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## Seeking Truth on the Other Side of the Wall: Greenleaf's Evangelists Meet the Federal Rules, Naturalism, and Judas

Nancy J. Kippenhan

*Liberty University School of Law*, [nkippenhan@liberty.edu](mailto:nkippenhan@liberty.edu)

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## ARTICLE

# SEEKING TRUTH ON THE OTHER SIDE OF THE WALL: GREENLEAF'S EVANGELISTS MEET THE FEDERAL RULES, NATURALISM, AND JUDAS

Nancy J. Kippenhan<sup>†</sup>

*Rules of evidence “shall be construed . . . to the end that the truth may be ascertained . . . .”*<sup>1</sup>

*“We are not afraid to follow truth wherever it may lead . . . .”*<sup>2</sup>  
~Thomas Jefferson

### I. INTRODUCTION

Simon Greenleaf was one of the nineteenth century's most noted scholars in the field of evidence.<sup>3</sup> Although his most famous work is his *Treatise on the Law of Evidence*,<sup>4</sup> his most enduring and far-reaching legacy may well be his *Testimony of the Evangelists: Examined by the Rules of Evidence Administered in Courts of Justice* (“*Testimony*”).<sup>5</sup> It is as

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<sup>†</sup> Assistant Professor of Law, Liberty University School of Law (B.S., M.B.A., Rensselaer Polytechnic Institute; J.D., *magna cum laude*, Widener University School of Law). I wrote this article in full recognition of the humility (some may say audacity) needed to approach Greenleaf's *Testimony*, and with no intent of rewriting his seminal text. My purpose is solely to introduce his acute analysis, in refreshed form, to a new generation of legal minds, “remaining always ready to give a reasoned answer to anyone who asks you to explain the hope you have in you.” *I Peter* 3:15.

1. FED. R. EVID. 102.

2. Letter from Thomas Jefferson to William Roscoe (Dec. 27, 1820), *available at* [http://memory.loc.gov/ammem/collections/jefferson\\_papers/mtjser1.html](http://memory.loc.gov/ammem/collections/jefferson_papers/mtjser1.html) (then follow “From May 17, 1820” to image number 419: “We are not afraid to follow truth wherever it may lead, nor to tolerate any error so long as reason is left free to combat it.”).

3. Simon Greenleaf, LL.D. (1783–1853) was appointed Royall professor of law in the Law School of Harvard University from 1833 until 1846, and later succeeded Justice Joseph Story as the Dane professor of law in 1846. John Henry Wigmore, *Preface* to SIMON GREENLEAF, A TREATISE ON THE LAW OF EVIDENCE (16th ed. Little, Brown & Co. 2001) (1842).

4. GREENLEAF, *supra* note 3 (first published in 1842, dedicated by Greenleaf to the Honorable Joseph Story).

5. SIMON GREENLEAF, THE TESTIMONY OF THE EVANGELISTS: EXAMINED BY THE RULES OF EVIDENCE ADMINISTERED IN COURTS OF JUSTICE (James Cockcroft & Co. 2001) (1874) [hereinafter

significant today as it was when first published, particularly for its assertion that truth exists and can be demonstrated on both sides of the wall that has long separated the natural and the supernatural realms.

Relying on the most respected legal and theological experts of his day,<sup>6</sup> Greenleaf argued that the testimony of the evangelists Matthew, Mark, Luke, and John, as recorded in the four canonical gospels, would stand as credible, factual evidence in a court of law. He decried a standard of proof for religious-based sources that was higher than the standard required of evidence in secular inquiries,<sup>7</sup> and reminded his readers that the burden of disproving evidence lies squarely on the shoulders of the objector.<sup>8</sup> Greenleaf challenged his readers to approach the inquiry with “a mind free from all pride of opinion, not hostile to the truth sought for, willing to pursue the inquiry, and impartially to weigh the arguments and evidence, and to acquiesce in the judgment of right reason.”<sup>9</sup> *Testimony* was a significant work in its time, and continues to be cited as a foundational work by those who take an evidentiary approach to Christian apologetics<sup>10</sup> today.<sup>11</sup>

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TESTIMONY]. The 1874 printing contained Greenleaf's essay (pp. 1-54), accompanied by an extensive Harmony of the Gospels (pp. 55-503), where the verses of the four gospels were arranged in chronological order, providing a side-by-side comparison of the events of Jesus' life and ministry as portrayed in each gospel. The Appendix to the 1874 edition also included: Constantine Tischendorff, *The Various Versions of the Bible*; notes to each of the gospels; Simon Greenleaf, *Note on the Resurrection*; and Joseph Salvador, *The Jewish Account of the Trial of Jesus* (with an introduction by Greenleaf). The *Testimony* itself is also available at <http://books.google.com/books?id=S3CoKC5JI3EC&printsec=frontcover&dq=testimony+of+the+evangelists&ei=BMFwSqTUCqr8ygTG4LjaDg> (last visited Oct. 9, 2010).

6. In *Testimony*, Greenleaf draws from the works of many notable scholars including English lawyer and jurist Thomas Starkie (1782–1849), famous for his multi-volume *Starkie on Evidence*; Scottish mathematician and church leader Thomas Chalmers (1780–1847), who wrote *Chalmers Evidences*; and English writer and theologian Thomas Hartwell Horne (1780–1862), who filled five volumes with detailed commentary and analysis on the scriptures in his *Introduction to the Study of the Holy Scriptures*.

7. TESTIMONY, *supra* note 5, §§ 3, 27, 48.

8. *Id.* §§ 28, 33, 41.

9. *Id.* § 1.

10. “A rational defense for the existence of God . . . [using b]oth reason and scientific evidence . . .” Louis Hoffman, *Postmodernism Dictionary*, POSTMODERNISM AND PSYCHOLOGY, [http://www.postmodernpsychology.com/Postmodernism\\_Dictionary.html](http://www.postmodernpsychology.com/Postmodernism_Dictionary.html) (last visited Oct. 9, 2010).

11. See, e.g., PAMELA BINNINGS EWEN, FAITH ON TRIAL 52 (1999); JOSH McDOWELL, EVIDENCE FOR CHRISTIANITY 263 (2006); LEE STROBEL, THE CASE FOR CHRIST 58 (1998).

Of course, much about the world has changed since Greenleaf penned *Testimony*. The trend toward natural philosophy, emerging from the emphasis on rational knowledge during the Enlightenment, came into sharp focus just six years after Greenleaf's death with the publication of Charles Darwin's *Origin of Species* in 1859.<sup>12</sup> Since then, the wall separating the natural and the supernatural has been built ever higher, foreclosing any complete definition or explanation of truth, and excluding an entire realm of potential knowledge. Generations raised and educated on a diet of naturalism now blindly accept the proposition that religious texts cannot possibly be based on fact or offer factual evidence; however, Greenleaf's *Testimony* and its progeny prove this supposition to be false, giving freedom to those who seek truth wherever it can be found.<sup>13</sup>

The "natural-only" approach is exemplified within naturalism's definition of science,<sup>14</sup> which provides "your way of knowing about the

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12. CHARLES DARWIN, ON THE ORIGIN OF SPECIES BY MEANS OF NATURAL SELECTION, OR THE PRESERVATION OF FAVOURED RACES IN THE STRUGGLE FOR LIFE (Gryphon Editions 1987) (1859).

13. One dramatic consequence of erecting a wall between the natural and the supernatural in academia and culture is the resulting *lack* of acknowledgement of the existence of morals and sin (at least from any external source), and of sin's consequences. David Stern explains:

We live in an age when many people do not know what sin is. Sin is violation of *Torah*, transgression of the law God gave his people in order to help them live a life which would be in their own best interests as well as holy and pleasing to God. In the so-called Age of Enlightenment, two or three centuries ago, the notion of moral relativism began to gain hold in Western societies. Under its sway people discarded the concept of sin as irrelevant. In this view there are no sins, only sickness, misfortunes, mistakes, or the outworking on one's environmental, hereditary and biological input (western terminology) or of one's fate or karma (eastern). Alternatively, sin is acknowledged to exist, but only as defined in one's culture—cultural relativism thus negates the biblical concept of sin as absolute wrong.

DAVID H. STERN, JEWISH NEW TESTAMENT COMMENTARY 17-18 (1992).

14. For example, in *Kitzmiller v. Dover Area Sch. Dist.*, 400 F. Supp. 2d 707 (M.D. Pa. 2005), the court noted that:

[S]ince the scientific revolution of the 16th an[d] 17th centuries, science has been limited to the search for natural causes to explain natural phenomena. . . . In deliberately omitting theological or "ultimate" explanations for the existence or characteristics of the natural world, science does not consider issues of "meaning" and "purpose" in the world.

