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## “Satan’s Minions” and “True Believers”: How Criminal Defense Attorneys Employ Quasi-Religious Rhetoric and What It Suggests about Lawyering Culture

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### ABSTRACT

The notion of law as sacred, and lawyers as righteous saviors, may seem anachronistic in the current context of heavy caseloads and expedited processing in the criminal justice system. Nevertheless, language reflecting these ideals still permeates defense attorneys’ descriptions of their roles, their legal practice, and their relationships to their colleagues and adversaries. We examine this language – specifically, attorneys’ quasi-religious rhetoric – to better understand courtroom dynamics: how attorneys see themselves, their work, their colleagues, and their legal adversaries. In this analysis of semi-structured interviews with 30 defense attorneys, we find that attorneys use of quasi-religious rhetoric manifests as a cultural practice that helps to establish and maintain professional identities, boundaries, and relationships. Our findings also suggest that young and novice public defenders are likely to express especially zealous views, which may compromise their efforts to collaborate within the adversarial system, as well as contribute to burnout.

### KEYWORDS

adversarial relationships; public defender; criminal law; attorneys

The adversarial nature of the criminal justice system necessarily pits prosecutors and defense attorneys against each other. The defense attorney works to defend the downtrodden, while the prosecutor strives to uphold virtue and counter vice. Such righteous ideals may sound anachronistic in the current context, in which attorneys are assumed to cooperate with one another to efficiently dispose of cases. Nevertheless, language reflecting these ideals still permeates criminal law attorneys’ descriptions of their roles, their work, and their relationships to their colleagues and adversaries. When a defense attorney calls themselves a “zealot,” for example (Bazelon 2021), or a prosecutor refers to a defense attorney as a “true believer” (Roiphe 2019), these religious-sounding terms suggest the establishment of professional identities based on self-righteous role opposition.

In this study, we examine defense attorneys’ use of quasi-religious rhetoric to better understand courtroom dynamics: how attorneys see themselves, their work, their colleagues, and their legal adversaries. We join two sets of qualitative interview data (N= 30) with public defenders and other public interest defense attorneys to examine how they use these terms to self-identify and to describe their professional relationships. We ask: what does defense attorneys’ use of religious-sounding language suggest about criminal lawyering culture? We explore how quasi-religious rhetoric sheds light on the identities of defense attorneys, and, in turn, how these identities affect their profession and courtroom dynamics.

Findings suggest that lawyers draw from a common professional culture and language to employ quasi-religious terms in divergent ways. While some use these terms to claim legitimacy

and express reverence for their profession, others use these same terms to distance themselves from what they describe as the hyperadversarial, self-righteous tendencies of their counterparts and colleagues. Therefore, our analysis reveals a cultural tension between zeal (as in zealous advocacy) and zealotry (as in blind faith). The study considers how these contrasting beliefs manifest in attorney self-image, career motivations, career paths, and professional relationships. Findings suggest that hyperadversarial attorneys are more likely to suffer from burnout and to struggle when collaborating with their counterparts. We argue that these findings have practical implications for collaborative endeavors such as diversion programs, problem-solving courts, conviction integrity units, and other criminal justice reform initiatives.

## Background

Our analysis is rooted in longstanding cultural approaches to understanding criminal justice system organizations, which focus on professional socialization through shared training, language, values, and tropes (Kappeler et al. 1998). Organizational socialization, according to this view, consists of “a somewhat special language and ideology that help edit a member’s everyday experience... shared standards of relevance as to the critical aspects of the work that is being accomplished... [and] certain customs and rituals suggestive of how members are to relate to colleagues, subordinates, superiors, and outsiders” (Van Maanen and Schein 1979, 210).

The adversarial process of the criminal justice system is key to the organizational socialization of public interest lawyers, whose work is shaped by the pursuit of different goals to seek justice (for prosecutors) or to protect individual liberties (for defenders). Prior research on criminal lawyering suggests that social dynamics and interactions between these two counterparts matters for professional identities and workplace relationships. For example, public defenders express a desire towards “fighting the system” by providing representation to poor clients from more powerful adversaries, like the state and the prosecution (Weiss 2005). Interactions with legal adversaries can also be a salient source of stress in the workplace, as a survey of public defenders revealed that working with prosecutors and judges can be a particularly stressful element of their jobs (Lynch 1997). These relational aspects of criminal defense lawyering are important to understand because they can engender job retention or turnover (e.g., Bačák, Lageson, and Powell 2020).

As Van Maanen and Schein (1979, 210) described, “organizational cultures arise and are maintained as a way of coping with and making sense of a given problematic environment.” For criminal defense attorneys, the “problematic environment” exists as an adversarial system operating within a broader context of American criminal justice, known for mass incarceration, racial disparities, and widespread inequality. A cultural-organizational approach directs attention to the shared language of the profession. In the following, we describe the use of quasi-religious rhetoric as a characteristic of criminal defense attorneys’ organizational culture.

