sup>

As the defamation claims discussed in Part I show, American courts assume that most people will automatically have a very negative emotional reaction to any alleged Satanist, especially one accused of a crime.<sup>95</sup> Accusing a defendant or a witness of devil worship can be quite discrediting at trial. Perhaps this is why prosecutors (and at least one defendant) in criminal cases have tried to admit evidence of Satanic sympathies against their opponents, though their success in doing so has been mixed.<sup>96</sup>

Consider the following cases:

In the early 1980s, Joey Tate was convicted for shoplifting in Iowa.<sup>97</sup> A fellow customer had reported that he saw Tate come out of a dressing room with a bulging vinyl bag.<sup>98</sup> When the salesman requested to look in the bag, Tate went back to the dressing room, dropped two pairs of pants, and then ran out of the store.<sup>99</sup> He was later arrested. The bag was entered into

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approach the evidentiary distinction between character and motive, see David P. Leonard, *Character and Motive in Evidence Law*, 34 LOY. L.A. L. REV. 439 (2001).

92. Dawson v. Delaware, 503 U.S. 159, 163 (1992).

93. *Id.* at 167 (holding that evidence that white defendant was a member of the Aryan Brotherhood was irrelevant for sentencing purposes because his victim was also white).

94. *Id.*

95. *See supra* pt. I.

96. *See generally* George L. Blum, Annotation, *Admissibility and Prejudicial Effect of Evidence, in Criminal Prosecution, of Defendant's Involvement with Witchcraft, Satanism, or the Like*, 18 A.L.R. 5th 804 (1994).

97. Iowa v. Tate, 341 N.W.2d 63, 64 (Iowa Ct. App. 1983).

98. *Id.*

99. *Id.*



evidence along with a book that Tate had been carrying inside titled *Satan is Alive and Well on Planet Earth*.<sup>100</sup>

At trial, the investigating officer testified that he talked to Tate about the book, which Tate said he liked and believed to be truthful.<sup>101</sup> Tate's attorney did not object to the officer's testimony, but attempted to have Tate testify about the contents of the book, which was actually a Christian author's call to fight against Satan's power over society.<sup>102</sup> However, the prosecutor objected, arguing that the content of the book was irrelevant, and the trial court sustained the objection.<sup>103</sup> Tate was not allowed to clarify the contents of the book during his testimony.

On appeal, the Court of Appeals of Iowa reversed Tate's conviction and remanded for a new trial. When prosecutors produce unfavorable evidence, the Court said, defendants must be allowed to explain or rebut it (assuming they do not successfully object to its admission in the first place).<sup>104</sup> This was especially true for a book with such an ambiguous and potentially prejudicial title:

The title of the book in question, which was designed to attract the attention of a bookstore browser, does not reveal whether the book promotes or opposes satanic worship. Therefore, when the police officer testified that defendant liked and agreed with the book, the jury may very well have concluded that defendant was a Satan worshipper. This would obviously be highly prejudicial to his case. If the defendant had been given the opportunity to offer an explanation, any misunderstanding or prejudice could have easily been cleared up. The book in question was written by a contemporary Christian author. It discusses

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100. *Id.*

101. *Id.*

102. *Id.*

103. *Tate*, 341 N.W.2d at 64.

104. *Id.* at 65. The Court did not address whether the book was validly admissible in the first place because Tate's attorney did not raise an objection at trial. However, it is not a stretch to assume the appeals court would have also reversed the District Court if it had not sustained such an objection.

the author's beliefs about the evidence of Satan's influence in society and the way in which it can be eliminated. While the book is about satanism in one sense, it certainly does not promote Satan worship.<sup>105</sup>

The Iowa Court did not explain why a jury would "obviously" be prejudiced against Tate if they concluded he was a Satan worshipper. Was Tate's jury composed entirely of Christians? Was he prosecuted in a particularly religious jurisdiction? That is unclear. The Court just assumed the prejudicial effect was so obvious that it scolded the prosecutor:

The prejudice to the defendant should have been obvious to the prosecutor in this case. We question his decision to use the book at trial for any purpose. Assuming, however, that the book was relevant to connect the defendant with the vinyl bag, its prejudicial effect could have been eliminated or at least minimized by a simple request for an admonition, agreed to by both sides, from the court to the jury that the book did not advocate satanic worship but was instead written by a noted religious author. Had the prosecutor used common sense and discretion in talking about the book, additional time, effort, resources and expense in this appeal and new trial would have been conserved.<sup>106</sup>

In a somewhat similar case from Illinois, Peter Quiroz, a member of the Satan Disciples street gang in Chicago, was on trial for murder, robbery, and battery.<sup>107</sup> During closing arguments, the prosecutor twice referred to him as a "disciple of Satan," rather than as a Satan Disciple.<sup>108</sup> On appeal, the

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105. *Id.* at 64–65.

106. *Id.* at 65. It is probably fair to assume that the prejudice to the defendant was obvious to the prosecutor, and that is precisely why prosecutor produced the book and then objected to any effort to clarify its content.

107. *People v. Quiroz*, 628 N.E.2d 542 (Ill. App. Ct. 1993).

108. *Id.* at 548.

Appellate Court of Illinois held those references to be “clearly improper” because “it is obvious that the fact that defendant admitted to belonging to the Satan Disciples street gang does not lead to the reasonable inference . . . that defendant was ‘a disciple of Satan’” and such references were made only to inflame religious feeling.<sup>109</sup> The Court observed that prosecutorial comments “designed to stir religious feeling push beyond the bounds of proper courtroom decorum.”<sup>110</sup>

Other courts *have* allowed prejudicial evidence of infernal affiliation at the trial stage, however.<sup>111</sup> In *State v. Bartnick*, another Iowa criminal case, prosecutors produced a letter allegedly signed by Michael Bartnick, on trial for double murder.<sup>112</sup> In place of Bartnick’s signature, however, appeared the handwritten phrase “Satan’s Dog Soldiers” and the number “666,” which matched a tattoo on his arm.<sup>113</sup> The Court acknowledged that the signature portion of the letter was prejudicial, but held that its probative value outweighed any prejudice because: (1) the letter was essentially a confession to the crime, (2) Bartnick denied that he wrote it and thus made the signature an issue, and (3) an expert witness testified that it

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109. *Id.* at 549.

110. *Id.* Nevertheless, the appellate court held that the prosecutor’s remarks did not constitute reversible error in Quiroz’s case because the verdict would not have been different without them. *Id.* Contrast this ruling with *Mitchell v. State*, 379 S.E.2d 123 (S.C. 1989) (conviction reversed and remanded for new trial upon finding that prosecutor’s introduction of defendant’s “devil worship,” without other evidence linking him to the crime, improperly placed defendant’s character at issue).

111. See *State v. Nesbit*, 978 S.W.2d 872, 884–85 (Tenn. 1998) (holding questions to witness about defendant’s alleged Satanism was admissible because it was relevant to “the defendant’s reputation in the community for peacefulness and quietude”); *Commonwealth v. Drew*, 489 N.E.2d 1233, 1243 (Mass. 1986) (holding evidence of defendant’s “involvement in Satanism” and the victim’s desire to leave defendant’s cult “were inextricably intertwined with the description of events on the night of the killing” and thus admissible.); *Stephan v. State*, 422 S.E.2d 25, 26 (Ga. Ct. App. 1992) (defendant’s affiliation with Satanic cult was admissible because it became “relevant and material” to motivation for assault of witness who had convinced former cult member to leave.); *Skinner v. State*, 784 S.W.2d 873, 875 (Mo. Ct. App. 1990) (holding trial counsel was not ineffective for not objecting to cross-examination of defendant about devil worship, considering defendant repeatedly denied it and no other evidence was produced).

112. 436 N.W.2d 647 (Iowa Ct. App. 1988).

113. *Id.* at 648.

was in his handwriting.<sup>114</sup>

Meanwhile, in Maine, Scott Waterhouse was accused of strangling a twelve year-old girl and ritually defiling her corpse.<sup>115</sup> During his trial, prosecutors produced a tape-recorded conversation between police officers and Waterhouse during which he described his Satanic practices and beliefs.<sup>116</sup> The prosecution also produced passages from Anton LaVey's *The Satanic Bible*, which Waterhouse referenced during his interrogation.<sup>117</sup> Despite Waterhouse's argument that such evidence was unfairly prejudicial, the Supreme Judicial Court of Maine ruled that Waterhouse's references to specific passages from *The Satanic Bible* were probative of motive, identity, and intent, because the jury could interpret the passages to be consistent with the heinous crime for which he was accused.<sup>118</sup>

Then there is the case of Daniel Naylor, convicted of killing a young man named Wayne Lange. Naylor, Lange, and several other young men and women had formed a "family" that lived together at various locations in the Rochester, Minnesota area in the late 1980s.<sup>119</sup> Members of this family had become interested in both witchcraft and Satanism, and some, including both Naylor and Lange, started referring to themselves as "warlocks."<sup>120</sup> Then, during a group road trip into the country two days before Halloween in 1989, Naylor slashed Lange's throat with a boot knife, killing him.<sup>121</sup> When Lange's body was found several hours later, he had suffered what appeared to be numerous ritualistic wounds: three slashes across the neck and a stab wound to the chest, along with various other cuts and

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114. *Id.*; see also *Skinner*, 784 S.W.2d at 873 (holding the admission of a letter written by defendant that included allegedly Satanic references "Merciful Fate" and "Evil Slayer" was not prejudicial error).

115. *State v. Waterhouse*, 513 A.2d 862, 864 (Me. 1986).

116. *Id.* at 864.

117. *Id.*

118. *Id.* at 864–65. The admitted passages included, "[d]eath to the weakling, wealth to the strong," "[c]ursed are the feeble, for they shall be blotted out," and "[a]re we not all predatory animals by instinct?" As discussed below in pt. IV, passages from *The Satanic Bible* have also been cited to deny religious free exercise to incarcerated Satanists.

119. *State v. Naylor*, 474 N.W.2d 314, 316 (Minn. 1991).

120. *Id.*

121. *Id.*

punctures.<sup>122</sup>

At trial, the prosecution produced a variety of evidence of Naylor's involvement in witchcraft and Satanism: testimony from co-defendants that Naylor referred to himself as a "warlock" and "Satanic high priest," photographs of books on witchcraft and Satanism that Naylor and his co-defendants had had access to, and twelve actual books on the same subjects.<sup>123</sup> One of the books, *Satanism: Is Your Family Safe?*, was an anti-witchcraft book with a message that "people with long-term involvement in witchcraft are necessarily persons with ghastly criminal records and that jurors ought to put such people away."<sup>124</sup>

On appeal, Naylor argued that admission of this book with no limiting instruction to the jury was unfairly prejudicial to him.<sup>125</sup> The Supreme Court of Minnesota acknowledged that admission of the book without limitation was "persuasion by illegitimate means," but concluded that it was harmless error by the trial court because "the jury would have decided exactly the same way" based on the vast amount of other, admissible evidence against Naylor such as the testimony of his co-defendants and the other books.<sup>126</sup> Naylor's conviction for first-degree murder was affirmed.<sup>127</sup>

Finally, consider the case of *Commonwealth v. Costal*, another example of a court allowing prosecutors to admit

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122. *Id.* at 317.