*Id.* at 735.

world and what ultimately exists in it.”<sup>15</sup> Yet, evidence continues to inexorably lead the inquirer to the “primacy of facts, which is the central concern of the field of evidence. Facts are primary in any coherent study of evidence, obviously, but they are primary in an even deeper manner, for they are the foundation upon which western civilization rests.”<sup>16</sup> *Testimony* concludes that the canonical Gospels are credible evidence, a conclusion that raises a dissonance between the demonstrable facts and an explanation that can only be found on the supernatural side of the wall.

Just as the theories of natural inquiry have changed since the initial publication of *Testimony*, so too, our knowledge about the Gospels themselves has expanded: more than 24,000 pieces of New Testament texts are now available for critical review.<sup>17</sup> Physical evidence consistent with the content of these documents far surpasses that of any other historical source,<sup>18</sup> bolstering their credibility beyond *Testimony*’s conclusions.

Since *Testimony* was first published, archeologists and historians have found evidence not only of the canonical documents themselves, but also of other ancient documents including the Dead Sea Scrolls,<sup>19</sup> the Nag

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15. *Q & A on Naturalism*, CENTER FOR NATURALISM, <http://www.centerfornaturalism.org/faqs.htm> (last visited Oct. 9, 2010) (“Science is the basis for naturalism.”).

16. Ronald J. Allen, *From the Enlightenment to Crawford to Holmes Address at the Association of American Law Schools Evidence Conference*, 39 SETON HALL L. REV. 1, 4 (2009).

17. STROBEL, *supra* note 11, at 81; *see also* Preface to IAN WILSON, JESUS: THE EVIDENCE 6-7 (1996). (This edition incorporates the “considerable number of discoveries relating to Jesus that there have been since 1984, such as the discovery of a fishing boat of his time; of the bones of the high priest Caiaphas; and of what may be the oldest known fragments of a gospel text.”).

18. STROBEL, *supra* note 11, at 82 (citing F.F. BRUCE, THE BOOKS AND THE PARCHMENTS 178 (1963)) (“There is no body of ancient literature in the world which enjoys such a wealth of good textual attestation as the New Testament.”); *see also* WILSON, *supra* note 17, at 23:

[W]hereas we have just a single manuscript, copied around the twelfth century, for Tacitus’ history of the early Roman emperors, of canonical material alone attesting to Jesus’ existence there are some 274 vellum manuscripts . . . dating from between the fourth and the eleventh centuries, and 88 papyrus fragments datable to between the second and the fourth centuries.

19. The Dead Sea Scrolls were first discovered by a Bedouin shepherd in 1947 in a cave south of Jericho. The cave contained Hebrew and Aramaic writings, along with some six hundred fragmentary inscriptions. Archeologists discovered more fragments in other caves in the region beginning in 1952. Among the numerous manuscripts and fragments were multiple sections of *Isaiah*, *Psalms*, *Jeremiah*, *Daniel*, and *Habakkuk*. MERRILL F. UNGER, THE DEAD SEA SCROLLS 5-7 (1957).

Hammadi tractates,<sup>20</sup> and more recently, tractates containing a text known as the *Gospel of Judas* (“*Judas*”).<sup>21</sup> With each new discovery, there are many who jump to the conclusion that these new finds are reliable without any further investigation. Others use the very existence of the discovered texts as *prima facie* evidence of grand conspiracies within the early church.<sup>22</sup> One need look no further than the popular reaction to pop fiction such as *The Da Vinci Code*<sup>23</sup> or ideas from more traditional authors in “daring theories that run beyond the evidence.”<sup>24</sup>

More than 150 years after *Testimony* was published, it is fair to ask whether Greenleaf’s persuasive analytical construct would still lead today’s jurists to the same conclusions. Does the testimony of the evangelists stand the test of today’s evidentiary inquiry, such that it would be admitted into today’s court of justice? This Article answers in the affirmative. Section II of this Article reviews Greenleaf’s original analysis, updates his analytical principles to the current Federal Rules of Evidence,<sup>25</sup> and then applies those rules to the canonical Gospels. Section III of this Article applies the same

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20. Bedouins discovered a cache of thirteen leather-bound volumes buried in an earthen jar near the village of Nag Hammadi in Upper Egypt in December 1945. These volumes contain fifty-two treatises that have “increased our knowledge of ancient Gnosticism immeasurably.” BART D. EHRMAN, *LOST CHRISTIANITIES: CHRISTIAN SCRIPTURES AND THE BATTLES OVER AUTHENTICATION* 54 (2002); HERBERT KROSNY, *THE LOST GOSPEL* 11 (2006).

21. *The Gospel of Judas* is one of the texts contained in a twenty-six page papyrus manuscript discovered in a cave tomb not far from the village of Qarara in Middle Egypt in the late 1970s. The Coptic document was passed on to an underground Egyptian antiquities dealer and ultimately surfaced in an antiquities market in Geneva in May 1983. KROSNY, *supra* note 20, at 1, 9-12, 79, 106-11.

22. The term “church” in this Article is used in the context of the earliest groups of believers in Jesus. While formal orthodoxies and hierarchical organizations developed over the centuries, this Article will not focus on the issues that ultimately divided the Roman Catholic, Orthodox, Protestant, Messianic Jewish, and other denominations, but rather the gospel evidence that is foundational to them all.

23. DAN BROWN, *THE DA VINCI CODE* (2003). While the book’s historical accuracy has been thoroughly discredited, *see, e.g.*, DARRELL L. BOCK, *BREAKING THE DA VINCI CODE: ANSWERS TO THE QUESTIONS EVERYONE’S ASKING* (2004); MICHAEL GREEN, *THE BOOKS THE CHURCH SUPPRESSED: FICTION AND TRUTH IN THE DA VINCI CODE* (2005), included in the preface is a list of items purported to be “facts,” and posters for the subsequent film were subtitled with the strap line “Seek the Truth.” *See, e.g.*, Tina Mrazik, *The Da Vinci Code: Seek the Truth*, ASSOCIATED CONTENT (Sept. 2, 2006), [http://www.associatedcontent.com/article/56075/the\\_da\\_vinci\\_code\\_seek\\_the\\_truth.html](http://www.associatedcontent.com/article/56075/the_da_vinci_code_seek_the_truth.html).

24. CRAIG A. EVANS, *FABRICATING JESUS: HOW MODERN SCHOLARS DISTORT THE GOSPELS* 16 (2006).

25. FED. R. EVID. (2009).

critical evidentiary analysis to the non-canonical testimony of the *Gospel of Judas* to determine whether the content of that document meets the same level of credibility as the canonical Gospels. Section IV concludes with a discussion of the significance of these analyses: if the canonical Gospels are indeed credible evidence, what conclusions should be drawn from their testimony? An objective reader, coming to the question as a juror with an open mind, will find ample factual support on both sides of the wall for the truth explicated in the Gospel accounts.

## II. TESTIMONY OF THE EVANGELISTS

### A. Evidentiary Principles

Greenleaf's *Testimony* presents a framework with which to analyze the four canonical Gospels using the generally accepted concepts of testamentary evidence of his day. Following a line of familiar legal logic, Greenleaf first addressed the authenticity of the documents, concluding that the Gospel texts meet all of the requirements of the "ancient documents" hearsay exception.<sup>26</sup> Next, he established the credibility of the witnesses by examining the Gospels' authors under the same indicia of reliability used by modern courts.<sup>27</sup> He questioned the content and context of the testimony, evaluated the credentials and the reliability of the authors, and found them to be credible witnesses.<sup>28</sup> Greenleaf's final conclusion was that the four canonical Gospels would be admissible and credible in a court of law at that time.<sup>29</sup>

The basic evidentiary principles changed remarkably little over the subsequent century and a half. Now, as then, evidence is generally admitted for consideration unless the opposing party makes an objection, at which time the burden shifts to the opposing party to provide specific grounds for

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26. FED. R. EVID. 803(16); TESTIMONY, *supra* note 5, § 9; *see infra* Table 1 (comparing Greenleaf's evidentiary principles to corresponding modern rules).

27. Compare TESTIMONY, *supra* note 5, §§ 12–25, with *People v. Farrell*, 34 P.3d 401, 406–07 (Colo. 2001) (considering factors to assess reliability of hearsay testimony). While such reliability tests do not overcome a criminal defendant's right to cross-examine witnesses against him, *Crawford v. Washington*, 541 U.S. 36 (2004), these "indicia of reliability" continue to demonstrate what it means for a witness to provide credible testimony. *See also infra* note 168, 174.

28. TESTIMONY, *supra* note 5, §§ 12–14 (analysis of Matthew as author), §§ 15–17 (Mark), §§ 18–22 (Luke), §§ 23–25 (John), §§ 29–44 (examining the credibility of the authors and the reliability of their testimony); *see also infra* Part II.B.1–2.