### ***The influence of religious ideals in shaping American criminal lawyering culture***

The roots of religious ideals in American criminal law are evident in writings as old as the country itself. Preeminent legal scholars writing around the time of America’s formation, such as William Blackstone (1753), adhere to a higher law “dictated by God himself” (42). Legal principles like impartiality and equity, proportionality of punishment, and the notion of inalienable “God-given” rights likely have a theological basis (Brauch and Woods 2001, 50). Modern legal codes are often traced to the Ten Commandments of the Christian Bible’s Old Testament (Finkelman 2005).<sup>1</sup> Biblical law is a recognized source of American law along with the Magna

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<sup>1</sup>See *Van Orden v. Perry* (2005), in which the US Supreme Court ruled constitutional a monument to the Ten Commandments which still appears on the lawn of the Texas State Capitol building.

Carta and the English Bill of Rights (ibid). The influence of religion also appears in the religious mandate of early prosecutors in colonial America. Connecticut statutes describe the prosecutor as a “sober, discreet and religious person” whose duties include the “suppression of vice and immorality” (Worrall 2008, 7). Early characterizations of the defense attorney’s role reflect a similar righteousness: “It is indeed the noblest faculty of the profession to counsel the ignorant, defend the weak and oppressed, and to stand forth on all occasions as the bulwark of private rights against the assaults of power” (Sharswood 1884, 53). Of the practice of law in general, Sharswood writes: “It is the noblest work in which the intellectual powers of man can be engaged, as it resembles most nearly the work of the Deity” (10). By implication, the work of a defense attorney is the most noble work of a most noble profession.

These religious ideals have likely had a broad effect upon criminal lawyering culture, manifesting in both religious and secular lawyering movements. A comparison of two of these—the religious lawyering movement and the legal professionalism movement—is illustrative. The “religious lawyering” movement entered mainstream legal scholarship in the 1990s (Pearce 1998) when lawyers of various faiths attempted to integrate their religious values and identities into their legal practice (see for example, Allegretti 1991, 1996, 1998; Ball 1993; Broyde 1998; Gantt 2003; Griffin 1998; Levine 1996; Levinson 1992; Pearce and Uelmen 2004; Reza 1999; Shaffer 1979, 1981). The religious lawyer identifies first with the religious community, and second with the legal community (Shaffer 1991).

A helpful contrast can be drawn between this movement and the “legal professionalism” movement (Levine 2002). According to its critics, the legal professionalism movement positions the legal profession as a kind of religion in and of itself. Adherents remain steadfast to a belief in lawyering as “an honorable calling” and not just an “ordinary business” (Myers 1996). Former Yale Law School Dean Anthony Kronman, a prominent figure in the legal professionalism movement, famously invites lawyers to reconnect with their “ethical, spiritual, and moral traditions” in his 1993 book “The Lost Lawyer” (Kronman 1995, 118). Kronman preaches that the legal practice and profession “comprise a belief system and a way of life for the lawyer, analogous to that of religious commitment” (Levine 2002, 227). Samuel Levine writes:

From Kronman’s perspective, living the life of a lawyer did not merely reflect a noble or moral choice that could be reconciled or even integrated with other religious and personal values. Rather, he believed that participating in the legal profession carries intrinsic value and represents an independent and seemingly *religious commitment to the legal faith*. (2002, 229) (italics added)

Levine distinguishes religious lawyers who see the law as a noble choice for the fulfillment of previously held religious values, and secular lawyers who perceive the legal profession as providing its own religious values and requiring its own religious commitment. For the legal professional, the legal community *is* the religious community. Indeed, some of the most vocal critics of the legal professionalism movement have been religious lawyering scholars (see for example, Pearce 1995). In these two bodies of scholarship rests a distinction between lawyers’ styles of religious speech: expressions of personal religious faith and morality, compared to expressions of the inherent righteousness of the legal profession. Our focus is on the latter: how quasi-religious expressions of law and lawyering, arising independent of personal beliefs, translate to self-perceptions, and professional relationships.

Research has shown how both personal religious faith and “a religious commitment to the legal faith” can attract young attorneys to a career in criminal law. In their study of the Christian lawyering movement, Wilson and Hollis-Brusky identify 11 Christian law schools and 20 Christian legal organizations (2014). In her interviews with 40 defense attorneys, Margaret Etienne (2005) identifies a “religious worldview” as a common source of motivation. Religious criminal defense attorneys invoked the “golden rule” (treat others as you would want to be treated) and the Biblical concept of forgiveness (1216). At the same time, criminal lawyering careers also tend to attract those devoted to the legal faith. For example, heroic criminal defense

attorneys commit “with almost religious fervor” to their legal practice (Raymond 2003, 170). Public defenders view themselves as “angel-like guardians for the isolated, voiceless, powerless” (Gonzalez-Van Cleve 2016, 96). Prominent figures in indigent defense are referred to as “modern heroes, prophets, and saints” (Smith and Montross 1999, 497) and aspiring defense attorneys are encouraged to be “zealots” (Bazelon 2021). Bazelon characterizes the defense attorney zealot as such: “There is vanishingly little they would not do for a client in dire straits, even at the expense of people and institutions they love dearly” (np).

