

The Case against Christ

The Case against Christ:
A Critique of the Prosecution of Jesus

By

George R. Dekle Sr.

**CAMBRIDGE
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P U B L I S H I N G

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TABLE OF CONTENTS

LIST OF TABLES	xi
PREFACE	xiii
CHAPTER ONE: MALICIOUS PROSECUTION?	1
§ 1.1: Jesus and the Temple	1
§ 1.2: Judas and the Taxing	2
§ 1.3: The Twelve Witnesses	3
§ 1.4: Conflict and Confusion in the Canonical Gospels	4
§ 1.5: Prosecuting the Prosecutors	7
§ 1.6: Who Killed Jesus?	8
§ 1.7: Why Was Jesus Crucified?	11
§ 1.8: Does Anyone Deserve Censure?	12
CHAPTER TWO: PRELIMINARY CONSIDERATIONS	15
§ 2.1: What is Truth?	15
§ 2.2: What's in a Name?	17
§ 2.3: Evaluating the Evidence	19
§ 2.4: The Seven Pillars of Scholarly Wisdom	21
§ 2.5: The Jesus Seminar's Rules of Evidence	21
§ 2.6: Sanders' and Davies' Criteria for Evaluation	23
§ 2.7: John P. Meier's Criteria for Evaluation	24
§ 2.8: Simon Greenleaf's Rules of Evidence	25
§ 2.9: Evaluating Historical Evidence	26
§ 2.10: A Three Step Procedure for Evidentiary Analysis	27
CHAPTER THREE: ANCIENT CRIMINAL LAW	33
§ 3.1: Biblical and Talmudic Criminal Law and Procedure	33

§ 3.2: Courts and Procedure from the Earliest Courts to the Second Temple Sanhedrin.....	34
§ 3.3: The Talmudic Sanhedrin.....	35
§ 3.4: Capital Punishment under the Mishna.....	38
§ 3.5: Roman Criminal Law.....	38
§ 3.6: The Course of a Roman Criminal Trial.....	39
§ 3.7: Trials in the Provinces.....	40
§ 3.8: Egyptian Provincial Procedure.....	41
§ 3.9: Judean Provincial Procedure.....	42
§ 3.10: Ius Gladii.....	44
CHAPTER FOUR: ANCIENT JUDEAN PROSECUTIONS.....	49
§ 4.1: The Hopology of Criminal Prosecution.....	49
§ 4.2: Naboth.....	49
§ 4.3: Jeremiah.....	50
§ 4.4: Susanna.....	51
§ 4.5: The Eighty Witches of Ashkelon.....	53
§ 4.6: The Eight Hundred Pharisees.....	53
§ 4.7: Herod the Great.....	54
§ 4.8: Herod's Prosecutions.....	56
§ 4.9: Herod's Prosecution of Hyrcanus.....	56
§ 4.10: Herod's Prosecution of Mariamne.....	57
§ 4.11: Herod's Prosecution of Alexander and Aristobulus.....	58
§ 4.12: Herod's Prosecution of Tero.....	59
§ 4.13: Herod's Prosecution of Pheroras' Wife.....	59
§ 4.14: Herod's Prosecution of Antipater.....	60
§ 4.15: Peter and John.....	62
§ 4.16: Peter and the Apostles.....	64
§ 4.17: Stephen.....	66
§ 4.18: The Priest's Daughter.....	68
§ 4.19: Peter and James.....	69
§ 4.20: James the Just.....	69
§ 4.21: Jesus ben Ananus.....	71
§ 4.22: Zechariah.....	72

§ 4.23: Sanhedrin or Synedrion?	73
CHAPTER FIVE: GRECO-ROMAN PROSECUTIONS	75
§ 5.1: Socrates	75
§ 5.2: Alcibiades	79
§ 5.3: Verres	81
§ 5.4: The Catiline Conspirators	82
§ 5.5: Tiberius and Treason	84
§ 5.6: Paul at Iconium and Lystra	86
§ 5.7: Paul in Philippi	87
§ 5.8: Paul at Thessalonica	88
§ 5.9: Paul in Corinth	88
§ 5.10: Paul at Ephesus	89
§ 5.11: Paul in Jerusalem	90
§ 5.12: Paul before Felix	92
§ 5.13: Paul before Festus	93
§ 5.14: Paul before Herod Agrippa II	94
§ 5.15: Paul before Caesar	94
§ 5.16: The Bithynian Deaconesses	95
§ 5.17: Appolonius of Tyana	97
§ 5.18: Evaluating the Evidence	99
CHAPTER SIX: EXAMINING THE MINOR WITNESSES	101
§ 6.1: The Eight Minor Witnesses	101
§ 6.2: Tacitus	101
§ 6.3: Mara bar Serapion	103
§ 6.4: The Testimonium Flavianum	104
§ 6.5: The Talmud	106
§ 6.6: The Gospel of Peter	107
§ 6.7: The Witness of the New Testament Epistles	113
§ 6.8: The Speeches in Acts	114
§ 6.9: The Road to Emmaus	117
§ 6.10: Summary and Conclusions	119