29. TESTIMONY, *supra* note 5, § 48.

the objection and to demonstrate that the offered evidence should not be admitted.<sup>30</sup> The benefit of the doubt is given to the party presenting the evidence, thus erring on the side of inclusion rather than exclusion, in order to consider the greatest amount of relevant information possible in the quest for the truth of the matter.<sup>31</sup> Greenleaf noted this burden on the objectors throughout *Testimony*,<sup>32</sup> recognizing that in the culture of that day, as today, any evidence related to a religious inquiry was “unjustly presumed to be false, until it is proved to be true,”<sup>33</sup> rather than accepted as true until explicitly impeached.

For Greenleaf, “[a] proposition of fact is proved, when its truth is established by competent and satisfactory evidence.”<sup>34</sup> Such evidence is the “amount of proof, which ordinarily satisfies *an unprejudiced mind*, beyond any reasonable doubt.”<sup>35</sup> The facts attested to in the Gospels “are cognizable by the senses, [and] may be said to be proved when they are established by that kind and degree of evidence which . . . would . . . satisfy the mind and conscience of a common man.”<sup>36</sup> In viewing the claims of the canonical Gospels by the same standards as other evidence, Greenleaf noted:

[T]he narrative is more likely to be true than false; and it may be in the highest degree more likely, but still be short of absolute mathematical certainty. Yet this very probability may be so great as to satisfy the mind of the most cautious, and enforce the assent of the most reluctant and unbelieving. . . . If it is such as usually satisfies reasonable men, in matters of ordinary transaction, it is all which the greatest sceptic has a right to

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30. FED. R. EVID. 103(a)(1); TESTIMONY, *supra* note 5, §§ 8–10.

31. See FED. R. EVID. 401. (“‘Relevant evidence’ means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.”); see also FED. R. EVID. 402 (“All relevant evidence is admissible . . .”); FED. R. EVID. 403 (favoring admission, but excluding evidence “if its probative value is substantially outweighed by the danger of unfair prejudice”). See *United States v. Dennis*, 625 F.2d 782, 797 (8th Cir. 1980) (“In weighing the probative value of evidence against the dangers and considerations enumerated in Rule 403, the general rule is that the balance should be struck in favor of admission.”).

32. See, e.g., TESTIMONY, *supra* note 5, §§ 10, 28, 33.

33. *Id.* § 28.

34. *Id.* § 27.

35. *Id.* (emphasis added).

36. *Id.* (emphasis added).

require; for it is by such evidence alone that our rights are determined, in the civil tribunals; and on no other evidence do they proceed, even in capital cases.<sup>37</sup>

Speaking in the language of the time, he characterized the facts portrayed in the canonical Gospels as moral evidence, “sufficient to satisfy any rational mind, by carrying it to the highest degree of moral certainty.”<sup>38</sup> This standard remains essentially unchanged, and the Supreme Court has cited to Greenleaf’s own *Law of Evidence* in tracing the equivalence of moral evidence, moral certainty, and reasonable doubt.<sup>39</sup> The Court has noted, “We recognize that the phrase ‘moral evidence’ is not a mainstay of the modern lexicon, though we do not think it means anything different today than it did in the 19th century.”<sup>40</sup> The Court recognized that “proof beyond a reasonable doubt is synonymous with proof to a moral certainty, or subjective certitude.”<sup>41</sup> Thus, Greenleaf’s standard—that the evidence presented by the Gospel testimony rises to the same level that “will justify the taking away of human life or liberty”<sup>42</sup>—remains the test of testamentary credibility.

Greenleaf’s analysis in *Testimony* was grounded in basic historical concepts of evidentiary inquiry. As seen in the chart below, the current federal rules are substantially identical in letter and spirit to the principles of Greenleaf’s time. Thus, when today’s rules are compared with and incorporated into Greenleaf’s analysis, the conclusion must also be the same.

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37. *Id.* § 41.

38. *Id.*

39. *See, e.g.,* *Victor v. Nebraska*, 511 U.S. 1, 11-18 (1994) (citing 1 S. GREENLEAF, *LAW OF EVIDENCE* 3-4 (13th ed. 1876)).

40. *Id.* at 12.

41. *Stoltie v. California*, 501 F. Supp. 2d 1252, 1259 (C.D. Cal. 2007) (citing *Victor v. Nebraska*, 511 U.S. 1, 12 (1994)). *See generally* Steve Sheppard, *The Metamorphoses of Reasonable Doubt: How Changes in the Burden of Proof Have Weakened the Presumption of Innocence*, 78 NOTRE DAME L. REV. 1165 (2003); Anthony A. Morano, *A Reexamination of the Development of the Reasonable Doubt Rule*, 55 B.U. L. REV. 507 (1975).

42. TESTIMONY, *supra* note 5, § 41.

**Table 1: Comparison of Greenleaf's Evidentiary Principles with the Federal Rules of Evidence**

Greenleaf Rule/Principle	Modern Rule/Principle
<p>§ 8 Every document, apparently ancient, coming from the proper repository or custody, and bearing on its face no evident marks of forgery, the law presumes to be genuine, and devolves on the opposing party the burden of proving it to be otherwise.<sup>43</sup></p>	<p><b>Rule 803. Hearsay Exceptions; Availability of Declarant Immaterial</b></p> <p>The following are not excluded by the hearsay rule, even though the declarant is available as a witness:</p> <p><b>(16) Statements in ancient documents</b> Statements in a document in existence twenty years or more the authenticity of which is established.<sup>44</sup></p> <p><b>Rule 901. Requirement of Authentication or Identification</b></p> <p><b>(a) General provision</b> The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.<sup>45</sup></p> <p><b>(b) Illustrations</b> By way of illustration only, and not by way of limitation, the following are examples of authentication or identification conforming with the requirements of this rule:</p> <p>Ancient documents or data compilation. Evidence that a document or data compilation, in any form, (A) is in such condition as to create no suspicion concerning its authenticity, (B) was in a place where it, if authentic, would likely be,</p>

43. *Id.* § 8.

44. FED. R. EVID. 803(16).

45. FED. R. EVID. 901(a).

	and (C) has been in existence 20 years or more at the time it is offered. <sup>46</sup>
<p>§ 9 In matters of public and general interest, all persons must be presumed to be conversant, on the principle that individuals are presumed to be conversant with their own affairs.<sup>47</sup></p>	<p><b>Rule 601. General Rule of Competency</b> Every person is competent to be a witness except as otherwise provided by these rules.<sup>48</sup></p> <p><b>Rule 602. Lack of Personal Knowledge</b> A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the witness' own testimony.<sup>49</sup></p>
<p>§ 22 [T]he result of careful inquiry and examination, made by a person of science, intelligence and education, concerning subjects which he was perfectly competent to investigate, and as to many of which he was peculiarly skilled. . . .<sup>50</sup></p>	<p><b>Rule 702. Testimony by Experts</b> If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise, if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.<sup>51</sup></p>
<p>§ 26 In trials of fact, by oral testimony, the proper inquiry is not whether it is possible that the testimony may be false, but whether there is sufficient probability that it</p>	<p><b>No Reasonable Doubt</b> “Proof beyond a reasonable doubt is synonymous with proof to a moral certainty, or subjective certitude.”<sup>53</sup></p>

46. FED. R. EVID. 901(b)(8).

47. TESTIMONY, *supra* note 5, § 9.

48. FED. R. EVID. 601.

49. FED. R. EVID. 602.

50. TESTIMONY, *supra* note 5, § 22.

51. FED. R. EVID. 702.

<p>is true. . . . [And] that there is no reasonable doubt of their truth.<sup>52</sup></p>	<p>“[E]verything relating to human affairs, and depending on moral evidence, is open to some possible or imaginary doubt’ – in other words, that absolute certainty is unattainable in matters relating to human affairs. Moral evidence, in this sentence, can only mean empirical evidence offered to prove such matters—the proof introduced at trial.”<sup>54</sup></p>
<p>§ 27 A proposition of fact is proved, when its truth is established by competent and satisfactory evidence.<sup>55</sup></p>	<p><b>Rule 102. Purpose and Construction</b> These rules shall be construed to secure fairness . . . and promotion of growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined.<sup>56</sup></p>
<p>§ 28 In the absence of circumstances which generate suspicion, every witness is to be presumed credible, until the contrary is shown; the burden of impeaching his credibility lying on the objector.<sup>57</sup></p>	<p><b>Rule 601. General Rule of Competency</b> Every person is competent to be a witness except as otherwise provided by these rules.<sup>58</sup></p> <p><b>Rule 603. Oath or Affirmation</b> Before testifying, every witness shall be required to declare that the witness will testify truthfully, by oath or affirmation administered in a form calculated to awaken the witness’ conscience and impress the witness’ mind with the duty to do so.<sup>59</sup></p>

53. *Stoltie v. California*, 501 F. Supp. 2d 1252, 1259 (C.D. Cal. 2007).

52. TESTIMONY, *supra* note 5, § 26.

54. *Victor v. Nebraska*, 511 U.S. 1, 13 (1994) (quoting California jury instruction using the term “moral certainty” in its instruction regarding reasonable doubt).