Research on prosecutors echoes this religious-sounding language. In their study of prosecutors’ career motivations, Ronald Wright and Kay Levine interviewed 267 state prosecutors from nine different offices. They find that some prosecutors expressed “a core absolutist identity” characterized by “their near worship of rules, order, and accountability” (2018, 1683). These prosecutors describe themselves as “wearing the white hat,” as they envision “the forces of good aggressively taking on the forces of evil” (2014, 1081). Wearing the white hat allows the prosecutor to assume a righteous role “as the savior and protector of the community” (Levine and Wright 2017a, 43). This identity allows prosecutors to distinguish themselves from their defense attorney adversaries. As Levine and Wright caution, “For every white hat there must be a black hat—someone to fight against, someone whose natural inclination is to promote evil and immorality and danger” (65).

Researchers also find lawyers adopting religious terms and metaphors negatively to parody their overly zealous colleagues and adversaries. Levine and Wright’s prosecutor respondents commonly used the term “true believer” to signify those defense attorneys or fellow prosecutors who are “dogmatic followers of their causes, professing absolute belief in the rightness of their causes and the wrongness of the other side” (56). True believers often refused to negotiate with their adversaries, failed to close cases, and antagonized judges. The authors conclude: “Prosecutors in our study agreed that successful professionals need to keep some professional distance from their work to recognize that it’s a job for both attorneys involved” (63). This irreverent and pragmatic “it’s-a-job” stance provides a useful counterweight to the views of lawyers as “angel-like guardians” (Gonzalez-Van Cleve 2016) doing “the work of the Deity” (Sharswood 1884). It suggests negative implications for those unable to distance self from profession.

Overall then, this scholarship reveals that religious-sounding language takes different forms and is employed with different aims. We observe from the religious lawyering movement the desire to integrate religious faith into legal practice. These are true expressions of religious sentiment as they are traditionally understood. However, secular lawyers also speak with religious undertones about their commitment to the legal profession and the righteousness of their work in a secular spirit. Finally, lawyers parody colleagues and counterparts who they perceive as self-righteous and overly zealous using quasi-religious rhetoric as well.

Although limited, research suggests that the practical implication of self-righteous rhetoric among legal adversaries is potentially detrimental to career longevity: specifically, being a hero and a savior can be exhausting (Smith 2004). Abbe Smith finds the public defender’s desire to “save people” often draws them to the profession but fails to sustain them. Idealism leads to disillusionment and ultimately, to cynicism. According to Smith, “a pairing of idealism and cynicism” can keep lawyers grounded as well as motivated. (2004, 1211-1212). We build on this research by examining the use of quasi-religious terms (with both positive and negative connotations) among defense attorneys and unpacking the meaning of this language for professional identities and relationships in criminal lawyering.

## Methods

This research draws from two separate studies: 1) a set of interviews with prosecutors and defense attorneys conducted between April 2016 and November 2018; and, 2) a set of interviews with public defenders conducted between August 2017 and May 2018. Both studies were national in

scope. Both sets of researchers conducted semi-structured interviews designed to elicit open-ended responses. Both provided confidentiality, creating pseudonyms for the respondents.

The *Postconviction Mentality*<sup>2</sup> study explored prosecutors' role and rationale in assisting with exoneration cases through interviews with 20 prosecutors and 19 defense attorneys (N = 39).<sup>3</sup> Defense attorney respondents worked in a variety of settings including private practice, public defender offices, and non-profit innocence organizations. The *Weight of Public Service*<sup>4</sup> study intended to learn about processes of occupational stress, resilience, and well-being among current and former public defenders.<sup>5</sup> The sample (N = 87) included representation from public defenders practicing in 17 states and the Federal system and working in three main organizational settings: salaried government work, nonprofit organizations, and contract/conflict appointments.

We restrict this analysis to a sub-sample of 30 defense attorneys from both studies who voluntarily adopted relevant quasi-religious rhetoric during the interview. The final sub-sample includes 27 public defenders and 3 innocence organization attorneys.<sup>6</sup> Fourteen attorneys (47%) are women and seven (23%) identified as people of color. At the time of the interview, the youngest respondent was 29 and the oldest was 65. Respondents' years of experience on the job ranged from 2 to 36 years.

Combining these two sets of interviews allows us to identify how different types of attorneys employ similar quasi-religious rhetoric. Other scholars have taken a similar approach to study common motivations for criminal activity (Steinmetz, Shaefer and Green 2017) and to explore common legal processes and experiences (see Reiter and Coutin 2017). Here, we combine data to explore common language of criminal defense attorneys and to infer what this language suggests about criminal lawyering culture.