123. *Id.* at 318.

124. *Id.* at 319.

125. *Naylor*, 474 N.W.2d at 319 (Naylor argued that the testimony of his co-defendants, the photographs of the books, and the eleven other books admitted against him were also unfairly prejudicial, but the court rejected these arguments).

126. *Id.* at 320 (though not much consolation to Naylor, the court also issued a warning: "[W]e caution prosecutors and trial court judges to be especially meticulous in their review of books and documentary exhibits . . . Prosecutors should avoid putting at risk the fairness of a trial in a serious criminal matter by seeking the admission of such marginally relevant, cumulative and inflammatory material").

127. See *Naylor Denies Killing, Satanic Ties*, POST-BULLETIN (May 20, 1991), [https://www.postbulletin.com/naylor-denies-killing-satanic-ties/article\\_1a6ceb97-7152-5467-9952-6be8e67f53eb.html](https://www.postbulletin.com/naylor-denies-killing-satanic-ties/article_1a6ceb97-7152-5467-9952-6be8e67f53eb.html). Though he did not testify at trial, Naylor gave an interview while in prison in which he denied killing Wayne Lange and denied that he was a Satanist: "I was made out to look like the Charles Manson of Minnesota," he said. *Id.*

prejudicial evidence of Satanic religious beliefs against criminal defendants during the guilt phase of a trial.<sup>128</sup> Frank Costal was convicted of killing a woman and her four year-old daughter in their home in July of 1978.<sup>129</sup> At trial, prosecutors presented evidence that Costal considered himself a “high priest of Satan” and had regularly engaged in dark rituals, including the murders themselves.<sup>130</sup> An expert witness testified that various items found in Costal’s home, including “books, posters, plastic skulls and bats,” were Satanic paraphernalia.<sup>131</sup> The expert also “testified to the prominent role of mind control in satanism and the practice of causing others to commit crimes and perform homosexual acts to further such control.”<sup>132</sup>

Costal argued on appeal that the admission of his alleged Satanism was contrary to precedent banning the admission of religious belief as evidence.<sup>133</sup> The Supreme Court of Pennsylvania had twice before ruled that testimony about religion was irrelevant in criminal trials, and inadmissible under a 1909 state law categorically banning the use of religious belief “for the purpose of affecting [a defendant’s] competency or credibility.”<sup>134</sup> Nevertheless, the Court in *Costal* found no error. The jury, after all, “was not compelled” to believe the expert testimony about Satanism, and could instead choose to believe that Costal was merely “play acting” and involved in Satanism “as a joke.”<sup>135</sup> Prejudicial as the evidence of his religious beliefs may have been, it was not *unfairly* prejudicial, so the Court

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128. *Commonwealth v. Costal*, 505 A.2d 337 (Pa. Super. Ct. 1986).

129. *Id.* at 337.

130. *Id.*

131. *Id.*

132. *Id.* (testimony in the trial revealed that Costal had been having a gay relationship with his victim’s husband prior to the murders).

133. *Id.* at 202–03.

134. *Commonwealth v. Greenwood*, 413 A.2d 655, 657 (Pa. 1980) (questioning defendant’s membership in Universal Life Church was irrelevant and contrary to the statute); *Commonwealth v. Mimms*, 385 A.2d 334, 336 (Pa. 1978) (questioning the defendant’s Muslim faith was irrelevant and contrary to the statute).

135. *Costal*, 505 A.2d at 338. On the other hand, the Court also concluded that the evidence of Costal’s Satanic beliefs was, “highly probative regarding the manner of the slayings,” so it may have been disingenuous of the Court to suggest that a jury could easily choose not to believe it. *Id.*

affirmed his conviction.<sup>136</sup>

Though some courts are at least somewhat reluctant to entertain diabolical insinuations during the guilt phase of a trial, most are quite permissive after a guilty verdict has been reached. During the penalty phase, prosecutors, seeking a tougher sentence, generally get far more leeway to admit evidence of a convicted defendant's pro-Satan sentiments.

In *Wisconsin v. Mitchell*, the U.S. Supreme Court declared that "a defendant's abstract beliefs, however obnoxious to most people, may not be taken into consideration by a sentencing judge" without violating the First Amendment.<sup>137</sup> However, the Court also qualified this strict statement by noting that there is no "*per se* barrier to the admission of evidence concerning one's beliefs or associations" during the sentencing phase as long as such evidence is "related to" the crime or "relevant to several aggravating factors."<sup>138</sup> Evidence of bad character is considered relevant.<sup>139</sup> In practice, this qualification has allowed trial courts to routinely admit evidence of Satanic belief and association at the sentencing stage, and appellate courts routinely affirm those admissions.

In *People v. Kipp*, the Supreme Court of California rejected murder convict Martin Kipp's argument that admission of a letter and his own testimony stating that he harbored Satanic sympathies was reversible error.<sup>140</sup> His stated beliefs about the devil, according to the court, were inconsistent with his simultaneous claims of remorse, and therefore fair game:

A favorable view of the biblical figure of Satan is generally understood as a symbolic rejection of the values of love and compassion, and as indicating acceptance of the contrary values of

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136. *Id.* at 339; *see also* Commonwealth v. Enders, 595 A.2d 600 (Pa. 1991) (explaining that physical evidence, such as skulls and occult books, were seized from defendants who were convicted of false imprisonment in an alleged Satanic ritual which was ruled not unfairly prejudicial).

137. 508 U.S. 476, 485 (1993).

138. *Id.* at 486.

139. Zant v. Stephens, 462 U.S. 862, 878 (1983).

140. *See* 33 P.3d 450, 474 (Cal. 2001) (noting that the trial court excluded evidence of Kipp's Satanic leanings during the guilt phase, but allowed it during the penalty phase).

hatred and violence, with a consequent rejection of all moral restrictions on crimes such as murder and rape. This abhorrent value system is inconsistent with defendant's claimed remorse and shame for the murders of his two victims, and thus evidence was properly admitted in rebuttal. If defendant's conception of Satan encompassed qualities consistent with an attitude of remorse, he was free to articulate them.<sup>141</sup>

Furthermore, the Court said, it was Kipp who had placed his own good character at issue during the penalty phase of the trial, so there was no error in admitting rebuttal evidence showing he had vowed to "his savior, Satan" to commit murder.<sup>142</sup>

In *State v. Jones*, the Court of Appeals of Wisconsin affirmed a cocaine possession sentence that was based, at least to some extent, on the defendant's past Satanic beliefs and his affiliation with a gang called the Sonz of Satan.<sup>143</sup> The Defendant argued that any consideration of his religious affiliation violated the First Amendment.<sup>144</sup> The appellate court disagreed, because the trial court "did not sentence Jones for his satanic religious affiliation; rather, the court found that this affiliation led Jones to criminal conduct."<sup>145</sup> There was, according to the court, a "reliable nexus" between Jones' admitted past Satanic beliefs and the drug dealing for which he was convicted.<sup>146</sup>

In Delaware, Aryan Brotherhood member David Dawson was convicted of four counts of first-degree murder and

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141. *Id.* at 474–75 (supporting its position that Satanism is generally understood as an "abhorrent value system" that accepts "hatred and violence" or rejects "all moral restrictions on crimes such as murder and rape") (citing *McCorkle v. Johnson*, 881 F.2d 993, 995–96 (11th Cir. 1989)).

142. *Id.* at 474.

143. 603 N.W.2d 748 (Wis. Ct. App. 1999).

144. *Id.*

145. *Id.*

146. *Id.* Perhaps a more reliable (and obvious) nexus could be found between Jones' crimes and his association with the members of the cocaine-dealing Sonz of Satan. After all, it was the gang, the Court noted, who actually "taught him how to sell drugs." *Id.*



sentenced to death.<sup>147</sup> During the penalty phase of his trial, the Court admitted evidence that Dawson referred to himself as “Abaddon,” a name he had tattooed on his stomach, and which he told a witness meant “one of Satan’s disciples.”<sup>148</sup> Dawson argued that the use of the name against him during sentencing violated his First Amendment rights.<sup>149</sup> The Supreme Court of Delaware rejected this argument, however. “The State did not offer that evidence in order to improperly appeal to the jurors’ passions and prejudices concerning . . . religion,” the Court explained.<sup>150</sup> Instead, “[t]he context of the State’s evidence was necessary to explain Dawson’s view of himself and how he wanted to be viewed by others” and thus was relevant to his character, something a jury may consider in a capital case.<sup>151</sup>

As these cases illustrate, prosecutors are often allowed to admit evidence of devilish doings at the sentencing phase of a criminal trial. However, it is not a total free-for-all; courts are sometimes willing to pump the brakes (though it rarely changes the ultimate outcome for the defendants).

Dale Flanagan and Randolph Moore were both convicted in 1985 for murdering Flanagan’s grandparents in order to collect insurance proceeds and an inheritance.<sup>152</sup> During the penalty phase of their second trial (their prior convictions were reversed due to prosecutorial misconduct), the State of Nevada presented evidence that the two men were members of a Satanic cult and had sworn that “Satan is my God” as part of an initiation

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147. Dawson v. State, 581 A.2d 1078 (Del. 1990).

148. *Id.* at 1085. According to the Hebrew Bible, Abaddon means *destruction*, and was the name given to “the angel of the bottomless pit” in *Revelation* 9:11 of the King James Version.

149. *Id.* at 1102.

150. *Id.* at 1103.

151. *Id.* (What is important to a jury when choosing the death penalty is an individualized determination on the basis of the character of the individual and the “circumstances of the crime”) (citing *Zant v. Stephens*, 462 U.S. 862, 879 (1983)). The U.S. Supreme Court ultimately vacated and remanded *Dawson*, but not because the Delaware court had allowed references to “Abaddon.” Although the Court declared that the admission of constitutionally protected beliefs, it must be for some other purpose than to attack a character. The Court limited its discussion to Dawson’s affiliation with the Aryan Brotherhood, and did not hold that the admission of his religious beliefs was improper.