55. TESTIMONY, *supra* note 5, § 27.

56. FED. R. EVID. 102.

57. TESTIMONY, *supra* note 5, § 28 (citing THOMAS STARKIE, 1 STARKIE ON EVIDENCE 514 (1842)).

58. FED. R. EVID. 601.

59. FED. R. EVID. 603.

	<p><b>Rule 607. Who May Impeach</b> The credibility of a witness may be attacked by any party, including the party calling the witness.<sup>60</sup></p>
<p><b>§ 29</b> The credit due to the testimony of witnesses depends upon, firstly, their honesty; secondly, their ability; thirdly, their number and the consistency of their testimony; fourthly, the conformity of their testimony with experience; and fifthly, the coincidence of their testimony with collateral circumstances.<sup>61</sup></p>	<p><b>Reliability</b> “[W]here, when, and how the declarant made the statement, to whom the declarant made the statement, what prompted the statement, and the statement’s contents all provide indicia of reliability. [Also], the nature and character of the statement, the relationship of the parties, the declarant’s probable motivation for making the statement, and the circumstances surrounding the making of the statement [are] probative of the statement’s trustworthiness.”<sup>62</sup></p>

**Table 1: Comparison of Greenleaf’s Evidentiary Principles with the Federal Rules of Evidence**

Moreover, Greenleaf’s caution against discounting testimony due to witness bias is still sound: “If the witnesses could be supposed to have been biased, this would not destroy their testimony to matters of fact; it would only detract from the weight of their judgment in matters of opinion.”<sup>63</sup> Thus, the evidentiary framework on which Greenleaf based his analysis of Gospel credibility remains reliable for today’s jurist applying the current Federal Rules of Evidence.

60. FED. R. EVID. 607.

61. TESTIMONY, *supra* note 5, § 29 (citing THOMAS STARKIE, 1 STARKIE ON EVIDENCE 480, 545 (1842)).

62. *People v. Farrell*, 34 P.3d 401, 406 (Colo. 2001) (internal citations omitted).

63. TESTIMONY, *supra* note 5, § 30 n.1; *see, e.g., Saffon v. Wells Fargo & Co. Long Term Disability Plan*, 522 F.3d 863 (9th Cir. 2008) (“[C]ourts are familiar with the process of weighing a conflict of interest. For example, in a bench trial the court must decide how much weight to give to a witness’ testimony in the face of some evidence of bias.”) (citations omitted).

## B. *The Testimony of the Gospels*

### 1. Ancient Documents

An objection to these documents as hearsay evidence, and their validation under the “ancient documents” exception, remain consistent: a document more than twenty years old and whose authenticity has been established is admissible.<sup>64</sup> Ancient documents may be authenticated by

[e]vidence that a document or data compilation, in any form, (A) is in such condition as to create no suspicion concerning its authenticity, (B) was in a place where it, if authentic, would likely be, and (C) has been in existence 20 years or more at the time it is offered.<sup>65</sup>

Few questions existed as to the authenticity of the Gospel documents in Greenleaf’s time, and the archeological and historical evidence discovered since then has only reinforced the documents’ authenticity.<sup>66</sup> While approximately 5,000 pieces of the manuscripts were available in the mid-nineteenth century, the current total is closer to 24,000.<sup>67</sup> Although there are no extant originals, copies date as early as 70 A.D.<sup>68</sup> The content of the

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64. FED. R. EVID. 803(16).

65. FED. R. EVID. 901(8).

66. WILSON, *supra* note 17, at 16-17.

67. STROBEL, *supra* note 11, at 81.

68. *See, e.g.,* WILSON, *supra* note 17, at 21-23 (stating that manuscript fragments from the *Gospel of Matthew*, currently housed in the library at Magdalen College, Oxford, have been dated to “no later than the third quarter of the first century A.D., Pompeii and Herculaneum having been destroyed in 79 A.D. and Qumran—the site of the Dead Sea Scrolls—closed down in 70 A.D.”). For copies to exist from 70 A.D., the originals would have to have been written even earlier, well within the lifetime of the eyewitnesses. If Jesus’ crucifixion and resurrection date to approximately 30 A.D., then these early manuscripts came from originals written less than forty years after the events described. For perspective, the originals were written more closely in time to the events they describe than books written today about the Vietnam conflict, Martin Luther King, Jr., or landing a man on the moon. John’s Gospel, generally dated near the end of the first century, is likewise analogous to Steven Spielberg’s Shoah project, founded in 1994 to record the eyewitness testimonies of those who survived the Nazi Holocaust of the 1930s and ’40s. *See* SURVIVORS OF THE SHOAH VISUAL HISTORY FOUNDATION, <http://college.usc.edu/vhi/aboutus/> (last visited Oct. 30, 2010). Richard Bauckham also compares the vivid events of the Holocaust to the equally vivid events of Jesus’ ministry, death, and resurrection. RICHARD BAUCKHAM, *JESUS AND THE EYEWITNESSES* 493-505 (2006).

copies across the centuries is identical in all but the smallest details, leaving the fundamental testimony of the individual authors unchanged.<sup>69</sup>

Such consistency throughout the archeological record adds support to the acceptance of this testimony through the ancient documents exception. The basic premise behind the exception is that, unless there is reason to suspect forgery or tampering, the contents of a document of sufficient age are most likely to be the original contents and, therefore, trustworthy.<sup>70</sup> Greenleaf relied on this premise, maintaining that

the text of the Four Evangelists has been handed down to us in the state in which it was originally written, that is, without having been materially corrupted or falsified, either by heretics or Christians; are facts which we are entitled to assume as true, until the contrary is shown.<sup>71</sup>

The canonical Gospels have been accepted as genuine narratives of the life of Jesus since they were written in the first century, and were found in the marketplace of that day, where they would have been expected to be found. As Greenleaf noted:

There is no pretense that they were engraven on plates of gold and discovered in a cave,<sup>72</sup> nor that they were brought from

69. See STROBEL, *supra* note 11, at 75-76 (quoting Strobel's interview with Bruce M. Metzger, Ph.D.):

[W]hat the New Testament has in its favor, especially when compared with other ancient writings, is the unprecedented multiplicity of copies that have survived. . . .

. . . .  
[T]he more often you have copies that agree with each other, especially if they emerge from different geographical areas, the more you can cross-check them to figure out what the original document was like. . . .

. . . .  
. . . We have copies commencing within a couple of generations from the writings of the originals, whereas in the case of other ancient texts, maybe five, eight, or ten centuries elapsed between the original and the earliest surviving copy.

70. See *Threadgill v. Armstrong World Indus.*, 928 F.2d 1366, 1375-76 (3d Cir. 1991) (noting that the only questions for the trial judge are: (1) Were the documents in question what they purported to be? and (2) Do they purport to have been in existence twenty years or more?).

71. TESTIMONY, *supra* note 5, § 8.

72. There is a certain amount of irony in Greenleaf's comments here. Fragments of canonical Gospel manuscripts are often found in excavations of living areas of the relevant time period, where they would have been read and relied on in everyday life and study;

heaven by angels; but they are received as the plain narratives and writings of the men whose names they respectively bear, made public at the time they were written; and though there are some slight discrepancies among the copies subsequently made, there is no pretense that the originals were anywhere corrupted.<sup>73</sup>

Thus, no genuine concern exists regarding the authenticity of the texts.

## 2. The Witnesses

If the documents themselves are authentic, what can be said of the credibility of their authors, the witnesses to the events as portrayed in those documents? As with Greenleaf, “[o]ur attention will naturally be first directed to the witnesses themselves, to see who and what manner of men they were . . . .”<sup>74</sup> The Federal Rules of Evidence presume that any person is competent to be a witness,<sup>75</sup> but also require evidence “sufficient to support a finding that the witness has personal knowledge of the matter.”<sup>76</sup> The credibility of a witness may be challenged as to his character for truthfulness,<sup>77</sup> but “[e]vidence of the beliefs or opinions of a witness on matters of religion is not admissible for the purpose of showing that by reason of their nature the witness’ credibility is impaired or enhanced.”<sup>78</sup> The most accepted understanding of the authors has not changed since Greenleaf’s analysis:

[T]he uniform testimony of the early church was that Matthew, also known as Levi, the tax collector and one of the twelve disciples, was the author of the first gospel in the New Testament; that John Mark, a companion of Peter, was the author of the gospel we call Mark; and that Luke, known as Paul’s

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however, documents that were generally not viewed as authentic by early believers (e.g., Gnostic texts such as those found at Nag Hammadi and the *Gospel of Judas*) have more often been found in caves.

73. TESTIMONY, *supra* note 5, § 9.

74. *Id.* § 11.

75. FED. R. EVID. 601.

76. FED. R. EVID. 602.

77. FED. R. EVID. 608(a).

78. FED. R. EVID. 610. In the discussion in Section III, *infra*, for example, the credibility of the author of *Judas* should not be questioned simply because he was Gnostic. The content and truth of his writings can, however, be examined and challenged on their veracity.