While religious themes were not the subject of either study, such themes arose organically in response to a broad swath of questions in both studies. In particular, religious imagery appeared in the *Weight of Public Service* in response to the related themes of morality and identity. For example, interviewers asked: "Is there a moral imperative to your work?" In addition, both projects explored relationships with opposing counsel. Questions included: "How would you describe your relationship with judges and prosecutors?" and "What do you think prosecutors (or defense attorneys) should know in approaching and maintaining relationships with defense attorneys (or prosecutors)?" Both sets of questions occasionally prompted quasi-religious rhetoric in the response as revealed through initial coding of the interviews. Thus, religious-sounding language emerged independently.

Still, interviewees may wish to exaggerate or entertain, telling stories that do not really reflect how they have behaved or would behave. Interview subjects may naturally want to tell a good story, and this may be especially true of criminal defense attorneys who are accustomed to the regular dramatizations of their work on television and in the popular media. The risk of incorrectly interpreting the data, through attitudinal fallacy, may become heightened here when attitudes are reported rather than behaviors observed (Jerolmack and Khan 2014). The small sample size also challenges efforts to generalize about criminal lawyering culture more broadly.

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<sup>2</sup>Human subjects research for "A Postconviction Mentality: Prosecutorial Assistance as a Pathway to Exoneration" was approved by the Rutgers University Institutional Review Board under protocol #16-428M.

<sup>3</sup>This project was supported by Grant Number (2017-IJ-CX-0012), awarded by the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. Any opinions, findings, conclusions, or recommendations expressed in this presentation are those of the author and do not necessarily reflect the views of the Department of Justice.

<sup>4</sup>Human subjects research for "The Weight of Public Service: Occupational Wellbeing among Public Defenders" was approved by the Rutgers University Institutional Review Board under protocol #17-454M.

<sup>5</sup>This research was supported by the Rutgers University-Newark Chancellor's Seed Grant Program

<sup>6</sup>By "innocence organization attorney" we mean any attorney working on postconviction claims of innocence through a nonprofit innocence organization at the time of the interview. Many, but not all, also have experience working in public defender offices. While public defender respondents originate from both studies, all innocence organization attorneys originate from *A Postconviction Mentality*.



We proceed with the recognition of these limitations for predicting behavior. Indeed, we are equally interested in attorneys' views and attitudes as well as the specific language used to articulate these views and attitudes. By exploring the various definitions and interpretations of these professional constructs, we can draw some conclusions about how they might "shape what action seems possible" (Pugh 2013, 65). Whether intentional or not, the use of quasi-religious rhetoric when describing one's professional identity or workplace relationships manifests as a cultural practice that can help establish and maintain professional identities, boundaries, and relationships.

In our analysis, we extracted the chunks of text that represented the "index codes"<sup>7</sup> corresponding with attorneys' use of religious rhetoric (see Deterding and Waters 2018) and combined our two subsets of data from the separate studies representing the combined total of 30 interviews. We then worked independently to conduct line-by-line coding of these excerpted interviews, identifying sub-themes and determining the contextualized meanings of the quasi-religious language. We jointly developed a list of analytic codes, or labels, which we applied to segments of the excerpted text. Some of these analytic codes derived from theoretical preconceptions while others emerged organically. Finally, we investigated the data for patterns in language and themes along demographic differences such as age, years of experience, and gender. It was not possible to compare interviews based on race due to the very small number of defense attorneys interviewed who identified as a member of a racial or ethnic minority group.

## Results

First, we find little evidence of religious lawyering expressed among our sample of defense attorneys. For an exception, Calvin explained: "God put it on my heart that you need to go to law school." Only Calvin and two other attorneys in the sample self-identified as religious. Those who expressed true religious convictions used religious rhetoric in very different ways to discuss their faith without comparison to counterparts or colleagues.

Most attorneys used religious-sounding language to describe their professional self-image, their professional motivations, or their relationship to their courtroom counterpart. Some adopted quasi-religious rhetoric with self-righteous undertones to describe good lawyering practices, while others used it to describe hyperadversarial relationships in the courtroom or overzealous colleagues. Still others used religious terms in ways that belied the dichotomy, recognizing some value in zealotry without identifying as a zealot. Such divergent uses of quasi-religious rhetoric may reflect workplace tensions between colleagues and between adversaries that could impact attorneys' ability to reach cooperative resolutions.

### *Adopting Quasi-Religious Rhetoric to Describe Good (and Bad) Lawyering*

When used with a positive connotation, quasi-religious rhetoric was invoked to characterize attorneys' own professional identity and reputation as a "true believer," to speak highly of a colleague as a "true believer," or to exalt the profession in general ("you're doing God's work.")<sup>8</sup> The nine attorneys who used quasi-religious rhetoric with self-righteous language were younger and less experienced than the other respondents. Eight of them were in their thirties and/or they had ten or less years of professional experience. In contrast, of the 16 attorneys who used religious-

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<sup>7</sup>Deterding and Waters define index codes as "The inverse of line-by-line coding, index codes represent large chunks of text, enabling data reduction and retrieval as the analyst proceeds through constructing and documenting their argument. Setting the data up this way allows subsequent rounds of reading to be more focused and analytic coding to be more reliable" (2018, p. 19)

<sup>8</sup>This subset does not represent the three public defenders who self-identified as religious.

sounding language with a negative connotation, 13 were in their forties or older and/or had ten or more years of professional experience.