152. Flanagan v. State, 846 P.2d 1053, 1055 (Nev. 1993).

ceremony.<sup>153</sup> According to the state, “the cult activities were relevant to provide the jury with a clearer understanding of the [defendants’] characters.”<sup>154</sup> The Nevada Supreme Court rejected this argument, however, because prosecutors had not presented any evidence that the cult actually required or engaged in any violent acts, and thus the Defendants’ religious practices were “not relevant to help prove any aggravating circumstance.”<sup>155</sup> In effect, the Court concluded, “the prosecution invited the jury to try appellants for heresy.”<sup>156</sup> Flanagan’s and Moore’s death sentences were vacated and their cases were remanded for a third penalty hearing.<sup>157</sup>

Somewhat similarly, in *United States v. Fell*, the Second Circuit considered whether it was appropriate, during the sentencing phase of a capital case, to admit evidence of convicted murderer Donald Fell’s “satanic interests,” his “666” tattoo, and his wearing of a Slayer t-shirt.<sup>158</sup> Prosecutors argued that this evidence was relevant to establishing the motive behind the multiple killings in the case and to proving the aggravating factors necessary to justify a death sentence.<sup>159</sup> “According to the government,” the court noted, “a Satanist believes he ‘can murder rape and rob at will without regard for the moral or legal consequences,’” and the proffered evidence established Fell’s

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153. *Id.* at 1057.

154. *Id.*

155. *Id.* (quoting *Dawson*, 503 U.S. at 166).

156. *Id.* at 1058–59.

157. *Id.* at 1059. Unfortunately, for both Flanagan and Moore, their third penalty hearing produced the same result as the first two—they were again sentenced to death. The next year, the Nevada Supreme Court affirmed their convictions and sentences, even though the court concluded that the prosecutors had violated Flanagan and Moore’s First Amendment rights by referring to their religious beliefs during closing arguments during the of the guilt phase of the second trial. The Court reasoned that such error during the guilt phase was less problematic than at the sentencing phase and, applying the harmless error standard, concluded that the remarks had no impact on the ultimate outcome of the trial. See *Flanagan v. State*, 930 P.2d 691, 693, 700 (Nev. 1996).

158. 531 F.3d 197, 227–30 (2d Cir. 2008). Slayer is a Grammy award-winning heavy metal band. See *Metal Band Slayer Wins Grammy for Anti-War Song*, REUTERS (Feb. 11, 2007, 6:33 PM), <https://www.reuters.com/article/us-grammys-slayer/metal-band-slayer-wins-grammy-for-anti-war-song-idUSN1130509420070212>.

159. *Fell*, 531 F.3d at 230.

identity as a Satanist.<sup>160</sup> The evidence was not unfairly prejudicial, the Court ruled, not because religious evidence is generally acceptable, but because admission of Fell's beliefs was simply not necessary to prove the aggravating factors.<sup>161</sup> After all, the government had provided other "essentially uncontested" evidence of Fell's murderous brutality.<sup>162</sup> Admitting evidence of Fell's religious sentiments thus did not constitute plain error and his sentence could not be overturned on those grounds.<sup>163</sup> Unlike Flanagan and Moore, Fell did not even win a temporary victory for religious freedom on his journey to death row.<sup>164</sup>

Finally, we examine one case where a defendant, not a prosecutor, tried to use infernal allegations to attack the credibility of a hostile witness. If it is true, as courts have said in defamation cases, that allegations of Satanism and devil worship carry "a common, and largely unflattering secular meaning" suggesting an impulse or tendency toward dishonesty and "innate wickedness,"<sup>165</sup> then such allegations would no doubt be a powerful weapon against witnesses, for whom credibility means so much.

However, the Federal Rules of Evidence put various limits on how witness credibility—that is, trustworthiness—can be impeached at trial.<sup>166</sup> One of those limits, Rule 610, forecloses any admission of a witness's religious beliefs or opinions to attack or to bolster credibility.<sup>167</sup> If accusations of Satanism and

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160. *Id.*

161. *Id.*

162. *Id.*

163. *Id.*

164. Fell would ultimately plead guilty to four charges in exchange for a life sentence. See Lisa Rathke, *Man Pleads Guilty in Vermont Slaying to Avoid Death Penalty*, PORTLAND PRESS HERALD (Sept. 28, 2018), <https://www.pressherald.com/2018/09/28/man-pleads-guilty-in-vermont-slaying-to-avoid-death-penalty/>.

165. *Kliebenstein v. Iowa Conference of the Methodist Church*, 663 N.W.2d 404, 408 (Iowa 2003).

166. FED. R. EVID. 604.

167. FED. R. EVID. 610. ("Evidence of a witness' religious beliefs or opinions is not admissible to attack or support the witness's credibility"). Before Rule 604 was enacted in 1975, many states required witnesses to swear an oath of religious belief to be considered competent to testify at all, while other states permitted non-believers to testify but allowed their credibility to

devilish dealings are “inextricably intertwined with ecclesiastical or religious issues over which secular courts have no jurisdiction,” as the Ohio Court of Appeals declared in *Howard v. Covenant Apostolic Church*,<sup>168</sup> then evidentiary rules like Rule 610 and the larger principle of fairness upon which they are based should exclude such accusations as well. However, that has not stopped litigants from at least *trying* to impeach hostile witnesses this way.

In 1974, the Supreme Court of Nebraska considered the case of *State v. Zobel*.<sup>169</sup> Zobel was convicted on a misdemeanor drug charge. The only witness against him at his trial was a Nebraska State Patrol officer named Rick Houchin, who testified that he had purchased a controlled substance from Zobel, a claim which Zobel denied.<sup>170</sup> As the only witness for the prosecution, Houchin’s credibility was a critical issue in the trial. To attack it, the defense came up with a clever strategy: “establish Houchin’s status as a devotee of Satan.”<sup>171</sup>

Defense counsel tried to get Houchin to admit to being not just a cop, but also a “Priest of Satan” who, as a prerequisite, had to “fore swear allegiance to God and Christ and accept evil, the embodiment of evil or Satan as omnipotent” and also forswear “all that is good and truthful.”<sup>172</sup> The defense asked Houchin a series of questions, some of which were successfully objected to, about whether he had “attempted to interest other young people in Satanism and the worship of Satan” and whether he had “ever said to any person that [he was] a Priest of the Devil.”<sup>173</sup> Only two questions along this line were allowed. The defense asked whether Houchin had ever “made an oath rejecting the power of God and Christ and accepting Satan as omnipotent,” and whether he had ever told anyone else that he

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be attacked on a religious basis. See, e.g., Paul W. Kaufman, *Disbelieving Nonbelievers: Atheism, Competence, and Credibility in the Turn of the Century American Courtroom*, 15 YALE J.L. & HUMAN. 395 (2003).

168. 705 N.E.2d 385, 386 (1997) (discussed at length in Section I above).

169. 222 N.W.2d 570 (Neb. 1974).

170. *Id.* at 571.

171. *Id.* at 572.

172. *Id.*

173. *Id.* (objection sustained).

had done such a thing.<sup>174</sup> Houchin said no to both questions.

On appeal, Zobel argued that his full line of questioning should have been allowed, and that he should have been allowed to produce impeaching testimony to prove Houchin's Satanic allegiance.<sup>175</sup> The Supreme Court of Nebraska rejected these arguments:

Of the questions asked, accepting at face value the defendant's offer of proof indicating that Satanism entails the rejection of "all that is good and truthful," it is clear that only the two questions which were answered and the one immediately following had any direct relevance on the point of how the witness' claimed beliefs affected his veracity.<sup>176</sup>

Zobel's conviction was affirmed.<sup>177</sup>

These cases and others illustrate that the criminal courts, despite a general limitation on the admission of religious character evidence and the sanctity of constitutionally-protected rights such as free exercise and association, sometimes do admit evidence of demonic devotion to determine guilt and punishment.<sup>178</sup> This evidence is assessed for other purposes as well; as Part III explains below, courts also entertain allegations (and admissions) of devil worship and demonic delusion when deciding questions of capacity and competence for both defendants and the deceased.

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174. *Id.*

175. *Zobel*, 222 N.W.2d 570.

176. *Id.* The Court rejected the impeachment argument because the law in Nebraska states that "impeachment by specific acts which bear upon the character trait of veracity is not permitted" as to "avoid pursuit of collateral issues," and "[t]he witness' alleged activities in the cult of Satan were clearly collateral." *Id.* at 572-73 (citing *Boche v. State* 122 N.W. 72 (Neb. 1909)).

177. *Id.* at 573.

178. Criminal cases are not the only place where this is an issue. Nonconforming religious beliefs about Satan and his influence on daily life can also be prejudicial in civil cases, such as in divorce hearings. *See, e.g., In re Marriage of Knighton*, 723 S.W.2d 274 (Tex. Ct. App. 1987) (reversing custody order due to unfair reliance on mother's fundamentalist Christianity, including strong belief in Satan's power and influence, in award of custody to father).

## III. The Incompetent Devil

*But I fear, lest by any means, as the serpent beguiled Eve through his subtilty, so your minds should be corrupted from the simplicity that is in Christ. – 2 Corinthians 11:3*

Ever since the case of *United States v. Ballard* in 1944, the Supreme Court has consistently held that the only aspect of religious belief American courts are allowed to adjudicate is the sincerity of the believer.<sup>179</sup> For example, under the First Amendment and later statutes such as the Religious Freedom Restoration Act, if you can show sincerity, regardless of whether or not your beliefs are accurate, plausible, or literally true, it can be possible to avoid military deployment, dodge a fraud charge, receive asylum, or escape a neutral obligation to provide health insurance to your employees.<sup>180</sup> But what happens if your religious beliefs (especially beliefs about the devil) are a little *too* sincere?

In American courts, sincere Satanic beliefs are used to prove mental illness, insanity, delusion, or other forms of legally-relevant incompetence. For example, a defendant may claim an intense or literal belief in Satan to prove that they are delusional, thus qualifying them for certain defenses or perhaps even disqualifying them from standing trial entirely.<sup>181</sup>

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179. Nathan S. Chapman, *Adjudicating Religious Sincerity*, 92 WASH. L. REV. 1185, 1187–88 (2017). While *Ballard* is the first case to expressly articulate that only sincerity, not “verity,” may be adjudicated, the general “no-orthodoxy principle” of American law (as Chapman calls it) traces its origins to the 1871 case of *Watson v. Jones*, discussed at length in Part I, above. *Id.* at 1197 (citing 80 U.S. 679 (1871)).

180. *Id.* at 1188; see also *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014).