CHAPTER SEVEN: MARK’S PASSION WEEK	121
§ 7.1: Where Do We Begin?	121
§ 7.2: The Triumphal Entry	125
§ 7.3: Spring Cleaning in the Court of the Gentiles	131
§ 7.4: The Plot to Destroy Jesus	136
§ 7.5: “By What Authority?”	137
§ 7.6: The Wicked Tenants.....	139
§ 7.7: Render to Caesar	140
§ 7.8: The Question about the Resurrection	142
§ 7.9: Christ as the Son of David.....	144
§ 7.10: Destroying the Temple	145
CHAPTER EIGHT: MARK’S SANHEDRIN TRIAL	147
§ 8.1: The Plan to Arrest Jesus	147
§ 8.2: The Anointing at Bethany	148
§ 8.3: The Confidential Informant.....	149
§ 8.4: Clandestine Preparations	151
§ 8.5: The Betrayal Foretold.....	151
§ 8.6: The Arrest Team.....	152
§ 8.7: The Arrest.....	155
§ 8.8: The Aftermath of the Arrest	156
§ 8.9: In the House of the High Priest	157
§ 8.10: The Witness to the Trial	159
§ 8.11: The Search for Witnesses.....	160
§ 8.12: The Interrogation by the High Priest	163
§ 8.13: The Abuse of Jesus.....	166
§ 8.14: The Morning Trial.....	167
§ 8.15: Irregularities in the Sanhedrin Proceedings?	167
CHAPTER NINE: MARK’S ROMAN TRIAL	171
§ 9.1: On the Personality of Pilate.....	171
§ 9.2: On the Legality of the Trial.....	173
§ 9.3: The Arraignment	175
§ 9.4: The Paschal Pardon	177

§ 9.5: The Scourging and Mockery	182
§ 9.6: The Crucifixion	182
CHAPTER TEN: MATTHEW'S ACCOUNT OF THE TRIAL	185
§ 10.1: Identifying the Evangelist	185
§ 10.2: The Diatribe against the Scribes and Pharisees	188
§ 10.3: The Arrest	191
§ 10.4: The Trial before the Sanhedrin	193
§ 10.5: The Trial before Pilate	195
§ 10.6: Summary and Conclusions	200
CHAPTER ELEVEN: LUKE'S ACCOUNT OF THE TRIAL	203
§ 11.1: The Least Synoptic of the Synoptic Gospels	203
§ 11.2: The Jewish Proceedings	206
§ 11.3: Before Pilate I	207
§ 11.4: Actus Reus, Mens Rea	212
§ 11.5: Before Herod	213
§ 11.6: Before Pilate II	216
§ 11.7: Summary and Conclusions	217
CHAPTER TWELVE: JOHN'S ACCOUNT OF THE TRIAL	219
§ 12.1: Introductory	219
§ 12.2: The Sanhedrin's Plot	222
§ 12.3: The Triumphal Entry	226
§ 12.4: The Arrest	227
§ 12.5: In the House of the High Priest	228
§ 12.6: The Roman Trial	230
§ 12.7: Before Pilate	233
§ 12.8: Summary and Conclusions	236
CHAPTER THIRTEEN: FACTUAL THEORIES	237
§ 13.1: Expert Opinions	237
§ 13.2: Tatian	239
§ 13.3: Alfred Edersheim	240
§ 13.4: Richard W. Husband	241

§ 13.5: Solomon Zeitlin.....	242
§ 13.6: Paul Winter.....	243
§ 13.7: Raymond E. Brown.....	244
§ 13.8: N.T. Wright.....	246
§ 13.9: Gerd Theissen and Annette Merz.....	248
§ 13.10: Geza Vermes.....	249
§ 13.11: Craig A. Evans.....	249
§ 13.12: Revisiting the Factual Theory.....	250
CHAPTER FOURTEEN: A CRITIQUE OF THE PROSECUTION....	253
§ 14.1: Revisiting the Legal Theory.....	253
§ 14.2: Confronting the Situation and Devising a Response.....	255
§ 14.3: The Charging Decision.....	256
§ 14.4: Prosecuting the Prosecutors.....	258
§ 14.5: Judging the Judge.....	260
§ 14.6: Finalizing the Legal Theory and Case Theory.....	262
NOTES.....	265
BIBLIOGRAPHY.....	285
GENERAL INDEX.....	303
INDEX OF SCRIPTURE.....	321

LIST OF TABLES

TABLE 6-8: TRIAL OF JESUS IN THE SPEECHES OF ACTS	116
TABLE 6-9: SYNOPSIS OF LUKE AND JOSEPHUS.....	118
TABLE 7-1: SYNOPSIS OF THE BAPTISM OF JESUS	122
TABLE 11-4: COMPARISON OF ANCIENT INDICTMENTS	208
TABLE 13-6: WINTER’S ANALYSIS OF THE TRIAL OF JESUS... 	245

PREFACE

When I retired as a prosecutor back in 2005 and began my second career as a legal skills professor at the University of Florida, Levin College of Law, I began casting about looking for historical trials to use as illustrations of various points concerning the principles of good prosecution. One salient point that every prosecutor should know is that sometimes justice is better served by declining to prosecute an accused who is obviously guilty. The trial of Jesus appeared to be a prime example of this point. A fair reading of the Gospels seemed to indicate that Jesus was clearly guilty of violating the *lex iulia maiestas*, a minor form of treason, but just as clearly unworthy of punishment. Eventually I chose another ancient trial to exemplify the point, but the prosecution of Jesus still so intrigued me that I determined to write a monograph on the subject.