### **True Believers and Good Lawyering**

Four public defenders used quasi-religious rhetoric to characterize their own professional identity, emphasizing a distinction between their devotion and mission and that of others. They described themselves as a “true believer” or equivalent and described divisions within the office that set the true believers apart. For example, Kylie distinguished between types of public defenders in her office, saying: “Even within our organization, we know the true believers versus the people who are just here for a few years to get the trial experience.” Tiffany used the term “true believer” to signify a generational difference among public defenders.

*My generation, the public defenders of my age, that's why we're coming in. It is ideologically motivated, or morally motivated, for most of us. But that's not always the way it was. The older generations of public defenders saw it more as just like “Oh, it's a state job, and then maybe I'll go private one day, or I'll become a state's attorney one day.” It's just a stepping stone. ... They kind of look at us funny, the old ones. Like we're the true believers.*

Both Kylie and Tiffany referenced shared ideologies that bound them together in their higher calling. Both described the close camaraderie they enjoyed among the other “true believer” attorneys in their respective offices and distinguished themselves from colleagues. Tiffany described some public defenders as using the job as a “stepping stone” to bigger paychecks. Kylie felt that some of her colleagues were motivated just to get trial experience, and not for the mission.

In the following quote, Chase, a former public defender, used the term “true believer” to describe her former professional identity.

*I was a ride or die public defender. There was no way I was ever doing anything different than working for the public defender's office. In fact, when I gave notice, people were shocked because I was a true believer. A couple of things happened. First, to do my job extremely well, and do the best I can for each human being that's in front of me, each file, each case, was great. But no matter how well I did on each person's case, the system remained unchanged.*

Though she has left criminal defense work, Chase still clearly associated doing the job “extremely well” with being “a true believer.” As a true believer, Chase worked to fight back against what she perceived as an unjust system, but the battle challenged and depleted her faith in the law's ability to bring about change. Chase said that what caused her to leave after over ten years was “the vicarious trauma, and its effect on me.”

Even Tiffany wondered—considering the longevity of the “old ones” in her office—how they have managed to survive the work “because a lot of [the old ones] have lasted.” She said,

*A lot of us are freaking out, because we have these moral reasons for doing the work. But that means we're more susceptible to not being able to handle how bad of a job we do. We came to this because we think people deserve a really good job.*

In these statements, attorneys describe the challenge of staying motivated by lofty ideological goals while also surviving daily workplace realities such as high caseloads, low wages, and emotional tolls. Therefore, the true believer orientation operated as a claim to self-legitimacy for some, and even a type of martyrdom.

We also hear several possible explanations for the age and experience-level gap of attorneys who hold reverential views. From Tiffany and Kylie, religious-sounding language reflected a heightened need for camaraderie and the desire to establish a strong professional identity early in one's career. Tiffany suggested that generational differences play a role since younger attorneys tend to be more galvanized than their elders. Chase offered a third explanation: the older and more experienced attorneys persist precisely because they are *not* true believers, or else they have changed their views with experience.



### **Negative Consequences of Zealotry and Hyperadversarialism**

Sixteen defense attorneys in our sample used religious rhetoric with a negative connotation to describe overly zealous colleagues and adversaries. In some characterizations, colleagues and adversaries were disparaged for having an unrealistic, unsustainable worldview. In others, they were criticized for obstructing collaboration and collegiality. Respondents made these characterizations using the same “true believer” language as well as “zealots,” and other derogatory terms. Unlike the positive rhetoric of “true believer” for self- or group-identification, these respondents invoked the true believer to represent an unrealistic worldview.

Lewis argued that zealotry is unsustainable. In characterizing the true believer prosecutor as a crusader, he said:

*True believers, like in the prosecutor's office, would be people who are out to save the world, that they're going to put everybody in prison. They just get all riled up. They take their cases very personally, and get personally invested in them. Those prosecutors usually don't last very long. They get burned out and go away, because it's just so overwhelming. You can't save the world.*

According to Lewis, these prosecutors believe that the carceral system can “save the world.” His comments reflect the cautionary tale of the true believer as a victim of her own zealotry. She is overwhelmed by her impossible task and thus, has a higher likelihood of burning out. A true believer prosecutor has a blind faith in law enforcement and incarceration that interferes with their ability to get the job done: “They take the cases police give them and prosecute them” (Emma). True believer prosecutors “believe that if we can just lock away all the bad people, there won't be any more crime” (Shannon).

Several defense attorneys also disparaged true believer colleagues, defining fellow defense attorneys according to their *disbelief* in law enforcement and incarceration. For example, true believer defense attorneys believe that “everything is a product of systemic injustice,” (Leroy), or that “everybody in prison deserves to be out” (Iona). By definition, a true believer defense attorney never shares the same goals as a prosecutor and vice versa. The true believer, whether a prosecutor or a defense attorney, was described as diametrically opposed to one's courtroom counterpart. Because she cannot collaborate with opposing counsel, her reputation suffers as well. Here, the “true believer” invites the same skepticism as a cult follower or religious fanatic.