“beloved physician,” wrote both the gospel of Luke and the Acts of the Apostles.<sup>79</sup>

The first three Gospels have generally been dated to the middle of the first century, possibly as early as the late 30s,<sup>80</sup> with John’s writings ascribed to his time in exile at the end of that century.<sup>81</sup> All were written by men who were alive at the time of the events they recorded, in close physical and geographical proximity to the people, places, and events they describe, and “within living memory of the events they recount.”<sup>82</sup> Two of the authors—Matthew and John—were *talmidim*<sup>83</sup> of Jesus, personally

79. STROBEL, *supra* note 11, at 26-27 (quoting an interview with Craig L. Blomberg, Ph.D.). This understanding mirrors that of the early church:

Matthew published his own Gospel among the Hebrews in their own tongue, when Peter and Paul were preaching the Gospel in Rome and founding the church there. After their departure, Mark, the disciple and interpreter of Peter, himself handed down to us in writing the substance of Peter’s preaching. Luke, the follower of Paul, set down in a book the Gospel preached by his teacher. Then John, the disciple of the Lord, who also leaned on his breast, himself produced his Gospel while he was living at Ephesus in Asia.

*Id.* at 29 (citing IRENAEUS, ADVERSUS HAERESIS 3.3.4).

80. TESTIMONY, *supra* note 5, § 12. *See generally supra* note 68 (discussion of dates of Gospel texts). Corroboration for mid-century originals is provided by Luke’s *Book of Acts*, which was written after his Gospel and devoted primarily to the careers of Peter and Paul, and to the growth of the early church. While *Acts* includes a number of historical dates, e.g., the succession of Porcius Festus as procurator of Judea c. 59 A.D. while Paul was a prisoner in Caesarea, there is no mention of the deaths of Paul or Peter (mid-60s A.D.), or the death of James (c. 62 A.D.). The Jewish War with the Romans that began in 66 A.D., and the fall of Jerusalem in 70 A.D., are also absent. These events would have been central to the book’s key persons and geography, making them integral to its theme, and their absence argues for an earlier date for the original Gospel testimonies, before the mid-60s. *See also* KEITH F. NICKLE, THE SYNOPTIC GOSPELS 85, 129, 159 (2001). Moreover, *Acts* ends abruptly; it does not say what happened to Paul. Blomberg suggests this is likely because Paul had not yet been executed. So, *Acts* “cannot be dated any later than A.D. 62.” *Luke* came before *Acts*, and *Mark* likely came before *Luke*, perhaps the late 50s or 60 at the latest. STROBEL, *supra* note 11, at 42 (citing Strobel’s interview with Craig L. Blomberg, Ph.D.); *see also* Luke’s preface to *Acts*, citing his Gospel: “In the first book, I wrote about everything Yeshua set out to do and teach.” *Acts* 1:1.

81. F.F. BRUCE, JESUS & CHRISTIAN ORIGINS OUTSIDE THE NEW TESTAMENT 16 (1974) (dating John’s Gospel between 90 and 100 A.D.); CRAIG L. BLOMBERG, THE HISTORICAL RELIABILITY OF JOHN’S GOSPEL: ISSUES AND COMMENTARY 41-42 (2002) (noting a consensus among scholars dating c. 95 A.D.).

82. BAUCKHAM, *supra* note 68, at 7.

83. *Talmidim* (Hebrew; singular: *talmid*) were a rabbi’s disciples or students whose desire was not only to know what their teacher knew, but to also become like him. RAY VANDER LAAN, ECHOES OF HIS PRESENCE 50 (1998); *see also* STERN, *supra* note 13, at 23:

present for what they recount.<sup>84</sup> Mark is generally accepted to have been a recording secretary of another of Jesus' disciples, Peter.<sup>85</sup> And Luke, while not one of the original twelve disciples, was a first-generation author who spent significant time with the first-century witnesses and teachers. The precise details and the historical accounts, both in Luke's Gospel and in his *Book of Acts*, are sufficient to demonstrate his personal knowledge, as well as to corroborate, and be corroborated by, other sources. "In the absence of circumstances which generate suspicion, every witness is to be presumed credible, until the contrary is shown; the burden of impeaching his credibility lying on the objector."<sup>86</sup>

As one of the first disciples called by Jesus, Matthew was an eyewitness to Jesus' life and ministries.<sup>87</sup> As a Jew, Matthew was "familiar with the opinions, ceremonies, and customs of his countrymen . . . conversant with the Sacred Writings, and habituated to their idiom . . ."<sup>88</sup> His gospel was written for a Jewish audience, and reflects the scripture and idiom of his people. But Matthew was also a tax collector,<sup>89</sup> considered beneath contempt in that time. David Stern explains that "Jews who undertook to collect taxes for the Roman rulers were the most despised people in the Jewish community. Not only were they serving the oppressors, but they found it easy to abuse the system so as to line their own pockets by exploiting their fellow Jews."<sup>90</sup> Perhaps more important to an analysis of Matthew's credibility, his position would have made Matthew a skeptic, "familiar with a great variety of the forms of fraud, imposture, cunning, and deception, and [he] must have become habitually distrustful, scrutinizing, and cautious . . .,"<sup>91</sup> certainly not the type of man who would blindly

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The English word "disciple" fails to convey the richness of the relationship between a rabbi and his *talmidim* in the first century . . . [*Talmidim*] wholeheartedly gave themselves over to their teachers (though not in a mindless way, as happens today in some cults). The essence of the relationship was one of trust in every area of living, and its goal was to make the *talmid* like his rabbi in knowledge, wisdom and ethical behavior.

84. BAUCKHAM, *supra* note 68, at 417-18.

85. *Id.* at 235.

86. TESTIMONY, *supra* note 5, § 28 (citing STARKIE, *supra* note 57, at 16, 480, 521).

87. *See generally id.* §§ 12-15.

88. *Id.* § 13.

89. *Matthew* 9:9 (DAVID H. STERN, COMPLETE JEWISH BIBLE: AN ENGLISH VERSION OF THE *TANAKH* (OLD TESTAMENT) AND *B'RIT HADASHAH* (NEW TESTAMENT) 1223-62 (1998)) [hereinafter Complete Jewish Bible].

90. STERN, *supra* note 13, at 30; *see also* TESTIMONY, *supra* note 5, § 8.

91. TESTIMONY, *supra* note 5, § 14.

follow any of the numerous prophets or zealots who promised political freedom.

Instead, Matthew's testimony is that of a humble man, with no bragging or boasting of his own position, but rather telling the story of a man whom Matthew fully believed fulfilled the role of the promised messiah. Matthew's text traces Jesus' lineage from Abraham to David, from David to the Babylonian Exile, from the exile to "the Messiah."<sup>92</sup> In a few short verses, Matthew summarizes two thousand years of Jewish history and promise, placing Jesus in the context of the meta-narrative of God's covenant with his people; nowhere is the progression from promise to fulfillment more succinctly displayed than here.<sup>93</sup>

By comparison, Mark's text, generally considered "an original composition, written at the dictation of Peter,"<sup>94</sup> was written primarily for a Gentile audience. Mark transcribed Peter's oral teaching,<sup>95</sup> and "puts readers into direct touch with Peter's oral teaching. By doing more than translate, Mark puts readers in touch with a primary source, Peter's eyewitness testimony."<sup>96</sup> Peter is most prevalent in Mark's Gospel,<sup>97</sup> most notable in the beginning and ending of the text, "form[ing] an *inclusio* around the whole story, suggesting that Peter is the witness whose testimony includes the whole. This is striking confirmation . . . that Peter was the source of the Gospel traditions in Mark's Gospel."<sup>98</sup> As Peter's

92. *Matthew* 1:1-17; cf. Smith's description of the universality of Matthew's genealogy (and, by implication, of the offering of salvation through Jesus):

[I]n Jesus' early roots are not only such notable righteous men as Abraham and David, but also several who stand out in history as being particularly unrighteous, including wicked King Manasseh. Not only are there Jews, . . . but also Gentiles, including a Canaanite and a Moabite, whose respective countrymen have been notorious enemies of God's people.

F. LAGARD SMITH, *THE DAILY BIBLE* 1353 (1996). The list also included women, two of whom (Tamar and Rahab), "are known best for sins which they had committed." *Id.*

93. Matthew's incorporation of Jewish texts is most readily apparent in a format that highlights these passages within the text of the Gospel. See, e.g., Complete Jewish Bible 1223-62. See also *id.* at xliii-xlvii (list of *Tanakh* prophecies fulfilled by Jesus); *id.* at 1610-15 (index of *Tanakh* passages cited in the New Testament); STERN, *supra* note 13, at 79-80 (prophecies of how the Messiah will die and where these prophecies were fulfilled by Jesus); STERN, *supra* note 13, at 81-82 (discussion of God's covenants).