As I began my research, two additional issues arose which seemed to require comment. First, there has been a long and unfortunate history of animosity towards the Jews ostensibly arising from Jewish mistreatment of Jesus at the trial. Second, there has been a shorter, but still unfortunate, history of excoriating the Evangelists as racist bigots because of perceived animosity toward Jews. These two phenomena are both grounded on what Robert Heinlein called the “devil theory” fallacy. According to Heinlein, this fallacy occurs when you have “attributed to villainy conditions that result from stupidity.”¹ Heinlein’s “devil theory” has been twice restated as either Uhlmann’s Razor² or Hanlon’s Razor.³ The maxim should be more charitably stated as “Do not attribute to villainy that which can be explained by ignorance.” We tend to label people as stupid when they are ignorant of things which we know, but as Will Rogers once said, “Everybody is ignorant, only on different subjects.”⁴ As I will attempt to demonstrate in this book, these two unfortunate sets of beliefs came about because of ignorance as to what the Evangelists mean when they use the word *ioudaioi*.

A third issue, which I do not fully address, is the regard which writers show for the truthfulness of the Evangelists. One school of thought holds that they are little more than purveyors of fiction. Although I once shared that opinion, I now regard the Evangelists as honest witnesses. The person most responsible for my change of mind was O. Kimball Armayor, a

professor of ancient history from my days as a college senior. In his classes, I learned to respect the historical worth of many ancient works of literature which I had previously dismissed.

A fourth issue is the question “What did Jesus intend to accomplish that last week in Jerusalem?” I presume the simple answer “Nothing that posed a security threat to Roman provincial rule.” A full investigation of that question would take several hundred pages and would add little to our understanding of why the prosecutors and judges did what they did. Suffice it to say that the Gospels show Jesus doing his best to quell any idea that he might lead a rebellion against Rome.⁵

In discussing these issues I have worked hard to keep from wandering down side trails addressing matters that were at best peripheral to the objectives of the inquiry, but I was not always successful. Although I cut out most of those digressions during the numerous rewrites of the manuscript, a few remain.

When referring to ancient sources, I tried to confine myself to use of public domain translations because I felt free to revise the wording if I thought the translation missed the point. New Testament quotations are based on the translation by Richard Francis Weymouth. Unless otherwise noted, Old Testament quotations are adapted from the American Standard Version. With both translations I have modernized the archaic language used in dialog. Because I am not a Greek scholar, the revisions beyond modernized dialog are few; and those few were made only after careful study of the Greek text, Greek lexicons, and a number of additional translations.⁶ Online sources such as Google Books,⁷ the Internet Archive,⁸ BibleGateway.com,⁹ Biblos.com,¹⁰ and the Christian Classics Ethereal Library¹¹ made access to public domain translations of all quoted texts very easy.

At the very end of my labors I did something I should have done before beginning this project. I went to Jerusalem and walked the streets of the Old City. With the assistance of Hillel Kessler, an excellent professional guide, I gained deeper insight which caused me to revise some of my opinions. Three others provided invaluable assistance. Paula Mathew read a very early draft of the book and offered encouragement at a time when I was ready to scrap the project. The greatest assistance came from my wife, Lane Dekle, who has patiently suffered with me as I worked to give birth to this book as well as the others I have authored. Finally, my son John Thomas Dekle, who is also a lawyer and a student of the Bible, proofread the manuscript and offered critiques, some of which I heeded.

Ever the careful reader, John pointed out an apparent inconsistency in my reasoning in § 8.11 concerning the fate of Judas. Despite my vow to

stop tinkering with the manuscript, I have rewritten § 8.11 to remove the discrepancy and provide a better analysis.

During the preparation of this manuscript, a number of books have been published which would have been helpful in the writing of this work. None of the books I have reviewed, however, have caused me to change any of my conclusions, nor have they undermined the conclusions to the extent that I thought they needed to be answered. One of those books deserves mention—the second book of Pope Benedict’s biography of Jesus, *Jesus of Nazareth, Part Two, Holy Week: From the Entrance into Jerusalem to the Resurrection*. His reconstruction of the course of the trial had no influence on my analysis, but it bears a striking similarity to my reconstruction. Although my interpretation of the significance of those events varies widely from his, it is gratifying that someone of his stature, looking at the trial from such a different vantage point than mine, would agree with so many of my findings.

One final word: Although I am a Christian, I have done my best to write this book from a secular viewpoint, analyzing the trial just as I would any other trial from history. Readers can judge for themselves how successfully I divorced my judgment from religious doctrine.

CHAPTER ONE

MALICIOUS PROSECUTION?

§ 1.1: Jesus and the Temple

The ancient history of Israel cannot be told without reference to the Temple in Jerusalem. According to the Jewish historian, Flavius Josephus, the Temple era of Israelite history spanned 1,130 years. It began with the Temple built by Solomon, which stood approximately four centuries until the Babylonians destroyed it and took the Israelites into exile.¹ The returning exiles built the second Temple, which stood for 550 years until Herod the Great “renovated” it. Herod transformed that modest Temple into one of the most beautiful buildings of its time,² but his renovated Temple stood a mere 89 years before being destroyed when the Roman general Titus sacked Jerusalem in 70 CE. Josephus tells us that several years before Herod’s Temple fell, Jesus prophesied its destruction.