181. American courts define “delusion” in a variety of ways, and do so “quite independent of the clinical or pathological views of the medical profession.” J.E. Macy, Annotation, *Insane Delusion as Invalidating a Will*, 175 A.L.R. 882 § 3 (1948). For three representative examples, see *In re Kaven’s Estate*, 272 N.W. 696, 698 (Mich. 1937) (stating “[a] person persistently believing supposed facts which have no real existence, against all evidence and probability, and conducting himself upon the assumption of their existence, was so far as such facts are concerned, under an insane delusion”); *Batson v. Batson*, 117 So. 10, 12 (Ala. 1928) (stating “the belief in a state of supposed facts that do not exist, and which no rational person would believe, in the absence of evidence, to exist, is an insane delusion”); *Wigginton’s Ex’rs v.*

Similarly, in will contests, strong evidence of “hyper-religious” delusions can rebut the strong presumption of testamentary capacity.<sup>182</sup>

We begin with criminal defendants.

In late October, 1985, Gregory Stevens and his wife left Ohio on a road trip to Florida.<sup>183</sup> After they crossed the border into Georgia on I-75, they ran out of gas.<sup>184</sup> At some point over the next twenty-four hours, while their car was parked on the side of the highway, Stevens beat and strangled his wife to death.<sup>185</sup>

At trial, Stevens pleaded the defense of insanity, based primarily on a long history of mental illness and delusional compulsions, as well as on his behavior immediately following the murder.<sup>186</sup> When he was apprehended by police in Georgia, he told them that “his wife was possessed by Satan, that he had beaten Satan out of her, and that she would arise the next day at noon, rid of the devil.”<sup>187</sup> After Stevens’ arrest, a court-ordered psychiatric evaluation diagnosed him with manic depression, delusional compulsion, and an inability to distinguish right from wrong.<sup>188</sup> According to a social worker at the hospital where he was incarcerated before trial, Stevens was “one of the sickest patients the hospital had had in a long time.”<sup>189</sup>

Nevertheless, at trial, the jury rejected his insanity defense, found him “guilty but mentally ill,” and sentenced him to life in prison.<sup>190</sup> On appeal, the Supreme Court of Georgia

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Wigginton, 239 S.W. 455, 459 (Ky. 1922) (stating “[a]n insane delusion . . . is the spontaneous production of a diseased mind, leading to a belief in the existence of something which either does not exist or does not exist in the manner believed”).

182. However, as explained below, when it comes to the question of mental capacity in will contests, sincere beliefs in devilish influence are generally not enough reason for courts to toss aside the last wishes of testators because American courts give great deference to the competence of the dead.

183. *Stevens v. State*, 350 S.E.2d 21, 21 (Ga. 1986).

184. *Id.*

185. *Id.*

186. *Id.* at 22.

187. *Id.* at 21.

188. *Id.* at 22.

189. *Stevens*, 350 S.E.2d at 22.

190. *Id.* at 21. Under Georgia law, a jury has five verdict options any time a defendant claims insanity. They can find the defendant guilty, not

acknowledged that “Georgia law presumes the sanity of an accused,” but reversed the conviction, holding that Stevens deserved a not guilty verdict due to the severity of his delusions.<sup>191</sup> Under Georgia law, a defendant should be found not guilty if the defendant’s criminal act “was connected with [a] delusion under which the defendant was laboring” and “the delusion was as to a fact which, if true, would have justified the act.”<sup>192</sup> This was certainly the case for Stevens; the Court held:

The evidence was overwhelming that at the time the defendant killed his wife he was operating under the delusion that she was possessed by satan and that he, the defendant, was defending himself against satan’s physical attacks and attempts to trap and destroy him, as well as putting an end to the evil and destruction in the world caused by satan. This evidence demanded a finding that the defendant met the justification criterion for a defense of delusional compulsion.<sup>193</sup>

In other words, under the reasoning of Georgia law, if Stevens’ delusions about Satan’s possession of his wife had been true, he would have been justified in trying to beat the devil out of her, and thus could not be held guilty of her murder.

More than twenty years later, a similar case arose in Illinois. In 2005, a Chicago resident named Amir Kando attacked and stabbed his neighbor Jason Burley.<sup>194</sup> At trial, Kando raised an insanity defense, but, like Stevens in Georgia,

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guilty, “not guilty by reason of insanity at the time of the crime,” “guilty but mentally ill at the time of the crime,” or “guilty but with intellectual disability at the time of the crime.” GA. CODE ANN. § 17-7-131(b)(1) (2018).

191. *Stevens*, 350 S.E.2d at 22.

192. *Id.* at 22 (quoting GA. CODE ANN. § 16-3-3 (2018)).

193. *Id.* at 22–23. In opposition to Steven’s insanity defense, Georgia prosecutors pointed out that he had, at least arguably, taken steps to cover up the crime, suggesting that he was not totally delusional. Stevens had wiped the blood from windows of the car, removed his blood-covered shirt and undershirt, and had, at some point, “ask[ed] about the death penalty in Georgia.” *Id.* at 23.

194. *People v. Kando*, 921 N.E.2d 1166, 1168 (Ill. App. 2009).



a trial court found Kando guilty but mentally ill, and sentenced him to fifteen years in prison.<sup>195</sup>

Kando had had a long history of mental illness and suffered from religiously-themed delusions. In preparation for trial, Kando was interviewed by two doctors, both of whom he told the same general story: he had been receiving messages from Jesus “that he should kill and lock up Satan for 1000 years,” so that Satan “would not deceive the nations.”<sup>196</sup> According to Kando, his mind was constantly consumed by images of the devil and his minions. Kando told one doctor that “I’m seeing Satan. All Satanic people, Satanic workers, they’re all Demons.”<sup>197</sup> These delusions mostly focused on Kando’s neighbor, Jason Burley. Kando told doctors and the police that Burley was in fact Satan, because he “smelled like Satan” and “looked like Satan.”<sup>198</sup> When one day Burley allegedly told Kando that “Jesus was black,” Kando said he considered this to be a provocation by the devil himself and felt compelled by Jesus to attack his neighbor.<sup>199</sup>

According to Kando’s family, his mental illness regularly manifested itself as “hyper-religiosity,” in which he would constantly pray, be “very preoccupied with religion and with matters of God and Satan,” and experience “auditory and visual hallucinations with religious themes.”<sup>200</sup> During these “hyper-religious” episodes, Kando would become combative and violent.<sup>201</sup> The examining doctors confirmed the family’s claims and concluded that Kando suffered from a severe psychosis in which he could not tell right from wrong or appreciate the criminality of his actions.<sup>202</sup> Despite this evidence, the trial judge concluded that Kando *was* capable of appreciating the criminality of his actions and thus should be found guilty but mentally ill.<sup>203</sup>

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195. *Id.*

196. *Id.* at 1170 (internal quotation marks omitted).

197. *Id.* at 1171 (internal quotation marks omitted).

198. *Id.* at 1170 (internal quotation marks omitted).

199. *Id.* at 1174 (internal quotation marks omitted).

200. *Kando*, 921 N.E.2d at 1184.

201. *Id.*

202. *Id.* at 1177–78, 1180.

203. *Id.* at 1188–89 (noting that the trial judge relied heavily on Kando’s

On appeal, the Appellate Court of Illinois reversed, holding that the trial judge had improperly disregarded the testimony of two expert doctors and four lay witnesses that had clearly established that Kando was gripped by “hyper-religious delusions” at all times relevant to his attack on his neighbor Burley.<sup>204</sup>

[It] is undisputed in this case that the incident for which defendant was charged was conceived and took place in the grip of a psychotic delusion. No one suggested an alternative motive for defendant’s attack other than to eliminate Satan pursuant to a commandment from God . . . other than his delusion, namely that the victim was Satan whom he was determined to kill or incarcerate for 1,000 years. Accordingly defendant’s ability to appreciate the criminality of his conduct must be viewed from the perspective of this delusion, that whatever he did was to implement a divine command to attack the victim whom he envisioned as a demon or Satan.<sup>205</sup>

It is not unreasonable to say that the intense sincerity of Kando’s religious beliefs is what spared him from conviction for attempted murder (though not from involuntary hospitalization under Illinois law, pursuant to the appellate Court’s order of remand).<sup>206</sup> With his case and the *Stevens* case in mind, it may be fair to ask whether American law carves religious exemptions to criminal conviction if the sincerity of religious belief is so

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behavior immediately following the attack on his neighbor, including statements accusing his victim of being to blame for the attack, an effort to hide the weapon, and the removal and hiding of his bloody clothing).

204. *Id.* at 1196–97.

205. *Id.* at 1190–91.

206. *Kando*, 921 N.E.2d at 1202; *see also* *United States v. Aleksov*, 910 F. Supp. 2d 230, 234, 236 (D.D.C. 2012) (describing that Defendant, who pleaded not guilty by reason of insanity to threatening the life of President George W. Bush, was denied pretrial release from hospitalization because he only complied with his medication requirement to secure release from confinement and his “delusional system includes the belief that individuals, particularly Satan, can control [his] thoughts and actions,” compelling him to act violently).

intense that it becomes delusional.<sup>207</sup> However, this raises an interesting question beyond the scope of this Article: where is the line between normative religious belief and delusional “hyper-religiosity,” and how do courts find it, considering the general principle that religious tests and veracity assessments are forbidden?<sup>208</sup>

That question of procedure aside, the nebulous distinction between religion and delusion arises in another legal context: will contests. Courts frequently consider evidence that a testator so intensely suffered from wild fantasies during their life that they lacked the capacity necessary to leave a valid will. When these fantasies are religious in nature, the courts must decide whether they were intense (or, perhaps, sincere) enough to render the deceased incapacitated. As discussed above, similar evidence in criminal cases is thoroughly considered and defendants may escape conviction because of it. In will contests, however, probate courts generally ignore or wave aside all but the strongest evidence of religious delusion.

In most American jurisdictions, the testator of a will “is presumed to be sane and to have sufficient mental capacity to make a valid will.”<sup>209</sup> Thus the burden is on a will contestant to

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207. Compare *Kando*, 921 N.E.2d 1166, *and*, *Stevens v. State*, 350 S.E.2d 21, 21 (Ga. 1986), *with* *State v. Hebert*, No. 2010 KA 0305, 2011 WL 2119755, at \*1 (La. Ct. App. 2011) (convicting Defendant for the murder of her two children after she failed to rebut presumption of sanity despite testimony that Satan spoke to her and commanded her to kill), *and* *Plough v. State*, 725 S.W.2d 494, 500 (Tex. Ct. App. 1987) (finding the State successfully rebutted the insanity claim because the Defendant’s actions after he shot his brother were considered “methodical and calculating,” despite his belief that his brother was Satan).

208. Remember that the Supreme Court has long held that the First Amendment prohibits religious tests and trials, and no one can be compelled to “answer . . . for the verity of his religious views.” *United States v. Ballard*, 322 U.S. 78, 87 (1944). However, is that not what happened in the cases of *Kando* and *Stevens*? In order to determine whether the Defendants presented sufficient insanity defenses, the Courts in those cases had to assess their religious beliefs and determined them to be so detached from reality as to be delusional, even though both Defendants sincerely held them. Was it appropriate for the court to assume that *Stevens*’ wife was not actually possessed by Satan? Did the Court have authority to find *Kando*’s belief of Satan on earth to be delusional? These were in effect religious tests. Under what principle are such religious tests appropriate in the context of a criminal prosecution but not in any other case?