94. TESTIMONY, *supra* note 5, §§ 15-17.

95. BAUCKHAM, *supra* note 68, at 221.

96. *Id.* at 208-10.

97. *Id.* at 125-27, 148-49 tbl. 11 (noting persons named in Mark's Gospel).

98. *Id.* at 125.

transcriptionist, Mark includes testimony from a number of events where Peter was present with James and John, but not with the other disciples.<sup>99</sup> As in Matthew's text, Mark's testimony provides a human portrayal of the disciples, including his source, Peter, not as

an aged apostle reminiscing expansively in autobiographical mode, but an apostle fulfilling his commission to preach the Gospel and to teach believers, relating the traditions he has been recounting throughout his life as an apostle in the forms in which he had cast the memories of the Twelve and himself for ease of teaching and communication.<sup>100</sup>

Mark's text provides a glimpse into "a story of personal transformation through failure, self-recognition and restoration (the latter something to which Mark's narrative points, without recounting it), a dramatic example of the encounter with the meaning of the cross . . . ."<sup>101</sup> Thus, by recording Peter as the source and using him as the most demonstrative character, Mark's Gospel is an eyewitness recollection of Jesus. "Though acknowledging Jesus as Son of God, Mark is quite candid about [Jesus'] human nature. The moods and emotions he ascribed to Jesus are richer and more varied than in any of the other canonical Gospels. Jesus becomes angry, tires, hungers, groans, pities, and wonders."<sup>102</sup> Mark's Gospel relates—as only eyewitness testimony could—the humanity of Jesus as experienced by one of his closest companions.

Such personal testimony from the original witnesses was extremely important to those in the early church, including Papias,<sup>103</sup> who wrote from Hierapolis that he preferred speaking with the apostles, "for I did not imagine that things out of books would help me as much as the utterances of a living and abiding voice."<sup>104</sup> Based on his discussions with the eyewitnesses, Papias determined that Mark had

99. See, e.g., *Mark* 5:22-37 (raising Jairus's daughter); *Mark* 9:2 (Jesus' transfiguration); *Mark* 14 (in Gethsemane before Jesus' arrest).

100. BAUCKHAM, *supra* note 68, at 172.

101. *Id.* at 179-80.

102. NICKLE, *supra* note 80, at 69 (citing *Mark* 1:41; 3:5; 4:13; 5:30, 32; 6:6, 34; 7:17; 8:2, 12, 33; 10:14, 21; 11:12; 14:33; 15:34, 37).

103. BAUCKHAM, *supra* note 68, at 208-10.

104. NICKLE, *supra* note 80, at 188. "Papias wrote this in the preface to a lost five-volume collection of Jesus sayings. Eusebius quoted from the preface in his History of the Church from Christ to Constantine 3:39:2-3, p. 150." *Id.* at 208 n.21.

reproduced in his Gospel exactly what he heard Peter say. . . . Mark intended to do no more than write down what Peter said just as he recalled it. This emphasis coheres much more naturally with calling Mark Peter's "translator" than with conceding Mark freedom to interpret what Peter said.<sup>105</sup>

Further, Papias found that "Mark 'made no mistake' and did not include 'any false statement.' And Papias said Matthew had preserved the teachings of Jesus as well."<sup>106</sup> Thus, both Mark and Matthew, writing with different styles to serve the needs of different audiences, testify to the same events as portrayed in their respective Gospels.

Likewise, John wrote for a still-young Gentile church, but one that was already familiar with the testimonies of Matthew, Mark, and Luke, as well as the letters of Paul.<sup>107</sup> John's reader is presumed to have previous knowledge of the material in the Synoptic<sup>108</sup> Gospels.<sup>109</sup> Thus, his testimony does not dwell on details already provided by others, but his "relating [the other Gospels] in a brief and cursory manner, affords incidental but strong testimony that he regarded their accounts as faithful and true."<sup>110</sup>

John was the self-described disciple Jesus "particularly loved"<sup>111</sup> and was "present at several scenes, to which most of the others were not admitted."<sup>112</sup> John, his brother James, and Peter were present at the

105. BAUCKHAM, *supra* note 68, at 205.

106. STROBEL, *supra* note 11, at 28 (citing interview with Craig L. Blomberg, Ph.D.).

107. TESTIMONY, *supra* note 5, § 25:

That it was written either with especial reference to the Gentiles, or at a period when very many of them had become converts to Christianity, is inferred from the various explanations it contains, beyond the other Gospels, which could have been necessary only to persons unacquainted with Jewish names and customs.

108. The first three Gospels in canon order (Matthew, Mark, Luke) are often referred to as "synoptic," reflecting that the similarities among the three allow them to be "viewed together" (that is what 'synoptic' means) in a comparative way." NICKLE, *supra* note 80, at 42-43.

109. For example, when John describes the raising of Lazarus from the dead (*John* 11), the apostle begins by refreshing the reader's recollection that this is Bethany, where Jesus and the disciples stayed after the triumphal entry into Jerusalem (*Mark* 11:11-12), and where Mary and Martha lived (*Luke* 10:38-42), and that Mary was the same woman who washed Jesus' feet with her hair (*Luke* 7:38). STERN, *supra* note 13, at 189.

110. TESTIMONY, *supra* note 5, § 23, 25.

111. *E.g.*, *John* 13:23, 21:20 (Complete Jewish Bible).

112. TESTIMONY, *supra* note 5, § 23.

resurrection of Jairus' daughter,<sup>113</sup> at the transfiguration on the mount,<sup>114</sup> and with Jesus in the garden of Gethsemane.<sup>115</sup> John and Peter followed Jesus to the palace of the high priest after Jesus was arrested.<sup>116</sup> John was the only disciple expressly reported to be with Jesus at the cross,<sup>117</sup> and he was the first disciple at the empty tomb.<sup>118</sup> John was also present on the occasions when Jesus appeared after Jesus' resurrection.<sup>119</sup>

John's testimony was written at the end of the first century as one of the last eyewitness accounts.<sup>120</sup> Papias attributed much of his understanding to his discussions with "the Elder," which referred to John.<sup>121</sup> While John's work often complements the Synoptic Gospels, and in some cases adds details,<sup>122</sup> John chose "the incidents he reports to suit his purpose."<sup>123</sup> While "there are also many other things Jesus did,"<sup>124</sup> John "recognize[d] the value of brevity (compare *Ecclesiastes* 12:12)."<sup>125</sup>

John provides a particularly personal and loving perspective of the life and work of Jesus.<sup>126</sup> Exclusively in John's testimony, we hear Jesus' final exhortation to his *talmidim* before his arrest and crucifixion, and just before

113. *Mark* 5:37 (Jesus took only Peter, James, and John to Jairus' home).

114. *Matthew* 17:1; *Mark* 9:2; *Luke* 9:28.

115. See *Matthew* 26:36-37; *Mark* 14:32-33; *Luke* 22:39; *John* 18:1.

116. *John* 18:15.

117. *John* 19:25-27:

Near the cross of Jesus stood his mother, his mother's sister, Mary Magdalene. When Jesus saw his mother there, and the disciple whom he loved standing nearby, he said to his mother, "Dear woman, here is your son," and to the disciple, "Here is your mother." From that time on, this disciple took her into his home.

118. *John* 20:2-10.

119. *John* 20:21-21:25; see also *Matthew* 28:16-20; *Mark* 16:14-20; *Luke* 24:13-49.

120. TESTIMONY, *supra* note 5, § 24.

121. BAUCKHAM, *supra* note 68, at 202-04; see also *II John* 1:1, *III John* 1:1 (beginning with "From: The Elder").

122. STERN, *supra* note 13, at 206 (indentifying "one of the men" (*Matthew* 26:51) with Jesus when he was arrested as Peter; the "servant of the [high priest]" (*Mark* 14:47) was named Malchus; Jesus' comment to Peter regarding the cup he is about to drink corresponds to the prayers in Gethsemane (*Luke* 22:42)).

123. *Id.* at 213.

124. *John* 21:25.

125. STERN, *supra* note 13, at 213.

126. TESTIMONY, *supra* note 5, § 23.

taking the short walk<sup>127</sup> across the Kidron Valley to Gethsemane.<sup>128</sup> Jesus knows what is about to happen to him. John's testimony conveys urgency as Jesus reminds his friends that Jesus alone is the vine, that they must stay united with him to produce fruit, and that they must love one another—just as he has loved them.<sup>129</sup> Looking back from the end of the century, John relates Jesus' foreshadowing of the persecution to come: "No one has greater love than a person who lays down his life for his friends."<sup>130</sup> And the reassurance: "You are my friends, if you do what I command you. . . . I have called you friends, because everything I have heard from my Father I have made known to you."<sup>131</sup> Yet again: "This is what I command you: keep loving each other!"<sup>132</sup> These inclusions, in particular, embody the witness of John, the disciple Jesus loved, "testifying about these things and who has recorded them."<sup>133</sup>

The final gospel witness testimony comes from Luke, the author of both the third Synoptic Gospel and the *Book of Acts*.<sup>134</sup> Known as a physician<sup>135</sup> and a traveling companion of Paul,<sup>136</sup> Luke provides not only a particularized account of the life of Jesus, but also a detailed history of the early church.<sup>137</sup> Luke was the objective observer.<sup>138</sup> His testimonies were

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127. Approximately a half-mile. STERN, *supra* note 13, at 217 (noting that the distance from the Old City to the Mount of Olives falls within the rabbinic rules for walking on Shabbat).