The Judeans held a number of feasts throughout the year, and during those feasts, devout pilgrims thronged Jerusalem, coming to worship and sacrifice at the Temple and to spend their money on food and lodgings within the city. At one of those feasts Jesus came to Jerusalem, prophesying woes upon the city and the Temple as well. The Temple authorities tried to stop him. They arrested him, questioned him, flogged him, and brought him before the Roman governor seeking his death.

Jesus stood mute before the governor’s questioning, and the governor had him flogged until the bones were laid bare beneath Jesus’ skin. Jesus refused to defend himself, refused to answer questions, and refused to recant his prophecy. Finally the governor arrived at a verdict. Not guilty by reason of insanity. He released Jesus as a harmless lunatic, and Jesus continued to prophesy doom for the city and the Temple for another seven years and five months. The Romans killed Jesus, but he didn’t die on a cross. During Titus’ siege, as Jesus stood on the battlements bewailing the city, a stone launched from a catapult struck and killed him.

This Jesus was not Jesus of Nazareth. He was Jesus ben Ananus. History records no followers of this Jesus, nor any religious movement

founded on his teachings. Indeed, this Jesus would have been completely forgotten were it not for Josephus, who devoted more words to describing him than he did to describing Jesus of Nazareth. The careers of the two men followed similar paths until they reached the milestone of a trial before the Roman governor. The Romans branded one a madman and released him, while they crucified the other as the King of the Jews. Why the difference?

§ 1.2: Judas and the Taxing

When Quirinius was governor of Syria, Caesar Augustus decreed a census and taxation in what is now the Middle East. Judas of Galilee rose up in rebellion against the taxation, and recruited a sizeable following by teaching that God alone ruled Judea and that God forbade payment of taxes to Caesar. Although the Romans killed him and massacred his followers, Judas' doctrine didn't die. It lived on in the work of his sons and among his surviving followers, a group whom Josephus called the Fourth Philosophy of the Judeans. Josephus did not name this Fourth Philosophy, but it is widely believed to be the party known as the Zealots—men who were zealous for the Law of Moses.³ Taking “No king but God” as their slogan, they caused the Romans untold problems from the time of Judas the Galilean until after the sack of Jerusalem. Where most Judeans were content to await the advent of the Messiah to bring about the liberation of Judea, the Zealots believed that God helps those who help themselves.

We can easily understand why the Romans' would treat Ben Ananus less harshly than Judas of Galilee. They saw Ben Ananus as a harmless gadfly, but the Galilean as a deadly threat. If Ben Ananus had any followers, they were perfectly safe from the Romans; the Romans tried to hunt down and kill all Judas' followers. Jesus of Nazareth shared Judas' fate, but his followers went unmolested by the Romans. Because Jesus' disciples survived, we have difficulty seeing Jesus as a revolutionary in the mold of Judas the Galilean.

The Sermon on the Mount suggests that Jesus was far closer to Ben Ananus, and most contemporary scholarship depicts him as posing no threat at all to Judea's Roman overlords. Why, then, did they crucify Jesus? Should the authorities have prosecuted him? Should Pilate have condemned him? Does anyone or any group deserve censure for the prosecution and conviction?

§ 1.3: The Twelve Witnesses

Before we can answer any of the questions posed in § 1.2 above, we need to know what happened at Jesus' trial. In order to know what happened, we must examine our witnesses. We have a fairly short roster of witnesses, and it may help at this time to list them:

- (1-4) The Passion Narratives as found in the Gospels,
- (5) The testimony of Cleopas on the road to Emmaus.
- (6) Numerous speeches attributed to the apostles in the book of Acts. We say "attributed to" rather than "made by" because we believe that Luke followed the lead of Thucydides in reporting speeches.⁴
- (7) The witness of the New Testament epistles.
- (8) The pseudepigraphal Gospel of Peter. This Gospel gives a truncated account of the trial and resurrection. It begins with Herod not washing his hands and ends with Peter going fishing. We may be able to extract something useful from it.
- (9) References to Jesus' trial in the Talmud.
- (10) The "Testimonium Flavianum" in Josephus' *Antiquities of the Jews*.
- (11) The Mara bar Serapion letter from approximately 73 CE.
- (12) A brief notice in Tacitus' *Annals* concerning the crucifixion of Jesus.