Defense attorney respondents described how this opposition led to a breakdown in collegiality. For example, Mark, an experienced capital appellate defender faulted junior colleagues who approach prosecutors as if they are “Satan incarnate”:

*How do prosecutors and defense attorneys communicate? I think that it's, you know, they're not Satan incarnate, and if you try to dispel that falsehood to begin with, you can maybe get somewhere.... You really have to just see people as people and realize that, you know, yeah they have the task of going out and killing your client, but if you just engage in conversation, like, "Oh, you're a client killer, and you've got blood dripping from your hands," we're not going to get very far. I try to just act like it's a job.*

In this specific example, Mark referenced junior co-counsel who refused to shake the prosecutors' hand. He prefaced his comments by saying: “Sometimes when people go straight through law school and they don't have any experience in the world, that's not helpful.” As he suggests, novice defense attorneys who lack experience “in the world” may struggle to see prosecutors as people and recognize that “it's a job” for all involved. While the high-stakes and fervent emotions of death penalty litigation may understandably lead to hyperadversarialism, Mark argued that a sense of collegiality must be maintained.

Still, collegiality is easier to maintain when it is reciprocated. Twelve defense attorney respondents employed a variety of colorful quasi-religious rhetoric to describe the hostility that they, and/or their clients, faced from prosecutors. Prosecutors were described as “evil,”<sup>9</sup> “zealots”<sup>10</sup>

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<sup>9</sup>Wayne

<sup>10</sup>Darla

who behaved as if defense counsel were “one of Satan’s furry little minions”<sup>11</sup> out to “murder their kids or something.”<sup>12</sup> These prosecutors were “on a mission”<sup>13</sup> to win. Such quasi-religious rhetoric evokes divisions so deep and enduring, they’re almost biblical. For example,

*They think they’re doing God’s work. I’ve had one of the DA’s call me one of Satan’s furry little minions and that there was a special place in Hell reserved for me*

(Ari).

*I feel like our district attorney’s office when I first started was ... I want to say evil, close to evil ... They really, really hated our clients with vicious hatred*

(Wayne).

*The prosecutors are very hostile, like you are practically there to murder their kids or something. Every once in a while, there would be one that was relatively civil and just did their job the way they were supposed to in a professional manner, and the others who were just foul.*

(Brenda).

These defense attorneys described an inhospitable, combative, God/Satan, Us/Them climate that stifles communication and collaboration between adversaries. In some of these characterizations, defense attorney respondents spoke of having conflicts with an entire district attorneys’ office, and not just with individual prosecutors. As Brenda’s comment suggests, the “relatively civil” prosecutors appear to be the exception. In general, prosecutors are perceived as polarizing, reactionary, overzealous, and combative. Their zealotry encourages a type of tribalism and adversarialism that undermines justice.

These defense attorneys’ remarks could signal practical challenges with unreasonable adversaries, and/or a mutually combative legal culture in which both the district attorney’s office and the defense bar resort to polarized extremes. Defense attorneys spoke about how they felt disadvantaged as adversaries in these battles. Bryan describes the power imbalance between prosecutors and public defenders.

*“[t]he system that we’ve created devalues and looks down on public defenders, looks at the prosecutor as the white hat, the defenders are the black hats. We’re the ones begging for pennies at the end of the table.”*

Prosecutors have the advantage through the sanctity of their “white hat” and the extra “pennies,” or resources, that they have at their disposal. For Bryan, the white hat symbolizes the prosecutors’ self-righteousness in contrast to her counterparts on the other side of the courtroom. To this second point, defense attorneys voiced a variety of specific complaints: prosecutors would not produce discovery materials, prosecutors refused to respond to email communications, and prosecutors cut corners in their investigation of a case. Obstructionist behaviors such as these give prosecutors even greater leverage and make defense work even more difficult. Ruby described the self-righteousness of the “brand-spanking new DA’s that are fresh out of law school” and their sanctimonious adoption of the white hat:

*The belief that they’re wearing the white hat at all costs is difficult also ... We have some that are on a mission, that they don’t understand that the obligations of defense counsel are different from prosecutors.*

Here, the white hat represents overzealous prosecutors “on a mission.” Prosecutors not only want to win the case; they want to win the war. Wearing the white hat fosters exaggerated notions of the adversarial relationship as a battle between good and evil, between the “white hats” and the “black hats.” Ruby indicates that white hat prosecutors constitute a faction who tend to

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<sup>11</sup>Ari

<sup>12</sup>Brenda

<sup>13</sup>Ruby

be less experienced and younger. She speaks not of an entire office culture, but of those unschooled prosecutors who do not yet understand “the obligations” of defense counsel.