128. *John* 18.

129. *John* 15:1-11.

130. *John* 15:13.

131. *John* 15:14-15. Jesus as loving friend "is not the common image of Christianity. God forgive us, we have smothered the risen Christ in denominationalism, ecclesiasticism, respectability, moralism, and goodness knows what else. But that is the heart of authentic Christianity." MICHAEL GREEN, *THE DAY DEATH DIED* 79 (1982).

132. *John* 15:17.

133. *John* 21:24.

134. See generally TESTIMONY, *supra* note 5, §§ 18-22; STERN, *supra* note 13, at 215.

135. *Colossians* 4:14 (referring to "our dear friend, Luke, the doctor"); cf. NICKLE, *supra* note 80, at 142 ("Scholars often have claimed that the large amount of technical medical vocabulary in *Luke-Acts* strongly supports the thesis that the author was a physician. . . . [This] only establishes that he was well educated, not that he was, necessarily, a doctor.").

136. TESTIMONY, *supra* note 5, § 18; see, e.g., *Acts* 20-28; *Philemon* 24.

137. BAUCKHAM, *supra* note 68, at 115. See generally *Acts*.

138. TESTIMONY, *supra* note 5, § 20.

written for a Gentile audience,<sup>139</sup> and although his writing style was Greek, Luke may have been Jewish.<sup>140</sup>

The preface to Luke's Gospel explains his purpose in providing further testimony: "Luke knew of other accounts already written, but, much as he admired them and had learned from them, he considered them to be inadequate for the needs of his own community."<sup>141</sup> While Luke was a schooled man and a skilled writer, the "details of the preface . . . belong to no Greek literary tradition as such but are idiosyncrasies reflecting Christian or biblical modes of speech."<sup>142</sup> Writing to Theophilos, Luke explains:

[M]any people have undertaken to draw up accounts based on what was handed down to us by *those who from the start were eyewitnesses* and proclaimers of the message. Therefore, Your Excellency, since *I have carefully investigated all these things from the beginning*, it seemed good to me that I too should write you an accurate and ordered narrative, so that you might know how well-founded are the things about which you have been taught.<sup>143</sup>

In the same manner, Luke prefaces *Acts*, again to Theophilos: "In the first book, I wrote about everything Yeshua set out to do and teach, until the day when, after giving instructions through the [Holy Spirit] to the emissaries whom he had chosen, he was taken up into heaven."<sup>144</sup> *Acts* forms the sequel to Luke's Gospel testimony; "they are two parts of a single

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139. *Id.* § 19. For example, Luke's genealogy of Jesus is traced upward in the Gentile style. Compare Luke 3:23-38 with Matthew 1:1-17. Luke uses the progression of Roman officials to provide contemporary corroboration for his events. Also, Luke dedicates both of his texts to "Theophilos," generally considered to have been an upper-class Greek. STERN, *supra* note 13, at 103. "Alternatively, since the name means "lover of God," Luke may be writing to a generic and typical disciple." STERN, *supra* note 13, at 103.

140. *E.g.*, Acts 27:9 (recording the time of Paul's final journey to Rome as occurring "past the Fast," i.e., after Yom Kippur. STERN, *supra* note 13, at 320. This dating "lends strength to the contention that Luke himself was Jewish or a proselyte to Judaism; he would otherwise be unlikely to measure time for his Gentile reader (1:1-4) by the Jewish calendar." *Id.*)

141. NICKLE, *supra* note 80, at 146.

142. LOVEDAY ALEXANDER, THE PREFACE TO LUKE'S GOSPEL: LITERARY CONVENTION AND SOCIAL CONTEXT IN LUKE 1.1-4 AND ACTS 1.1 103 (Margaret E. Thrall ed., 1993).

143. Luke 1:1-4 (Complete Jewish Bible) (emphasis added).

144. Acts 1:1-2 (Complete Jewish Bible).

literary work. Luke composed them as a unity, intending that they be read together. The prefaces to the two volumes make this plain.”<sup>145</sup>

In *Acts*, Luke was often a participant in the events he describes, whereas his Gospel testimony is based on the accounts handed down by eyewitnesses after Luke personally gathered and investigated them. What legal significance does Luke’s writing have in this current inquiry? Greenleaf, among others,<sup>146</sup> placed Luke in the role of an “expert witness” who used his finely tuned powers of observation as a physician to describe in his Gospel the life of Jesus, as well as in his *Acts of the Apostles* the life of the early church, in which he was an active participant. His testimony “is the result of careful inquiry and examination, made by a person of science, intelligence and education, concerning subjects which he was perfectly competent to investigate, and as to many of which he was peculiarly skilled . . . .”<sup>147</sup> In examining the style and content of Luke’s work, Loveday Alexander makes similar observations, noting that “[L]uke fits specifically into the practice of the later scientific writers . . . . [h]is language is simple and modest, and there are no excessive claims.”<sup>148</sup> Comparing his work to other historians and writers of the same time period, “Luke’s preface is significantly closer to those of the scientific writers—especially to those of

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145. NICKLE, *supra* note 80, at 136; *see also* SAMUEL BYRSKOG, STORY AS HISTORY – HISTORY AS STORY: THE GOSPEL TRADITION IN THE CONTEXT OF ANCIENT ORAL HISTORY 228-29 (2000) (comparing Luke’s two volumes with a similar arrangement and similar prefaces in Josephus’ two-volume work *Contra Apionem*).

146. TESTIMONY, *supra* note 5, § 22; *see also* BAUCKHAM, *supra* note 68, at 117 (“[T]he form and rhetoric of Luke’s preface much more closely resemble those of prefaces to technical or professional treatises (for example, handbooks on medicine, mathematics, engineering, or rhetorical theory) than those of prefaces to historical works.”).

147. TESTIMONY, *supra* note 5, § 22 (stating the standard for expert testimony at that time). The current federal rule is comparable:

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise, if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

FED. R. EVID. 702; *see, e.g.*, *United States v. Members of the Estate of Boothby*, 16 F.3d 19, 22-23 (1st Cir. 1994) (noting that even though the witness was not a nautical architect, she was sufficiently familiar with both the regulations and the vessel at issue to qualify as an expert).

148. ALEXANDER, *supra* note 142, at 147 (observing that Luke’s introduction parallels “the prefaces of Hero of Alexandria, which date from around A.D. 70—which is, of course, well within the range of dates probable for Luke’s literary activity”).

his contemporary Hero of Alexandria—than to any other group, and his links with the scientific tradition go deeper than the mere adoption of a conventional form of words.”<sup>149</sup>

Moreover, Luke’s Gospel and *Acts* both demonstrate the type of close scrutiny and attention to detail to be expected from a man trained in a scientific discipline. It is counter-intuitive to believe that Luke would have spent his life in defense of an endeavor for which he did not find substantial evidence. Both books are integrated not only into the historical and scientific facts of the day, but also into the meta-narrative of the fulfillment of God’s promises to humankind:

It is possible to know the data of history—people, places, dates, events—and still be ignorant of, or even hostile to, God’s design of redemption. But secular history provides the context into which God inserts God’s saving presence. In that context the divine plan for salvation unfolds. . . . [Luke] wanted to integrate the story of Jesus’ life and the history of the church into a comprehensive understanding of God’s redemptive history unfolding in secular history.<sup>150</sup>

This integration, coupled with the collaborative support of secular history, adds to the credibility of the writers and their testimony.

### 3. Content and Context

Understanding and evaluating any of the gospels “requires us to think both in terms of the historical setting of Jesus and the historical setting of the [human] authors.”<sup>151</sup> The veracity of the Gospel writers is further buttressed by the corroboration evidenced among their reports, and by the comparison of those reports to known historical facts and circumstances.<sup>152</sup> Greenleaf noted, “[a]fter a witness is dead, and his moral character is forgotten, we can ascertain it only by a close inspection of his narrative, comparing its details with each other, and with contemporary accounts and

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149. *Id.* at 202; *see also id.* at 148-64 (examining similar authors of the time: “This combination of secular Greek preface-convention [leading into] biblical narrative immediately calls to mind the literature of hellinistic Judaism, where we find a comparable mixture: biblical narrative or discourse is embellished with stylistic features reminiscent of Greek literature.”).