Nothing else gives any direct help in determining what happened at Jesus' trial. The *Didascelia Apostolorum* (Teaching of the Apostles) has some passages which serve as food for thought, but it was written between 200 CE and 250 CE, and it relied heavily on the canonical Gospels for its information. The much celebrated *Gospel of Judas*, recently published with almost as much fanfare as the last Harry Potter novel, sheds less light on the trial of Jesus than *The Last of the Mohicans* sheds on the French and Indian War. Although Robert W. Funk saw fit to include *The Acts of Pilate* in his *New Gospel Parallels*,⁵ it appears to be too late and too dependent upon the Canonical Gospels to be of any use. The same can be said for Tatian's *Diatessaron*, which we will discuss in the next section. The Gospel of Thomas, a simple collection of Jesus' sayings somewhat like the *Analects* of Confucius or *Quotations from Chairman Mao*, says nothing about Jesus' trial. The *Toledot Yeshua*, a medieval libel of Jesus, has no useful information. Suetonius' brief mention of the riots in Rome over Chrestus gives us no information. We will largely ignore the unhelpful

witnesses and concentrate on the twelve witnesses in our list. We will examine each of the twelve in detail, and also examine some collateral witnesses who should provide us with circumstantial evidence establishing the context of Jesus' trial.

Before we take this detailed look, let us paint with a broad brush and outline the gist of what we learn from a quick scan of the twelve witnesses. Our scan tells us that any one of the first four witnesses give us more information about the trial than the eight other witnesses combined. We also learn from our scan that our "big four" witnesses often contradict each other and sometimes give us historically inaccurate information.

§ 1.4: Conflict and Confusion in the Canonical Gospels

When looking at the Canonical Gospels, we see numerous conflicts. A careful study of either Kurt Aland's *Synopsis of the Four Gospels*⁶ or Burton Throckmorton's *Gospel Parallels*⁷ will reveal multiple discrepancies in chronology and detail. Many have attempted to harmonize the four Gospels by fusing their disparate details into one continuous narrative. W.J. Herschell tried in *A Gospel Monogram*,⁸ but his was not the first attempt. Thomas Jefferson's *The Life and Morals of Jesus of Nazareth*⁹ and Leo Tolstoy's *The Gospel in Brief*¹⁰ anticipated Herschell's attempt by almost a century. The Church Father Tatian takes the honor for writing the first harmony, the *Diatessaron*.¹¹ If you compare any of these works with Aland, Throckmorton, or any other Gospel synopsis, you will find the harmonies to be rather unharmonious. Let us catalog a few of the more readily apparent conflicts:

(1) John seems to say that a Roman cohort (480-600 men) led by a tribune arrested Jesus. Mark calls the arrest party a mob. Luke says chief priests, Captains of the Temple, and elders made up the arrest party.¹²

(2) Matthew tells us that Judas repented, gave his bribe back to the chief priests, and committed suicide. Luke (in the book of Acts) tells us he bought a field with the blood money and (apparently while inspecting the field) fell and ruptured his intestines and died.¹³

(3) The four chronologies of Peter's denials in the court of the High Priest defy harmonizing or reconciliation. One attempt at accommodating the varying descriptions of sequence and circumstance has Peter making eight denials.¹⁴

(4) Matthew, Mark, and Luke have Jesus being crucified on Passover.

John has him crucified on the eve of Passover. This issue may have great importance depending upon your theology, but has little significance to our inquiry. For our purposes, all we need to know is that Jesus was crucified during a Passover celebration.

(5) Matthew and Mark are traditionally interpreted as describing two trials of Jesus before the Sanhedrin, the Judean high court. Luke describes only one. John says nothing about any trial before the Sanhedrin.

(6) You will find it difficult if not impossible to reconcile Luke's account of the morning trial before the Sanhedrin with Matthew's and Mark's nighttime trial before the Sanhedrin.

(7) The witnesses give very different accounts of the trial before Pilate. John gives us the most elaborate account, organizing the trial into seven stages with Jesus' scourging in the middle. Mark and Matthew have his scourging at the end, and Luke mentions no scourging at all. Luke alone tells us of an attempt by Pilate to waive jurisdiction and have Herod Antipas try Jesus. None of the other witnesses say anything about Herod even being in Jerusalem on that Passover.

If you try to harmonize the conflicts, you must have six trials occurring in the space of a night and a morning. Jesus first appears before Annas for a preliminary hearing; then he goes before the Sanhedrin for a nighttime trial; the next morning he goes before the Sanhedrin a second time; then it's off to Pilate for a trial; Pilate sends Jesus to be tried before Herod; Herod sends Jesus back to be tried before Pilate; Pilate finds Jesus not guilty and then orders his execution. I'm going to venture out onto a limb and say that none of these harmonizers have ever tried six felony cases in one day. I haven't either, but I have tried four felony jury trials in a single day. We tried the four felonies in a single courtroom, with juries and witnesses shuffling back and forth in a gigantic game of musical chairs. We began jury selection in the first case at 9:00 a.m., and the last jury rendered its verdict in the wee hours of the next morning. The pandemonium of that day could not hold a candle to the pandemonium of trying Jesus before three different tribunals located in three different places in Jerusalem. First you'd take him to the High Priest's palace; give him a preliminary hearing before Annas; send him in to the next room to appear before seventy Sanhedrists who have been roused from their beds to come try him; conclude that trial and the next morning try him again before the Sanhedrin; then hustle him across town to the Praetorium for his first trial before Pilate; then send him back across town for the trial before Herod; and finally take him back to the Praetorium for the second trial before Pilate. You will find this very

difficult to do unless you can also do what Joshua did in the battle against the five kings.¹⁵ Gathering together all the necessary witnesses and courtroom personnel on short notice presents a challenge for one trial, and here we have six.