209. 95 C.J.S. *Wills* § 20 (2018); *see also* 79 AM. JUR. 2D *Wills* § 90 (2019);

prove that the testator lacked capacity, otherwise the courts will not invalidate a will. Most courts have a “strong preference to find a testator competent,”<sup>210</sup> and in some states, such as Kentucky, the presumption of capacity is so strong that it “can only be rebutted by the strongest showing of incapacity.”<sup>211</sup>

To show incapacity, will contestants sometimes argue that testators suffered from delusions, including hyper-religious beliefs in witches, demons, and the devil. Probate courts view this as a questionable strategy, however, because such beliefs have long been part of mainstream Christianity, the predominant religious tradition in the United States, and mainstream beliefs tend not to be viewed as evidence of insanity or delusion.<sup>212</sup> Accordingly, the general rule in most states since the 1800s is that a will cannot be invalidated for lack of capacity simply because a testator “was generally disturbed with a strange belief in witches, devils, and evil spirits,” even if the belief was literal.<sup>213</sup> Only if someone becomes truly obsessed with such ideas can a case of incapacity perhaps be made out.

A brief illustration of this rule can be found in *Addington v. Wilson*, an Indiana will contest from 1854.<sup>214</sup> The testator, Francis Stephen, was “an ordinarily prudent, judicious businessman” and “an average farmer” who quite sincerely

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28 THOMAS PHILLIP BOGGESS V, CAUSES OF ACTION SECOND SERIES 99 § 32 (2005).

210. BOGGESS, *supra* note 209, at § 10.

211. *Bye v. Mattingly*, 975 S.W.2d 451, 455 (Ky. 1998).

212. J.E. Macy, Annotation, *Insane Delusions as Invalidating a Will*, 175 A.L.R. 882 § 30 (1948) (“A mere belief in witchcraft cannot be taken as, in itself, an insane delusion. . . . Absolute acceptance of the Bible as the Word of God was deemed to require the belief . . .”); *see also* *Scott v. Scott*, 72 N.E. 708, 710 (Ill. 1904) (“An insane delusion is a belief in something impossible in the nature of things,” not something that “a great majority of civilized human beings believe” such as “the existence of a life beyond the grave”). Contrast the deference given to religious belief in the context of will contests with the interpretation of religious beliefs as delusional in criminal prosecutions, like in the cases of *Kando* and *Stevens*, discussed above. *Batson v. Batson*, 117 So. at 12–13.

213. *Kelly v. Miller*, 39 Miss. 17, 58 (1860) (internal quotation marks omitted) (citing *Lee v. Lee*, 15 S.C. L. 183, 4 McCord 183 (1827); *McMasters v. Blair*, 29 Pa. 298 (1857)); *see also* *Henderson v. Jackson*, 111 N.W. 821, 823 (Iowa 1907) (“Nor is it sufficient to show that the testator’s imagination was generally controlled by his belief in witches, devils, and evil spirits which tormented him”).

214. *See generally* 5 Ind. 153 (Ind. 1854).

believed that his late wife and surviving daughters were sinister witches who “practised [sic] their infernal arts upon him.”<sup>215</sup> Unsurprisingly, he left his daughters nothing upon his death. The Court held that Stephen’s peculiar beliefs were no reason to invalidate his stingy will. After all:

There might be cases where a belief in witchcraft, as well as millerism, or the doctrine of predestination, if permitted too constantly to occupy the mind, might have the effect to obscure its perceptions, destroy its balance in regard to the ordinary transactions of life, make the believer, in short, a monomaniac. But the evidence was not such in this case as to make it clear that the jury should have so returned their verdict.<sup>216</sup>

Thus, it is not a particular belief in witches or other manifestations of devilish influence that can indicate incapacity, unless the testator is obsessively fixated on such things to the detriment of his or her other concerns.<sup>217</sup> Under this generous rule, courts rarely invalidate wills for eccentric religious beliefs.

There is, however, the case of “Crazy George” Caldwell of Texas. The facts are complicated, but the short of it is this: before he died, Caldwell left 160 acres of property in Anderson County to three of his children, who then granted the property to Gulf Oil and an investor.<sup>218</sup> Two other children of Caldwell contested the grant of property, arguing that Caldwell lacked the capacity to execute a valid deed. Gulf Oil, in defense of the

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215. *Id.* at 154.

216. *Id.* at 154.

217. *See* O’Dell v. Goff, 112 N.W. 736, 738 (Mich. 1907) (If someone thinks “so continually and persistently upon [a] subject . . . as to become a monomaniac, incapable of reasoning,” then “a will made in consequence of such monomania is void for lack of testamentary capacity”); Wait v. Westfall, 68 N.E. 271, 276 (Ind. 1903) (stating “when associated with uncontradicted proof . . . that the acts of the testator in the conduct of his business affairs, and in his social and domestic relations, were uniformly intelligent, rational and reasonable, proof of strange and unreasonable beliefs, and of wild and absurd stories, standing alone, cannot be termed evidence of a want of testamentary capacity”).

218. Gulf Oil Corp. v. Walker, 288 S.W.2d 173, 174 (Tex. Ct. App. 1956).

deed, produced a favorable will purported to be Caldwell's, which the deed challengers contested on the same grounds.<sup>219</sup>

At trial, the challengers of the deed and the will presented extensive evidence that their late father, who was locally known as "Crazy George," suffered from insane delusions that manifested as bizarre religious ideas. For example:

[H]e was unable to talk sense about cattle, usually getting off the subject and beginning to talk about the devil. He sometimes would create a disturbance in his house and explain it by saying he was having a fight with the devil. He believed he died and had physically gone to both heaven and hell, and while in these places he had talked with the devil, imps, demons and angels; that while in hell he had seen the devil making candy out of plow points; that hell was black and heaven was a pretty place; that while in hell he had heard the devil playing a tune on a fiddle and that he could sing this tune . . . that while in hell he had seen the devil sawing up people with a circular saw and throwing them into a lake of fire; he had seen the devil's horse, which was so big it had one foot in St. Louis and the other in California. George usually refused to cross any bridge and sometimes gave the reason that there were devils under them; he believed God was unable to kill him for twenty years. George beat on stumps, believing they were the devil's home and that he must drive the devil out by beating on them. He shooed back demons away from fences when he crossed them . . . . He believed he could converse with the Lord, the devil and the saints; that he could foretell the future.<sup>220</sup>

Based on this evidence and other testimony showing Caldwell's strained mental condition, the trial jury decided that

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219. *Id.*

220. *Id.* at 179–80.

Caldwell lacked capacity. On appeal, the Texas Court of Civil Appeals affirmed, not simply because Caldwell had bizarre beliefs sufficient to be considered delusional, but because he suffered “from an unsound mind generally” which made him “incapable of knowing and understanding the effects of his act in making a will.”<sup>221</sup> Acknowledging the permissive rule that no delusion short of monomania could prove incapacity, the appellate court held that the jury still had plenty of evidence to support its verdict in favor of the challengers.<sup>222</sup>

So far, we have examined several aspects of American law where Satanism carries a seriously negative connotation. Accusations of devil worship can damage reputations and impose liability, secure convictions, enhance sentences, and rebut presumptions of competence. In Section IV, however, we will consider how *admissions* of Satanism lead to negative outcomes in a very specific legal venue: the prison. Satanism’s bad reputation gives wardens and prison officials an excuse to restrict inmates’ religious exercise, and the courts nearly always allow it.

#### IV. The Incarcerated Devil

*Wherein in time past ye walked according to the course  
of this world, according to the prince of the power of the  
air, the spirit that now worketh in the children of  
disobedience. – Ephesians 2:2*

For avowed Satanists in prison, two competing forces collide. On one side, their constitutional right to the free exercise of religion. On the other, Satanism’s bad reputation as a religion of dishonesty, violence, and evil. This bad reputation has force because prison officials routinely use it to justify restrictions on Satanic inmates’ otherwise benign religious practices, such as the acquisition and possession of holy books, participation in group or individual prayer, and the observance of holidays.

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221. *Id.* at 180–81.

222. *Id.*

Under the First Amendment, prison officials need a legitimate penal interest to interfere with a prisoner's right to free exercise of religion.<sup>223</sup> Under the Religious Land Use and Incarcerated Persons Act (RLUIPA), prison officials may not place a substantial burden on prisoners' sincere religious exercise without a narrow policy supported by a compelling governmental interest.<sup>224</sup> Order and safety, according to the Supreme Court, qualify as both legitimate penal interests under the First Amendment and as compelling government interests under the RLUIPA.<sup>225</sup> So, a prison official who can reasonably articulate a sufficient interest in order and safety can curtail a prisoner's religious practice, and prison officials generally get the benefit of the doubt.<sup>226</sup>

This doctrine creates a hurdle for incarcerated Satanists for two reasons. First, "Satanism" has a very bad reputation as a religion of evil and disorder. As discussed earlier in Part I, mainstream Christian belief holds that to worship the devil is to be an evil person, a perpetrator of dishonesty, a potentially violent danger to others.<sup>227</sup> Negative assumptions like this predate the Colonial era witch trials and have been reaffirmed

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223. See *O'Lone v. Estate of Shabazz*, 482 U.S. 342, 349 (1987); *Turner v. Safley*, 482 U.S. 78, 89 (1987); *Cruz v. Beto*, 405 U.S. 319, 322 (1972). "Interference" in most cases means the denial of a religious accommodation to a prison rule or policy.

224. 42 U.S.C. § 2000cc-1(a) (2018).

225. *Cutter v. Wilkinson*, 544 U.S. 709, 722 (2005) (RLUIPA); *Turner*, 482 U.S. at 90 (First Amendment).

226. In First Amendment claims, the Supreme Court will not "substitute [its] judgment on difficult and sensitive matters of institutional administration for the determinations of those charged with the formidable task of running a prison." *O'Lone*, 482 U.S. at 353 (internal quotations omitted). In RLUIPA claims, "courts should not blind themselves to the fact that the analysis is conducted in the prison setting." *Holt v. Hobbs*, 135 S. Ct. 853, 866 (2015). Nevertheless, even giving prison officials significant deference, the Court has periodically ruled in favor of prisoners with minority religious practices. *Id.* at 859 (RLUIPA claim; Muslims); *Cutter*, 544 U.S. 709 (RLUIPA claim; Asatruans, Wiccans, Church of Jesus Christ Christians, and Satanists); *Cruz*, 405 U.S. 319 (First Amendment claim; Buddhists).