These cultural models of the white hat prosecutor and the true believer defense attorney inform criminal law attorneys’ professional identities, relationships, and legal practice. These models are readily available and recognizable to attorneys on both sides of the courtroom and across the country. To attorneys who adopt them, they reflect good lawyering practices while those who reject them highlight the negative consequences of zealotry. As described below, two respondents using quasi-religious rhetoric did not fall neatly into either of these two categories.

### **Recognizing the Value of Zeal and the Risks of Zealotry**

Two public defenders illustrated an alternative vision, where strong client advocacy can be conducive to collaboration with adversaries. They expressed reverence for their work in ways that closely resembled “true believer” rhetoric. Their comments suggest a negotiation of terms, and of identities, as cultural models shift and adapt. For example, Charlotte, who spoke of wanting to be an attorney since she was a little girl—first a prosecutor and then a defense attorney—distinguished true believers from those who “truly believe.” She said, “I think most people who work here truly believe in the work,” adding:

*I am not what we call a true believer, who believes everybody’s innocent, nobody should ever go to jail, everybody should get treatment. I’m not that person, but I definitely believe that we need good, strong lawyers doing the work that we do.*

Although Charlotte doesn’t identify as a true believer, she recognizes something of value in this cultural model: the devotion to the work. She distinguishes herself instead as a “good, strong lawyer” who “truly believes.”

Likewise, Kevin identified himself as a “zealous advocate,” using the term to describe his relationship with judges and prosecutors:

*The prosecutors, when I say something, that I’m going to do this, or I believe that this is incorrect, and I think that this is what the law says... they take me seriously... I cultivate that relationship. I try to be congenial, at least, and friendly, honestly. That way, when I do have to advocate or object to the judge’s ruling, or tell them, “Judge, you’re doing this wrong,” they understand that I’m doing it because I’m a zealous advocate. I’m not yelling and screaming. I’m doing it because it needs to be done.*

Kevin’s comments demonstrate the compatibility of fighting for clients and maintaining collegial relationships. In his reference to “yelling and screaming,” he invokes a distinction between the cultural model of the zealous advocate and that of the true believer public defender. He might be zealous, but he’s no zealot. In these respondents’ remarks, we hear that zealous advocacy, and truly believing in being a “good strong lawyer” need not impede attorney communication or collaboration. Instead, recognizing the value of adversarialism in their counterpart’s dedication to the law can enhance collaboration and improve justice.

### **Discussion and Conclusion**

Defense attorneys’ use of religious terms appears to draw from professional cultures rather than from religious doctrine. Most rhetoric either embraced, or criticized, a “religious commitment to the legal faith.” Only a few attorneys expressed true religious sentiments. Our examination of defense attorneys’ use of quasi-religious rhetoric uncovers a “somewhat special language and ideology” intrinsic to the profession (Van Maanen and Schein 1979, 210). Our study suggests that the influence of religious ideology on American criminal law still finds expression in contemporary legal discourse and practice through the use of religious-sounding language. The prevalence of this language is notable, as neither of our original studies intended to examine religious

themes, nor were they designed to elicit them. From this joint sample of defense attorneys from a variety of jurisdictions and varying experience levels, we draw some theoretical and practical conclusions about contemporary criminal lawyering culture.

We start with the premise that criminal law attorneys' language is meaningful, historically relevant, and reflective of professional culture and norms. Quasi-religious rhetoric is employed as a cultural practice that develops "styles of self" and of relationships (Swidler 1986). The "true believer," or the prosecutor who wears the "white hat" represent cultural models for attorneys to be adopted or rejected. They find historical precedent in religious ideals and professional ambitions of lawyering as "an honorable calling" (Myers 1996) and the "work of the Deity" (Sharswood 1884). Furthermore, we find that this rhetoric signals perceptions of self and adversary that shape courtroom dynamics and professional relationships.

Public defenders and other public interest defense attorneys could be especially inclined to identify as true believers, espousing their commitment to the legal faith and their sacrifice "to defend the weak and oppressed" (Sharswood 1884). The financial sacrifices that they must make for a career in indigent criminal defense lends support to this theory (National Association for Law Placement [NALP] 2018). The "true believer" defense attorney provides an alternative cultural model to counter the stereotyped generalization of the "public pretender," an inept and unskilled attorney unable to effectively fight against the state's power (McIntyre 1987). At the same time, defense attorneys also referenced "true believer" prosecutors and their self-righteous adoption of the "white hat." Indeed, prosecutors also have an historical justification for self-righteousness with their professional role of "suppressing vice and immorality" (Worrall 2008) as "ministers of justice" (Fisher 1987). With the power of the state behind them, the sanctity of the white hat can become a license to devalue defense advocacy, or worse, to engage in noble cause misbehavior. Defense attorney respondents explained how the overzealousness of true believer prosecutors negatively impacted them, their clients, and the legal culture. Together with judges, prosecutors set the tone for the local legal culture. Judges are more likely to share professional familiarity with the prosecutor than with the defense attorney since they frequently bring previous experience as prosecutors to the bench (Neily 2019). Therefore, defense attorneys may experience adversarial conflicts more acutely than their counterparts. This leaves all defense attorneys at a disadvantage, but especially those in their early career stages.