Many an exegete has made yeoman efforts to harmonize the six trials and to do so within a reasonable time frame. Annie Jaubert, in *La Date de la Cene* made an ingenious attempt, relying on the Passover date from the Book of Jubilees and Essene practice.¹⁶ Ralph Gorman¹⁷ uses the Jaubertian chronology in his attempt at saving the six trials thesis. The reconstruction works something like this. Jesus observes the Essene/Jubilees Passover on Monday evening (which would be Tuesday by the Judean calendar) and gets arrested late Monday night. He is taken to Annas, who interrogates him, and then Tuesday morning the Sanhedrin meets and convicts Jesus. On Wednesday they find him guilty in the second trial and send him to Pilate. Pilate tries Jesus the first time on Wednesday afternoon or Thursday morning. Pilate sends Jesus to Herod on Thursday and Herod sends him back on Thursday evening. Friday morning, the eve of the Sadducean Passover, Pilate holds a second trial, condemns Jesus, and orders him crucified. Everything fits nicely together and, although the schedule would be hectic, all the trials can be accommodated in the extended time. The *Didascalía Apostolorum*, written between 200 and 250 CE, gives a similar chronology:

But this was on Wednesday, for when we had eaten the Passover on Tuesday in the evening, we went out to the Mount of Olives, and in the night they took our Lord Jesus; and on the next day, which was Wednesday, He remained in prison in the house of Cepha the High Priest. In that day the chiefs of the people were assembled, and they took counsel together against Him. Again, the next day, which was Thursday, they brought Him to Pilate the governor, and again He remained in prison with Pilate, in the night after Thursday. And when it dawned on Friday, they accused Him much before Pilate, yet they could show nothing true, but they brought false witness against Him. And they asked Him from Pilate, to put Him to death, and they crucified Him on Friday.¹⁸

Such a reconstruction could also solve the problem of the Synoptic Evangelists dating the crucifixion on Passover and John on the eve of Passover—the Synoptic Evangelists were working off one calendar and John another. This chronology finds itself contradicted, however, by Mark's very precise timetable for the Passion. Marcus Borg and John

Dominic Crossan use Mark's timetable in *The Last Week*,¹⁹ and it completely rules out Gorman's chronology.

This conflict might tempt us to throw up our hands in dismay and pronounce the witnesses unworthy of belief. We must remember, however, that discrepancies in testimony do not per se invalidate that testimony. As a criminal trial lawyer with 32 years' experience, having tried hundreds of cases, I expect discrepancies in testimony. If all the witnesses come to court telling identical stories, I suspect collusion. Discrepancies fall into three broad categories—real, apparent, and imagined. First we look to see if the discrepancies are imagined or apparent. If they are imagined or apparent, we develop the evidence which shows the “discrepancies” are not real. If the discrepancies are real, then we use three additional categories—minor, major, and fatal. Few discrepancies are fatal; most fall in the minor category. Of the seven discrepancies noted above, only the last three are major discrepancies, and we will deal with them at length in our discussion of the Gospel accounts of the trial.

§ 1.5: Prosecuting the Prosecutors

In § 1.2 we raised a number of issues: Why was Jesus crucified? Should the authorities have prosecuted him? Should Pilate have condemned him? Does anyone or any group deserve censure for the prosecution and conviction? We will seek to answer these questions by “prosecuting” the prosecutors and judging the judges. We will investigate the case as though we are deciding whether to prosecute Pilate, the High Priest, or someone else for the unlawful killing of Jesus. Of necessity, we will also have to determine whether Jesus committed any crime for which he should have been prosecuted.

If we're going to decide upon the propriety of the trial, we must first decide whether it happened at all. “Well,” you might ask, “isn't it enough the Gospels say there was a trial?” Apparently not. A number of worthy scholars have decided that it didn't happen. George A. Wells²⁰ believes the trial never happened because Jesus never existed. John Dominic Crossan believes the trial never happened for another reason. Why should a crude, brutal governor like Pilate have taken the trouble to hold a trial for a peasant rabble-rouser?²¹

Crossan says that none of Jesus' disciples were anywhere around when Pilate decided to crucify Jesus and they made up the story of a trial in light

of passages of Hebrew scripture which they thought to have been fulfilled in Jesus. Haim Cohn²² believes that there was a Roman trial, but no Judean trial. At one time it would be unthinkable to question the veracity of the Gospels as these men do. At one time they were universally accepted at face value, and many Christians still accept them in this way. But Albert Schweitzer's *Quest of the Historical Jesus*,²³ demonstrates a lengthy scholarly tradition holding that the Gospels give a skewed, mythologized picture of Jesus. Schweitzer's book chronicles how scholars "from Reimarus to Wrede" combed the Gospels in an effort to overthrow the Christ of faith and replace him with a Jesus of history.