227. This is, for what it is worth, not an accurate description of predominant Satanist belief. According to Patrick Elkins, "Satanism is a benign religion" and "does not teach hatred." "Satanists obey the law." Patrick K.A. Elkins, *The Devil You Know!: Should Prisoners Have the Right to Practice Satanism?*, 41 HOUS. L. REV. 613, 642-44 (2004).



in American pop culture as recently as the 1990s.<sup>228</sup> Prison officials embracing these stereotypes have refused to accommodate the practice of Satanism among inmates. Second, many inmates who profess to be Satanists are not very sympathetic plaintiffs, often admitting to antisocial beliefs that bolster the negative stereotypes of their religion. Unsurprisingly, courts have mostly ruled against them.<sup>229</sup>

One unsympathetic prisoner was Charles McCorkle, an Alabama inmate who sued prison officials when he was denied access to two Satanic books and a medallion.<sup>230</sup> The prison defended itself first by denying that Satanism is a religion at all, second by denying that McCorkle was a sincere believer even if Satanism is a religion, and third by claiming that his practice of Satanism posed a security threat to the prison.<sup>231</sup> Why? Because, as the prison put it, Satanism “teaches hatred for one’s fellow man and disrespect for laws and legal order, and encourages the practice of violent acts such as flesh-eating and bloodletting.”<sup>232</sup>

In affirming the dismissal of his suit, the Eleventh Circuit, *per curiam*, dodged the first two questions and turned instead to the prison’s security concerns, which the Court believed were justified based on McCorkle’s own testimony about his Satanic beliefs. According to him, many of the rituals he sought to study

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228. See related discussion in Section I. Sparked by a series of sensational (and false) claims of ritualistic murder and cannibalism performed by teenagers and adults, and bolstered by uncritical media reports, fears of “Satanic Ritual Abuse” gripped the United States in the early 1990s. “At the height of the scare, people were arrested, charged, and found guilty on what hindsight reveals, and contemporary critical thinking revealed, as the flimsiest of evidence.” DYRENDAL ET AL., *supra* note 42, at 106–07.

229. See, e.g., *Miskam v. McAllister*, Civil No. 2:08–02229 JMS, 2011 WL 1549339, at \*1 (E.D. Cal. Apr. 21, 2011) (holding the prohibition of the comic book “Satan’s Sodomy Baby” was not a violation of prisoner’s First Amendment rights); *Burton v. Frank*, No. 03-C-0374-C, 2004 WL 1176171, at \*1 (W.D. Wis. May 20, 2004) (holding that prison ban of *The Satanic Bible* by Anton LaVey was not a violation of inmate’s First Amendment rights).

230. *McCorkle v. Johnson*, 881 F.2d 993, 994 (11th Cir. 1989). According to the court, the books were *The Satanic Bible* and *The Satanic Book of Rituals*. The second book was likely misidentified, though. The actual title is *The Satanic Rituals*. Both books were written by Anton LaVey, the founder of the Church of Satan.

231. *Id.*

232. *Id.* at 996.

in the book *The Satanic Book of Rituals* involved the sacrifice of Christians, “[w]rist-slashing, blood-drinking, and the consumption of human flesh—usually fingers.”<sup>233</sup> Also, according to McCorkle, the candles used in such rituals had to be “made from the fat of unbaptized infants.”<sup>234</sup> Bolstering his claims, a fellow inmate testified that he had, on several occasions, seen McCorkle performing blood-drawing and paper-burning rituals on the prison grounds.<sup>235</sup>

If this was not scary enough, the Court then turned to the contents of *The Satanic Bible*, “which,” the Court noted, McCorkle “claim[ed] to wholeheartedly believe.”<sup>236</sup> The Court relied on testimony by the prison warden, “proclaimed (but unnamed) Satanists,” and its own “independent review of the book” to conclude that the book’s teachings “present a significant threat to security and order within the prison.”<sup>237</sup> The warden testified that persons following the teachings of the book “would murder, rape or rob at will without regard for the moral or legal consequences.”<sup>238</sup> Further, the Court paraphrased a portion of the book as stating “that right and wrong have been inverted too long,” and as challenging readers “to rebel against the laws of man and God” and seek revenge against their enemies.<sup>239</sup>

The Court was convinced:

Clearly, practices such as those described above, and the beliefs that encourage them, cannot be tolerated in a prison environment since they pose security threats and are directly contrary to the goals of the institution. Allowing the plaintiff access to the requested books and medallion would only encourage such behavior.<sup>240</sup>

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233. *Id.* at 995. The actual book, *The Satanic Rituals*, contains no such rituals, and there is no indication in the court’s opinion that any other party reviewed the contents of the book to confirm McCorkle’s account.

234. *Id.*

235. *Id.*

236. *McCorkle*, 881 F.2d at 995.

237. *Id.*

238. *Id.*

239. *Id.* at 995–96. This is not quite a call to “murder, rape or rob at will,” but is perhaps suggestive of such behavior when paraphrased this way.

240. *Id.* at 996.

If it was any consolation to McCorkle, though, the Court also recognized that he had been able to clandestinely practice his own particular form of Satanism without the books and medallion and thus the prison's restrictions had not "foreclosed all avenues of his worship of Satan."<sup>241</sup> The prison's restrictions were therefore considered reasonable partially because "alternative means of exercising the asserted right remain[ed] open."<sup>242</sup>

Seven years later, in 1995, another federal court would consider the penological implications of *The Satanic Bible*. This time, a copy of it was denied to Ohio state prison inmate Robert Carpenter.<sup>243</sup> Like McCorkle, Carpenter claimed a violation of his First Amendment right to free exercise, but unlike McCorkle, Carpenter also alleged a violation of his Fourteenth Amendment right to equal protection.<sup>244</sup> According to Carpenter, the prison unfairly discriminated against him and other Satanists by allowing inmates to possess copies of the Christian *Holy Bible* and the Muslim *Koran*, but not allowing inmates to possess *The Satanic Bible*.<sup>245</sup>

In their motion for summary judgment, prison officials countered Carpenter's claim with roughly the same defenses used against McCorkle's: Satanism is not a "religion," but even if it is, Carpenter's ability to practice it had not been burdened, and regardless of his beliefs, the prison system had "legitimate penological reasons both for distinguishing between Satanism and other religions and for barring *The Satanic Bible* from Ohio's prisons."<sup>246</sup>

The District Court first considered whether Satanism qualified as a "religion" for First Amendment purposes.<sup>247</sup> To

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241. *Id.*

242. *Id.*

243. *Carpenter v. Wilkinson*, 946 F. Supp. 522, 523 (N.D. Ohio 1996).

244. *Id.*

245. *Id.*

246. *Id.* at 524.

247. *Id.* at 526–27. The District Court considered "three 'useful indicia' for determining the existence of a religion": first, the address of "fundamental and ultimate questions having to do with deep and imponderable matters"; second, a comprehensive belief system, rather than "isolated teaching"; and finally "certain formal and external signs," including "formal services," a clergy, and "structure and organization." *Id.* (quoting *Africa v. Pennsylvania*,

decide this question, the court relied on *The Satanic Bible* itself, citing several passages which showed that Satanism “addresses fundamental questions” (albeit “in an unconventional manner”), has dogmas (“sort of”), refers to itself as a “religion,” celebrates holidays, and has complex rituals (none of which involve violent behavior as suggested by the court in *McCorkle*).<sup>248</sup> Considering all of this, the Court concluded that “Satanism *appears* to have at least some of the indicia of a religion,” but it ultimately did not matter because the Court was willing to “presume for the sake of this motion only that Satanism is a religion the practice of which is protected by the First Amendment.”<sup>249</sup>

With that inquiry out of the way, the Court then proceeded to the real question in the case: was the prison justified in its prohibition of *The Satanic Bible*?<sup>250</sup> Initially, the prison system’s Publication Screening Committee had recommended that the book be allowed, but the director of the system overruled them on the basis that the book—specifically its references to human sacrifice—was “inflammatory” and thus in violation of prison policy against religious practices that “threaten institutional security.”<sup>251</sup>

The District Court agreed:

The Court ordinarily must defer to the institution’s decisions regarding the appropriateness of policies and practices. Here, no deference is necessary because the Court is in complete agreement that large portions of *The Satanic Bible* have great potential for fomenting trouble of all kinds in a prison setting, leading to difficulty in maintaining security and order and in delivering rehabilitative services in the prisons.

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662 F.2d 1025, 1032 (3d Cir. 1981)).

248. *Id.* at 527–28.

249. *Carpenter*, 946 F. Supp. at 528 (emphasis in the original). It is unclear from the opinion why the Court conducted such a thorough analysis of *The Satanic Bible* at all if it was just going to presume Satanism was a religion anyway.

250. *Id.* at 530 (stating “[t]his case is about a very narrow issue: whether there are legitimate penological reasons for prohibiting plaintiff from possessing *The Satanic Bible*”).

251. *Id.* at 529.

In addition, much of the publication advocates preying on the weak in any way possible for one's own gratification—clearly an extremely dangerous “teaching” in *any* setting, but especially in a prison where the weak have fewer avoidance strategies at their disposal.<sup>252</sup>

The Court then provided “a few examples of isolated quotations” to illustrate its point, including passages that encourage the hatred and smashing of enemies, “eye for eye, tooth for tooth” retribution upon adversaries, indulgence in sin, indulgence in “natural desires,” human sacrifice, ritual sexual gratification, and “intense, calculated hatred and disdain.”<sup>253</sup> In the Court's view, this content clearly justified the prison's prohibition of the book, and Carpenter's First Amendment free exercise rights had not been substantially burdened by the ban.

The District Court also dispatched Carpenter's Fourteenth Amendment equal protection claim on similar grounds; because *The Satanic Bible* posed a unique danger of institutional disruption and violence, the prison was justified in singling it out for prohibition while allowing other holy books like the *Bible*.<sup>254</sup>

*The Satanic Bible* is banned in the prison systems of many states, and, almost unanimously, courts have rejected challenges under both the First Amendment and the RLUIPA. In addition to the rulings in *McCorkle* (Alabama) and *Carpenter*

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252. *Id.*

253. *Id.*

254. *Id.* at 531. One wonders why both the prison and the court considered *The Satanic Bible*, based on the quoted passages, to pose a penological threat sufficient to justify it being singled out from other religious texts such as the *Holy Bible*, which, for example, contains its own fair share of violence, references to sacrifice and cannibalism, prescriptions for revenge and retribution, and descriptions of antisocial behavior. See generally JEROME F. D. CREAMER, *VIOLENCE IN SCRIPTURE: INTERPRETATION: RESOURCES FOR THE USE OF SCRIPTURE IN THE CHURCH* (2013). As just one example out of a great many, consider Deuteronomy 25:11-12, describing what should be done to a woman who comes to the aid of her husband in a fight: “When men strive together one with another, and the wife of the one draweth near for to deliver her husband out of the hand of him that smiteth him, and putteth forth her hand, and taketh him by the secrets: Then thou shalt cut off her hand, thine eye shall not pity her.” *Deuteronomy* 25:11-12 (King James).