Our results also suggest that overly reverential views of the legal profession appear to be associated with young, or early career defense attorneys. In this finding, we support previous research identifying the "young prosecutor's syndrome" in which rookie prosecutors adopt a "highly adversarial posture" characterized by a "constant quest for trials" and "aggressive posturing with defense attorneys" (Wright and Levine 2014, 1065). In our study, age and experience-level differences were supported in the data through attorney demographics and also through respondents' remarks. Public defenders who used self-righteous language were often either younger or less experienced than their colleagues. In addition, respondents described white hat prosecutors "fresh out of law school"<sup>14</sup> and novice defense attorneys who lack experience in the world<sup>15</sup> as overly zealous. This zealotry can compromise an attorney's career longevity when true believers are "more susceptible to not being able to handle how bad of a job [they] do."<sup>16</sup> Therefore, our analysis provides empirical support for legal scholarship suggesting that a practice of the law that balances idealism and cynicism better supports a long and productive career (Smith 2004).

Older and more experienced attorneys expressed that the influence of religiously inspired ideals (e.g., zealotry for defending the downtrodden or upholding the righteousness of punishment) creates conflicts. While the normative aspects of these religious ideals may have a positive influence on attorney motivations, they may also encourage a destructive hyperadversarialism.

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<sup>14</sup>Ruby

<sup>15</sup>Mark

<sup>16</sup>Tiffany

Attorney respondents perceived this tendency in both colleagues and adversaries. Their remarks suggest a common social norm within the criminal lawyering culture—that self-righteous dogmatism threatens good legal practice. The true believer—almost as a matter of definition—believes the opposite of what her adversary believes and works towards opposing goals. Respondents adopted quasi-religious rhetoric as a form of parody, describing individual attorneys, or entire office cultures, characterized by overzealousness. They referenced lawyers with blind faith in the righteousness of the law and blind faith in the criminal justice system. Respondents expressed how the zealotry that polarizes adversaries to exaggerated extremes of good vs. evil produces unjust outcomes, inhospitable work environments, and attorney exhaustion, and disillusionment.

Our findings further shed light on court functioning and case negotiations. Hyperadversarialism and zealotry have been negatively implicated in prosecutorial misconduct (Aviram 2013); greater risk of producing wrongful convictions (Levine and Wright 2017b); and an over-identification with clients (Roiphe 2019). In our sample, hyperadversarialism is further explained as a barrier to effective communication and collaboration among legal adversaries. Such a polarizing approach to the work may be counterproductive to opportunities for collaborative outcomes that benefit both sides and produce shared goals of justice.

Systemic innovations in criminal justice policy, including front-end processing (such as restorative justice circles, diversion, and problem-solving courts) and post-conviction reviews (such as conviction integrity units), often require prosecutors and defense attorneys to set aside their adversarial roles to collectively attain goals. Indeed, such innovations have together been termed “non-adversarial justice” (King et al. 2014). Their implementation has been credited with various successes, including reducing recidivism (Rempel et al. 2012; Wong et al. 2016); inspiring abstinence from substance abuse (Liang, Long and Knottnerus 2016); and exonerating the wrongfully convicted (NRE Annual Report 2021). Collaboration is a prerequisite and essential characteristic of these innovations. For example, problem-solving courts require bringing together a group of system actors with diverse goals, including attorneys, court officers, probation officers, and other personnel (National Association of Drug Court Professionals 1997; Casey & Rottman 2005; Miller & Johnson 2009). This mentality represents such a departure from general jurisdiction criminal courts that attorneys adapting to drug court work have had to newly internalize a non-adversarial approach to their profession (Nolan 2003). Similarly, a study of attorneys in two restorative justice programs reported “a deep tension between some values of holistic, cooperative processes and those of specialized, adversarial processes” (Olson and Dzur 2003, 86). While cooperation facilitates these programs, their widespread adoption may be impeded by the embeddedness of hyperadversarialism in criminal lawyering culture.

Nevertheless, most respondents rejected hyperadversarialism in favor of a balanced perspective. Some defense attorneys referenced a zealous advocacy that unites rather than divides. They used religious language to describe a balanced approach in which there is simultaneously room for devotion to professional norms and collaboration with opposing counsel or believers. They suggest that holding a “religious commitment to the legal faith” (Levine 2002, 229) need not be incompatible with good lawyering. In these descriptions, we hear reverence for the law as a unifying force among attorneys. Indeed, prosecutors and defense attorneys share common goals—doing justice, maintaining professional relationships, and disposing cases (Eisenstein and Jacob 1977). The zealous public defender who provides strong advocacy for her clients provides a balance between the cultural models of the “public pretender” and the “true believer.” This more balanced cultural model offers more promise for the adoption of decarceration programs and policies aiming to reduce the scale of the criminal justice system in the long-term.

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