Scholarship may have overthrown the Christ of faith, but the Jesus of history has proven elusive. As Arthur's knights quested after the Holy Grail, modern scholars quest after the historical Jesus. The questers have uncovered a number of different "historical" identities for Jesus. The different identities have only this in common—they bear little resemblance to the Jesus portrayed in the Gospels. Schweitzer found the historical Jesus to be a misguided apocalyptic prophet.²⁴ Morton Smith found him to be a magician;²⁵ Burton Mack found a Cynic sage;²⁶ Hugh J. Schonfield found a pious fraud,²⁷ Harvey Falk²⁸ and Bruce Chilton,²⁹ a Pharisee; John Dominic Crossan, a peasant;³⁰ and George A. Wells, a figment of the imagination.³¹

Robert W. Funk and the Jesus Seminar find that the Gospel accounts of the trial are "improbable[, do not] fit verifiable evidence; [and are] largely or entirely fictive."³² What are we to make of this? Must we adopt the Jesus Seminar's Seventh Pillar of Scholarly Wisdom, which says that the Gospel accounts are false until proven true?³³ "False until proven true" is not a reasonable yardstick for measuring evidence. In the eyes of the law, testimony is accepted as true absent good reason to disbelieve it.³⁴ Sound evidentiary principles hold that unimpeached, unrebutted testimony should be accepted as true unless it is inherently improbable³⁵ or physically impossible.³⁶ Even when dealing with impeached or rebutted testimony the law does not summarily reject it. The fact finder must weigh the evidence to determine its worth. In the next chapter we will decide how the Gospel testimony should be weighed.

§ 1.6: Who Killed Jesus?

"Who killed Jesus?" This question sounds like the joke, "Who is buried in Grant's Tomb?" The answers to both questions seem obvious. A

detachment of Roman soldiers crucified and killed Jesus, and Grant is buried in Grant's Tomb. On second thought, the answers to both questions are a little more complicated than that. Grant and his wife are entombed above ground in a huge mausoleum. If you mean "buried" in the sense of "put in a hole in the ground and covered up," then nobody is buried in Grant's Tomb. If you mean "buried" in the sense of "put in a final resting place," then Ulysses S. Grant and his wife are buried there. If you mean "killed" in the sense of "acted as an immediate cause of death," then a detachment of Roman soldiers killed Jesus. If you mean "killed" in the sense of "intentionally started a chain of events inevitably resulting in death," then the question is open. John Dominic Crossan wrote over 200 pages trying to answer the question in the second sense.³⁷ Hyman E. Goldin³⁸ wrote over 800 pages answering it. Goldin framed his answer in the form of a murder trial, with opening statements, direct and cross examination of witnesses, final arguments, and instructions to the jury. Goldin, being both a lawyer and a rabbi, wrote from a unique perspective, and his scholarship is evident. Reading his book is like reading the transcript of a trial. Unfortunately, a trial transcript is a dreadfully dull thing to read.

Goldin's approach does have merit, but he chooses his starting point too late in the process. Every murder trial begins as a death investigation, and that is where we should start. To my knowledge, no one has ever studied the trial of Jesus as a forensic death investigation, but we can find some validation for that approach in the words of Geza Vermes, who compares a Biblical interpreter to a detective preparing a report for a criminal trial. He says that both the investigator and the interpreter must seek to clarify obscurities, establish facts, and point out discrepancies.³⁹ I agree wholeheartedly with his assessment, except that I see the investigator's duty as not only discovering discrepancies, but also trying to resolve them.

A death investigation seeks to answer two questions: What was the cause of death? What was the manner of death? Cause of death is the immediate mechanism for inflicting death, such as gunshot or disease. Manner of death is how the immediate mechanism of death was brought about. When the cause of death is gunshot, the manner of death may be accident, suicide, or homicide. When the evidence shows that another person caused the death, the death investigation becomes a homicide investigation. It might be more glamorous to call it a murder mystery; but that term presupposes that someone should be prosecuted. Remember that many "murder mysteries" result in the exoneration of all the suspects. Two

examples from literature will suffice to make the point. Edgar Allen Poe's "Murders in the Rue Morgue" was a murder mystery which ended up murderless when Dupin determined that an orangutan committed the killings. Arthur Conan Doyle's "Adventure of the Lion's Mane" began as a murder mystery but ended an accidental death when Sherlock Holmes determined that the victim had been stung by a venomous jellyfish. Of the many death investigations in which I participated, most were ruled accident, suicide, or natural causes. Only a few hundred were homicides, and many of those homicides were either justifiable or excusable.

When a death investigation becomes a homicide investigation, we must ask three more questions: Who caused the death? Why did the killer cause the death? What consequences should the killer suffer? In other words, in the death investigation, we only ask "howdunnit." When we shift from death investigation to homicide investigation, we ask "whodunnit" "whydunnit" and "what-of-it." Usually we can determine howdunnit and whodunnit easily. Whydunnit and what-of-it present knottier problems. In the trial of Jesus, none of the four questions is easily answered. Although the passion narratives tell the story of Jesus' arrest, trial, and crucifixion, they serve merely as our "crime scene." If we simply surround the scene with crime scene tape and never venture outside the tape for clues, we will not get accurate answers. When we investigate the death of Jesus, we will find our clues in all sorts of places. We will put the clues together like pieces of a jigsaw puzzle, and when we finish we will have gaps in the puzzle. If we have enough pieces, though, we will be able to see the picture despite the gaps.