(Ohio), federal courts have upheld bans of the book in Arizona, Illinois, Kentucky, Michigan, Oregon, and Wisconsin.<sup>255</sup> However, not all inmates of infernal inclination have lost in court. The most notable win by a Satanic prisoner is that of Robert Howard, who in 1994 was incarcerated at the Federal Correctional Institute at Englewood in Littleton, Colorado.<sup>256</sup>

Howard, unlike McCorkle and Carpenter, did not request any particular religious items to keep for himself. Instead, he requested “time, space, and implements” necessary to perform three specific hour-long Satanic rituals, roughly one per

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255. See, e.g., *Goninan v. Holmes*, No. 6:12-cv-01555-PK, 2014 WL 6966990, at \*1 (D. Or. Dec. 4, 2014); *Ruley v. Stovall*, Civil Action No. 10-CV-142-KKC, 2012 WL 1038665, at \*1 (E.D. Ky. Mar. 27, 2012) (holding that even though confiscation of the book created a “substantial burden,” no violation of RLUIPA); *Johnson v. Williams*, No. 3:07-cv-1659-HZ, 2011 WL 6778711, at \*1 (D. Or. Dec. 22, 2011) (“It goes without saying that the book . . . could negatively impact prison staff and other inmates.”); *Hendrickson v. Caruso*, No. 1:07-cv-304, 2008 WL 623788, at \*1 (W.D. Mich. Mar. 4, 2008) (adopting verbatim *Carpenter’s* negative position on the book); *Winford v. Frank*, No. 06-C-1000, 2008 WL 359728, at \*1 (E.D. Wis. Feb. 8, 2008) (It was “undisputed” that *The Satanic Bible* is “designed and used to cause harm to other people.”); *Burton v. Frank*, No. 03-C-0374-C, 2004 WL 1176171, at \*1 (W.D. Wis. May 20, 2004) (Ban of book and other items justified even though inmate had “no other means of practicing Satanism.”); *Doty v. Lewis*, 995 F.Supp 1081 (D. Arizona 1998) (holding that the book, “in the hands of Plaintiff presented a serious threat to the safety and security of the prison.”); Jesse Bogan, *Illinois Inmate Says Rights Were Violated Over ‘Satanic Bible,’* ST. LOUIS POST-DISPATCH, (Aug. 9, 2011), [https://www.stltoday.com/news/local/illinois/article\\_d2bcf1f2-885b-5b26-8bab-4d75319e8314.html](https://www.stltoday.com/news/local/illinois/article_d2bcf1f2-885b-5b26-8bab-4d75319e8314.html). Also of note, the U.S. Department of Justice has issued an opinion in support of Virginia’s ban on *The Satanic Bible* in prisons. Letter of Finding from Michael Alton, Dir., Office for Civil Rights for the Dep’t of Justice, Office of Justice Programs to Harold Clarke, Dir., Va. Dep’t of Corr. (Aug. 12, 2013), <https://ojp.gov/about/ocr/pdfs/V A-13-OCR-10.pdf>.

256. *Howard v. United States*, 864 F. Supp. 1019 (D. Colo. 1994). Only one other case appears to have been decided in favor of a Satanic inmate. In 2006, the Southern District of Illinois ruled that a state prison had not justified the confiscation of several books from an inmate, including *The Satanic Bible* and *The Satanic Rituals*, considering the inmate had possessed them for several months and they had previously been approved by the institutional publication committee. *Semla v. Snyder*, No. 03-CV-00015-JPG, 2006 WL 1465558, at \*1 (S.D. Ill. May 24, 2006). In a 2010 prison case, a magistrate judge for the District of Montana recommended that the parties submit further briefing on the question of whether a prison’s denial of an inmate’s request for a copy of *The Satanic Bible* was justified under the First Amendment and RLUIPA. *Indreland v. Yellowstone Cty. Bd. Of Commr’s*, 693 F.Supp.2d 1230, 1241-42 (D. Mont. 2010). No subsequent opinion of the court in this case is available.

month.<sup>257</sup> For the time, he requested three hours in the morning.<sup>258</sup> For the space, Howard requested a very small chamber (“even a broom closet will do”).<sup>259</sup> For the implements, Howard asked for “candles, candle holders, incense, a gong, a black robe, a chalice, and a short wooden staff or other object suitable for pointing.”<sup>260</sup>

In defense of his requests, Howard painted a significantly different picture of Satanism than Charles McCorkle had. According to Howard, his desired rituals, though avowedly Satanic, allowed him “to release his anger” and made him less violent.<sup>261</sup> He also described his Satanic beliefs and practices, contrary to the claims of the prison, as being “non-violent in nature” and part of a “humanistic ethical system which would never allow for violence, rape, human sacrifice, animal sacrifice, [or] bloodletting.”<sup>262</sup> Howard testified that Anton LaVey’s writing, including *The Satanic Bible* and *The Satanic Rituals*, was meant to be read symbolically, not literally.<sup>263</sup>

Nevertheless, the prison denied Howard’s request to conduct his religious rituals. According to the prison, allowing him or other Satanists to perform rituals “would pose a threat to the good order and security of the institution.”<sup>264</sup> The warden testified that Howard’s various requested implements could cause a fire, mask smells, cause audible disruptions, obscure his identity, or be used as weapons.<sup>265</sup> The warden also argued that allowing Howard to openly practice Satanism would be “inflammatory and . . . abhorrent to other inmates,” thus putting his safety at risk.<sup>266</sup>

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257. *Howard*, 864 F. Supp. 1019, 1021–22 (D. Colo. 1994). The rituals, according to Howard, were “a compassionate ritual, a destruction ritual, and a personal ritual.”

258. *Id.* at 1022.

259. *Id.*

260. *Id.* Howard would not keep the implements after the conclusion of the rituals.

261. *Id.*

262. *Id.*

263. *Howard*, 864 F. Supp. at 1022.

264. *Id.* at 1021.

265. *Id.* at 1025.

266. *Id.* at 1025–26.

The District Court considered these arguments, and acknowledged that they were legitimate concerns. However, the Court noted, “[t]he problem is that many of the other religious groups [in the prison] regularly use these very same—allegedly very dangerous—implements,” and “[n]o security problems have occurred.”<sup>267</sup> As to Howard’s safety, the court brushed aside the warden’s worry. Howard testified that he was already open about his beliefs with other inmates, and, even though the court felt the safety argument had “a certain amount of intuitive appeal,” it was “not supported by one shred of evidence.”<sup>268</sup>

Next, the Court considered the cases of *McCorkle* and *Childs v. Duckworth*, which both upheld prison restrictions on Satanic practices.<sup>269</sup> Both cases were easily distinguishable on their facts, the *Howard* Court reasoned. *McCorkle* especially was different, because the inmate’s professed Satanic beliefs in that case were violent and dangerous.<sup>270</sup> Howard’s beliefs were peaceful and benign.<sup>271</sup>

Ultimately, the Court granted Howard’s requested injunction, requiring the prison officials to stop denying his requests to practice his religious rituals. It was clear to the Court that the prison’s concerns, while legitimate in theory, were unsupported by the evidence, and the prison officials had inappropriately “focused on the tenets of the religion itself . . . despite their professed concern for scarcity of resources and security.”<sup>272</sup>

In this section we explored the negative impact Satanism has on its adherents inside prison walls. With the exception of Robert Howard and maybe a few others, admitting to Satanic beliefs and seeking to exercise them freely can be quite a

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267. *Id.* at 1025.

268. *Id.* at 1026.

269. *Howard*, 864 F. Supp. at 1026. In *Childs*, 705 F.2d 915 (7th Cir. 1983), the Seventh Circuit upheld the rejection of an Indiana inmate’s various requests for religious items such as a podium, candles and incense in his cell, a crystal ball, and the use of the interlibrary loan system for use of books for group study rather than individual use.

270. *Howard*, 864 F. Supp. at 1026.

271. *Id.*

272. *Id.* at 1029 (carefully noting that the ruling did “not require prison officials to accommodate every form of Satanism,” nor “require them to allow each inmate to become a religion unto himself”).



challenge for inmates in prison systems that consider it a security threat and a court system that defers to the judgment of the prisons.

In the final section, Part V, we shift gears to our final, and somewhat lighter topic: what happens when the devil and his alleged minions themselves become parties to litigation.

#### V. The Litigious Devil

*But he turned, and said unto Peter, Get thee behind me, Satan: thou art an offense unto me: for thou savorest not the things that be of God, but those that be of men. – Matthew 16:23*

There is one more way the devil regularly appears in contemporary American law: as a party to the proceedings, not just as a nefarious defendant, but also sometimes also as a remedy-seeking petitioner.<sup>273</sup>

As the “archvillain of world culture,” one might assume that Satan would be the target of more than a few lawsuits, even though, as the source of all evil in the world, he is probably uninsurable. However, an inability to collect is not the only problem facing would-be plaintiffs seeking damages from the devil. Other problems are procedural.<sup>274</sup>

In 1971, Gerald Mayo sought leave from the Western District of Pennsylvania to file, *in forma pauperis*, a complaint against “Satan and his staff,” alleging that Satan had long harassed and troubled him and “placed deliberate obstacles in his path and caused [his] downfall.”<sup>275</sup> These actions, Mayo argued, deprived him of his rights under the U.S.

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273. Though this Section mostly features inmates challenging their incarceration, the nature of these particular claims does not fit under the same penological theme of Part IV, and thus a separate section felt appropriate. Also, as noted in the Introduction, outside the scope of this Article are copyright and other intellectual property claims by artists or organizations for whom Satan or other devilish imagery is the subject of their art.

274. For an entertaining guide to the nuts and bolts of suing Satan, see Charles Yablon, *Suing the Devil: A Guide for Practitioners*, 86 VA. L. REV. 103, 103–15 (2000).

275. *United States ex rel. Mayo v. Satan & Staff*, 54 F.R.D. 282, 283 (W.D. Pa. 1971).

Constitution.<sup>276</sup> Denying Mayo's request to proceed *in forma pauperis*, the District Court questioned first the obvious inability of the Plaintiff to "obtain personal jurisdiction over the defendant in this judicial district."<sup>277</sup> The complaint, after all, included no allegation that Satan even lived in Pennsylvania.<sup>278</sup> Mayo also failed to include the required form of instructions for service of process to the U.S. Marshal.<sup>279</sup> An unserved defendant is no defendant at all, and thus Mayo's claim could go no further.

Personal jurisdiction is not the only thing plaintiffs must establish in order to sue the dark lord, however. They must also state a claim for which relief may be granted.<sup>280</sup> The same goes if the defendants are merely Satan's associates, rather than the devil himself. This was the hurdle Tennessee inmate Alvin Kennedy faced when he tried to sue the Church of Satan in 2008.<sup>281</sup> This is what happened, according to the Court:

On December 27, 2007, the plaintiff sent a letter to the Church of Satan in San Francisco, California requesting information about the church and Satanism. He also stated in the letter that he "was very serious about becoming a member of the Dark Side."

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276. *Id.*

277. *Id.*

278. *Id.* Though, Pennsylvania does share a border with New Jersey, which is rumored to be home to its own particular form of devil. See BRIAN REGAL & FRANK ESPOSITO, *THE SECRET HISTORY OF THE JERSEY DEVIL: HOW QUAKERS, HUCKSTERS, AND BENJAMIN FRANKLIN CREATED A MONSTER* (2018). As an aside, the Court in *Mayo* also noted that no official court reports include any case where Satan has actually made an appearance in court, though "there is an unofficial account of a trial in New Hampshire where this defendant filed an action of mortgage foreclosure as plaintiff," a winking nod to the plot of "The Devil and Daniel Webster," the 1936 short story by Stephen Vincent Benet. *Mayo*, 54 F.R.D. at 283; see also STEPHEN VINCENT BENET, *THE DEVIL AND DANIEL WEBSTER* (Penguin Classics 1999) (1936).

279. *Mayo*, 54 F.R.D. at 283.

280. FED. R. CIV. P. 8(a)(2); FED. R. CIV. P. 12(b)(6). For plaintiffs seeking to proceed *in forma pauperis*, like *Mayo*, federal law says courts "shall" dismiss their claims, *sua sponte*, for failing to state a viable cause of action. See 28 U.S.C. § 1915(e)(2)(B)(i) (2018).

281. *Kennedy v. Church of Satan*, No. 3 08 0225, 2008 WL 594065, at \*1 (M.D. Tenn. Mar. 4, 2008).

Shortly thereafter, the Post Office returned the letter to the plaintiff with a note from “Mr. Satan” explaining that he was not approved to worship the Dark Side. The plaintiff believes that the defendant has violated his rights in some way by failing to provide him with the requested information and by not approving him for worship of the Dark Side.<sup>282</sup>

Kennedy, proceeding *pro se*, filed suit under 42 U.S.C. 1983, alleging that the Church of Satan, acting under the color of state law, deprived him of his constitutional rights by rejecting his request for information and membership.<sup>283</sup> The Court, finding no such action by the Church, summarily dismissed Kennedy’s suit for failing to state a viable claim.<sup>284</sup>

Kennedy’s incarceration was incidental to his claim against the Church of Satan. He did not sue the devil’s devotees for locking him up. However, many other claims against the devil appear in petitions for writs of habeas corpus, where prisoners challenge the conditions of their detention. In cases like those below, these litigious prisoners seek relief from far more sinister forces than their earthly wardens.

In 2015, prison inmate Dommernick Brown filed a petition for writ of habeas corpus in the District of South Carolina.<sup>285</sup> In habeas challenges, the proper respondent is the warden of the facility where the prisoner is being held,<sup>286</sup> but Brown named a few other notable parties, including “The Super-Rich Illuminate (t-Worlders),” “The Anti-Christ (POPE Francis),” and “United Nations and Their So-Called New World Order of satan.”<sup>287</sup>

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282. *Id.* at \*1–2.

283. *Id.* at \*2.

284. *Id.*

285. *Brown v. Jett*, No. 4:15-cv-01983-TLW, 2015 WL 11142468, at \*1 (D. S.C. June 17, 2015), *vacated*, 621 F. App’x 260 (4th Cir. 2015) (*per curiam*). The full caption of the case lists Brown as “Dommernick Brown #11049-171, United States of America, Suis Juris-Pro Se and Pro Se Coach-In Forma Pauperis and Supporter of The-Second Coming of Jesus Christ Super-Star The Messiah and Super-Star-and The Version of The New World Order #777 ALMIGHTY-GODs New World Order 777, Petitioner.”

286. *Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004).

287. *Brown v. Jett*, No. 4:15-1983-TLW-TER, 2015 WL 11120723, at \*1

Noting the warden rule, the Court dismissed the petition as to all other respondents.<sup>288</sup>

Meanwhile, a civilly committed Minnesota man named Paul Payen also filed a habeas petition in 2015, challenging his ongoing involuntary hospitalization for mental illness.<sup>289</sup> Payen's petition was similar to Brown's in that he listed, along with the warden of the hospital, several curiously-named respondents, including "Aliens, (Demons and Devils and U.F.O.'s) (Some Good and Some Evil)," "Prophet Ezekiel's Wheel," "Reptoids and Reptillians of the Lower Fourth Dimension," and, more relevantly, the "New World Order of Satan-# 666" and "Fall of Satanic-Same Sex Marriages."<sup>290</sup> The District Court originally dismissed Payen's entire petition for want of a proper respondent, but on appeal the Eighth Circuit reversed, finding that Payen had at least correctly named the warden of his facility and had alleged facts sufficient for the Court's consideration, even though his petition was otherwise "largely incoherent."<sup>291</sup> Unfortunately for Payen, remand provided no relief, because his petition, still incoherent, was ultimately dismissed on the merits as well.<sup>292</sup>

A third example of this genre is a habeas petition filed in 2016 by another South Carolina prison inmate, Julian Rochester. Unlike Dommernick Brown and Paul Payen before him, Mr. Rochester kept it simple. He named just one respondent to his petition, "Head Warden B. McKie, Satan."<sup>293</sup> However, the devil would once again escape accountability for his infernal injustices. Over Rochester's objections, the District Court adopted the magistrate judge's recommendation for dismissal, the objections being no more than "rambling nonsensical statements, various case citations, profanity, and

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(D. S.C. May 29, 2015).

288. *Id.*

289. Payen v. Jett, 610 F. App'x. 594 (8th Cir. 2015).

290. *Id.*

291. *Id.* at 595.

292. Payen v. Jett, No. 15-122 (JRT/HB), 2016 WL 3149665, at \*1 (D. Minn. June 3, 2016).

293. Rochester v. McKie, No.: 6:15-cv-03258-RBH, 2016 WL 2756432, at \*1 (D. S.C. May 12, 2016).

cartoon illustrations.”<sup>294</sup>

Our discussion of the litigious devil concludes with one very unique petitioner, a man who may or may not actually be the devil himself.

In 2012, a California state prison inmate filed a petition for writ of habeas corpus in the Central District of California.<sup>295</sup> The Petitioner was convicted in 2008 on misdemeanor and felony charges of criminal threat, cultivating marijuana, and “electronically contacting someone with the intent to annoy, using profane language and threats to inflict injury on the other person and his family.”<sup>296</sup> Despite reversal of the latter conviction and his incarceration having ended two years prior, the Petitioner nevertheless challenged his incarceration on the bases of ineffective assistance of counsel and involuntary guilty plea.<sup>297</sup>

So who was this petitioner? His birth name was Edmond Frank MacGillivray, Jr., but he legally changed it in 1988 to “I am the Beast Six six six of the Lord of Hosts in Edmond Frank MacGillivray, Jr. now” or “I am the Beast Sssotlohiefmjn” for short.<sup>298</sup>

Mr. Sssotlohiefmjn first came under the scrutiny of law enforcement in 2007 for sending a series of strange and threatening messages, including an online comment to a news article (signed “666BEAST666”) in which he claimed to be “considering a killing spree” on the campus of Mt. San Jacinto College where he would “off a bunch of preschoolers” at the school’s daycare facility.<sup>299</sup> The college went on lockdown, but Sssotlohiefmjn never attempted any violent action. Nevertheless, he admitted to making the threat and a

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294. *Id.*

295. *Sssotlohiefmjn v. Riverside Cty. Superior Court*, No. EDCV 10–925–GHK (AGR), 2012 WL 4791932, at \*1 (C.D. Cal. Aug. 31, 2012).

296. *Id.* For the state Appellate Court ruling, see *People v. Sssotlohiefmjn*, No. E047144, 2010 WL 219336, at \*1 (Cal. App. Jan. 22, 2010).

297. *Sssotlohiefmjn*, 2012 WL 4791932, at \*5.

298. *I Am The Beast etc. v. Michigan State Police*, No. 5:89:92, 1990 U.S. Dist. LEXIS, at \*1 (W.D. Mich. July 12, 1990). His previous name was Edmond Frank MacGillivray, Jr. *Sssotlohiefmjn*, 2012 WL 4791932, at \*1 n.1.

299. *Sssotlohiefmjn*, 2012 WL 4791932, at \*2.

subsequent search of his residence produced five marijuana plants.<sup>300</sup>

His petition proved to be a rare win for the devil in the federal courts. A federal magistrate judge recommended that Mr. Sssotlohiefmjn's petition for relief be granted on the first ground (ineffective assistance of counsel), but not on the second ground (involuntary guilty plea). The magistrate also recommended that his marijuana conviction be vacated, leaving the misdemeanor criminal threat as the only conviction on his record.<sup>301</sup> The District Court agreed, and the Beast was no longer a felon in the eyes of the law.

### Conclusion

This Article surveyed five key legal contexts in which the devil appears. Accusations of Satanism have long been a source of civil liability in defamation claims. Courts sometimes allow prosecutors to admit evidence of devil worship to convict and sentence criminal defendants. Too-sincere beliefs in Lucifer can support insanity defenses at trial or be grounds for invalidating a will. Courts often affirm restrictions on the practice of Satanism within prisons, and litigants sometimes list the dark lord (or some other variant of his name) as a party to their lawsuits.

Again, this Article offers no theory or prescription as to how courts should handle Satanism in any of the above contexts, but it does raise several important questions for future research and argument. As just a few examples: are American courts adhering to the Supreme Court's ban on religious tests when they assess evidence of Satanic belief? Do negative cultural stereotypes about devil worship create bias in the courtroom? And, are Satanists being left out of the recent legal and political push for increased religious freedom?

These questions and others deserve serious consideration. No matter how despised the devil may be in the Christian

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300. *Id.* at \*7.

301. *Sssotlohiefmjn*, 2012 WL 4791618, at \*1. California does not appear to have appealed this ruling or moved to retry Mr. Sssotlohiefmjn on the marijuana charge.

cultural tradition of the United States, the Constitution—and long-standing Supreme Court doctrine—requires free exercise for all and equal treatment under the law. Our courts and our legal system should adhere to those principles even when confronted with religious beliefs most people may still find nefarious.