In performing our evaluation, we must not forget that our informants give us a prepackaged assessment of the significance of the evidence and a predetermined assignment of guilt. The police have conducted their investigation and decided who should be punished, and they have brought us the evidence which they think will convince us to agree with them. If they are highly competent professionals, they bring us the evidence which tends to refute their conclusions, but that does not always happen. As we assimilate the evidence we must work to negate an all-too human tendency. When presented with a mass of evidence and a prepackaged conclusion, we tend to work the evidence to confirm the prepackaged conclusion. Some prosecutors overcorrect for this tendency, and work the evidence looking to disconfirm the prepackaged conclusion. We must strike a balance between *carte-blanche* acceptance and thoroughgoing skepticism.

In this respect the prosecutor has the hardest job in the court system.

Plaintiff's attorneys are expected to work the evidence for confirmation of their case theory, and defense attorneys are likewise expected to work the evidence for disconfirmation. But a prosecutor is not a plaintiff's attorney. A prosecutor is a minister of justice, and as such the prosecutor must evaluate the evidence as a neutral judge, not an advocate for one position or the other. Once guilt is assigned and charges filed, the prosecutor becomes an advocate who must present as powerful a case as possible, but even then she must continually revisit her charging decision to reassure herself that she is right. If she ever determines that she has improperly assigned blame, she must immediately take corrective action.

When we investigate the trial of Jesus, we confront two problems not ordinarily faced by prosecutors. (1) At first blush, it seems clear that Jesus died as the result of a justifiable homicide. He stood trial before Pilate and Pilate condemned him for treason. A judge's findings of fact are entitled to a presumption of correctness. If we are going to make a case of guilt against anyone, we must overcome that presumption with a strong affirmative showing.⁴⁰ (2) Invariably, when we read police reports, we have questions. We find gaps in the evidence. The reports sometimes confuse us. We do not always understand what the reporter is trying to say. We have already encountered this problem in § 1.4, and we can expect more problems of the same nature when we dig deeper into the Gospel accounts. Usually, when questions come up, we call the officers in and talk to them face-to-face, and we get our questions answered. The Evangelists are not available for questioning. Being conscientious prosecutors, we will try to compensate for that problem. We will look to the evidence and try to make reasonable deductions and draw reasonable inferences from the evidence, but we must resist the urge to base our answers on speculation. If we give too free a rein to our imagination, we end up with a convoluted conspiracy theory which might be the makings of a page-turner mystery and an edge-of-the-seat movie, but it won't be worth much as a case theory. We want to find answers that account for as much of the evidence as possible, but in doing so we want to follow Einstein's dictum, and "make everything as simple as possible, but no simpler."

§ 1.7: Why Was Jesus Crucified?

Since Jesus died as the result of a judicial sentence imposed at the conclusion of a prosecution, we first want to determine whether Jesus did

anything to warrant crucifixion. A prosecutor would formulate the questions like this: (1) Was a crime committed? (2) Did Jesus commit it? (3) Was there sufficient proof of guilt to support prosecution? You may think that answering these three questions ends the inquiry. It does not. Prosecutors customarily ask another question: (4) Do the circumstances warrant the prosecution? Even if someone is guilty of a crime and you can convict him of it, the ends of justice sometimes require that you forego prosecution.

§ 1.8: Does Anyone Deserve Censure?

Two thousand years of conventional wisdom and Christian apologetic have already answered all our questions and assigned blame accordingly. Conventional wisdom finds Jesus innocent, Caiaphas and the Sanhedrin guilty of prosecutorial misconduct, and Pilate guilty of judicial malfeasance. These preconceptions skew our lenses as we put the trial under the microscope. They magnify evidence supporting our preconceptions and blind us to the contrary evidence. If we're going to do justice as prosecutors, we must base that justice firmly on the bedrock of undistorted truth.

Our measure of justice must also be one that commands the assent of right-thinking people. Before we begin, then, we should deal with two preliminary objections. One objection comes from those who believe it impossible to recover the truth from our reports. The second comes from those who say we should not use twenty first century standards of right and wrong in judging a completely alien first century society. We will answer the first objection succinctly. Just as we cannot rubber stamp the opinions of our informants, we cannot uncritically accept the opinions of the naysayers who think it impossible to recover the truth. We must sift through the reports ourselves and make our own determination. The second requires a little more discussion.

As to the second objection, we must admit that first century Judea was a very different place from twenty first century America. Human nature, however, has changed little since the Stone Age, and we find that there are universal standards of justice which transcend time, place, and culture. Hammurabi's Code meted out dreadful punishments for perjury and false accusation,⁴¹ and judges who rendered false verdicts were subject to fine and removal from office.⁴² The Torah likewise required truthful accusation

and just judgment. The book of Deuteronomy requires judges to fairly adjudicate controversies and forbids the taking of bribes;⁴³ provides that those guilty of malicious prosecution should receive the punishment intended for the defendant;⁴⁴ and seeks to insure truthful verdicts by requiring multiple witnesses to a crime.⁴⁵ The Roman crime of *calumnia* consisted of prosecuting someone while knowing the person to be innocent. A prosecutor convicted of *calumnia* got the letter **K** branded on his forehead in addition to his other punishments.⁴⁶ Even by ancient standards of justice false accusation, false testimony, and false judgment are blameworthy. We can rightly require Jesus' accusers and judges to base their actions on the bedrock of truth.