150. NICKLE, *supra* note 80, at 153.

151. GORDON D. FEE & DOUGLAS STUART, *HOW TO READ THE BIBLE FOR ALL ITS WORTH* 130 (3d ed. 2003).

152. *See generally* TESTIMONY, *supra* note 5, §§ 29–47 (referring to ability of witnesses, corroboration, discrepancies, naturalness of writing, and consistent treatment of evidence).

collateral facts.”<sup>153</sup> Even the minor discrepancies among the testimonies provide additional credibility to the individual witness of each author.<sup>154</sup> If, as might be suggested by challengers, the four were merely copied one from the other, or from a common source document, or written in concert, the details would likely be more identical.<sup>155</sup> While the Gospels, especially considered in parallel, show overwhelming similarities and agreements, they also show the minor deviations that would be expected from multiple eyewitness accounts. The 1847 edition containing *Testimony* also included extensive tables showing how and where the events of the respective testimonies were reported in the other texts, and providing a framework to view the overwhelming similarities among them.<sup>156</sup>

The credibility of the testimonies can be assessed by examining the breadth, the harmony, and the antiquity of the four Gospels, both among themselves and in comparison to what is considered credible from other secular sources.<sup>157</sup> Secular historians of the day often wrote from a greater distance in time than did the Gospel witnesses. “Tacitus . . . wrote some eighty years after most of the events he described, yet his accuracy is rated very highly.”<sup>158</sup> Suetonius wrote 100 years after the events he described, and the Jewish book of Maccabees, written seventy years after the exploits of the freedom fighters, is considered “a most reliable document.”<sup>159</sup> In recognizing how the accounts complement and corroborate each other, particularly in comparison to secular historical sources, Greenleaf asserted that “the Four Evangelists should be admitted in corroboration of each other, as readily as Josephus and Tacitus, or Polybius and Livy . . . .”<sup>160</sup>

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153. TESTIMONY, *supra* note 5, § 39.

154. *Id.* § 34.

155. *Id.*

156. TESTIMONY, *supra* note 5, tbl. at ix (“Contents and Synopsis of the Harmony”). The similarities are particularly notable in a printing of the Gospels where the content of the four is integrated into one. *See* SMITH, *supra* note 92, at 1350-51 (integrating the four sets of “recorded events as nearly as possible in their proper chronological sequence . . . [provides] . . . a new sense of context and an added appreciation of the significance of each separate event within that context.”); BAUCKHAM, *supra* note 68, at 285-86 (“We may reasonably suppose that the extent of variation we can observe in the extant records (the canonical Gospels along with the early extracanonical material) is the same—no greater or less—as the extent to which the traditions varied in oral performance.”).

157. GREEN, *supra* note 131, at 35-36.

158. *Id.* at 36.

159. *Id.*

160. TESTIMONY, *supra* note 5, § 28; *see also* BAUCKHAM, *supra* note 68, at 8-10 (“The ancient historians—such as Thucydides, Polybius, Josephus, and Tacitus—were convinced

Challenges to the content of the gospel testimony often come from those who question the purported miracles, generally from those relying on their own limited human experience or natural observation.<sup>161</sup> Greenleaf addresses such arguments, particularly those of Spinoza and Hume, which are echoed by today's naturalists.<sup>162</sup> Moreover, Greenleaf notes that "[i]n almost every miracle related by the evangelists, the facts, separately taken, were plain, intelligible, transpiring in public, and about which no person of ordinary observation would be likely to mistake."<sup>163</sup> But because the wall between the natural and the secular remains in place, Greenleaf's admonitions for objective consideration are as necessary and as applicable today as they were then:

If [the miraculous events] were separately testified to, by different witnesses of ordinary intelligence and integrity, in any court of justice, the jury would be bound to believe them; and a verdict, rendered contrary to the uncontradicted testimony of credible witnesses to any one of these plain facts, separately taken, would be liable to be set aside, as a verdict against evidence.<sup>164</sup>

Here, the corroborated—and unrefuted—experience of the Gospel writers and, indeed, thousands of other eyewitnesses reported to have been present, would be credible under any legal analysis. “In each of these cases, each isolated fact was capable of being accurately observed, and certainly known; and the evidence demands our assent, precisely as the like evidence upon any other indifferent subject.”<sup>165</sup> After nearly two thousand years, the testimony of the Gospel writers has not been effectively challenged. Greenleaf concluded that “[e]ither the men of Galilee were men of superlative wisdom, and extensive knowledge and experience, and of deeper skill in the arts of deception, than any and all others, before or after them, or they have truly stated the astonishing things which they saw and heard.”<sup>166</sup>

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that true history could be written only while events were still within living memory . . . the historian had also to rely on eyewitnesses whose living voices he could hear and whom he could question himself . . .”).

161. TESTIMONY, *supra* note 5, § 38.

162. *Id.* § 37 n.1 (citing Lord Brougham's two-point refutation of Hume's argument).

163. *Id.* § 38.

164. *Id.*

165. *Id.*

166. *Id.* § 48.

Greenleaf's tests of the credibility of the authors' statements include those that would still be recognized in any court of law: "The credit due to the testimony of witnesses depends upon, firstly, their honesty; secondly, their ability; thirdly, their number and the consistency of their testimony; fourthly, the conformity of their testimony with experience; and fifthly, the coincidence of their testimony with collateral circumstances."<sup>167</sup> For today's courts to determine whether a statement "bears the particularized guarantees of trustworthiness necessary to justify its admission, [the courts] examine the totality of the circumstances surrounding the making of the statement . . . [and] should predicate [the] reliability determination on an examination of the circumstances surrounding the making of the statement."<sup>168</sup> Greenleaf's tests and modern courts' methods of assessing reliability are wholly compatible.

The testimony of the witnesses in their Gospels reflects their own experience and observations, whether the eyewitness testimony of Matthew, Peter (through Mark), and John, or the expert investigations of Luke. Psychological studies have identified a number of factors that contribute to the quality and reliability of recollective memory, including, whether the account involves a unique or unusual event, a salient or consequential event, an event in which a person is emotionally involved, or vivid imagery.<sup>169</sup> Similarly, courts use well-established factors every day to determine the reliability of testimony:

[W]here, when, and how the declarant made the statement, to whom the declarant made the statement, what prompted the statement, and the statement's contents all provide indicia of reliability. [In addition], the nature and character of the statement, the relationship of the parties, the declarant's probable motivation for making the statement, and the circumstances

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167. *Id.* § 29.

168. *People v. Farrell*, 34 P.3d 401, 406 (Colo. 2001) (citations omitted); *see also* *Washington v. Crawford*, No. 25307-1-II, 2001 Wash. App. LEXIS 1723 (Wash. Ct. App. July 30, 2001), *rev'd*, 541 U.S. 36 (2004). While the holdings of *Farrell* and *Crawford* vis-à-vis testimonial statements made without benefit of cross-examination were challenged by *Crawford v. Washington*, 541 U.S. 36 (2004), the lower courts' discussions of the reliability of witness testimony reflects an established understanding of what makes such testimony reliable. "There are countless factors bearing on whether a statement is reliable; the nine-factor balancing test applied by the Court of Appeals below is representative." *Crawford*, 541 U.S. at 63.

169. BAUCKHAM, *supra* note 68, at 330-35; *see also id.* at 493-505 (comparing Gospel testimony to Holocaust testimony as credible reporting of exceptional events).

surrounding the making of the statement [are] probative of the statement's trustworthiness.<sup>170</sup>

In sum, the "ability of a witness to speak the truth, depends on the opportunities which he has had for observing the fact, the accuracy of his powers of discerning, and the faithfulness of his memory in retaining the facts, once observed and known."<sup>171</sup>

In similar fashion, the Supreme Court has relied on a nine-part analysis for reliability that "examines factors that show particularized guaranties of the statement's trustworthiness,"<sup>172</sup> essentially the same as those relied on by Greenleaf:<sup>173</sup>

[W]hether the declarant had an apparent motive to lie . . . whether the declarant's general character suggests trustworthiness . . . whether more than one person heard the statement . . . whether the declarant made the statement spontaneously . . . whether the timing of the statements and the relationship between the declarant and the witness suggests trustworthiness . . . whether [the] statement contained express assertions of past fact . . . whether cross-examination could help to show the declarant's lack of knowledge . . . [whether] the event was remote . . . [and] whether the circumstances surrounding the statement suggest that the declarant misrepresented the defendant's involvement.<sup>174</sup>

By nineteenth century standards and those of the current Federal Rules of Evidence, the writers provide credible testimony. Greenleaf proposes that the inquirer

[l]et the witnesses be compared with themselves, with each other, and with surrounding facts and circumstances; and let their testimony be sifted, as if it were given in a court of justice, on the side of the adverse party, the witness being subjected to a

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170. *Farrell*, 34 P.3d at 406 (internal citations omitted).

171. TESTIMONY, *supra* note 5, § 33 (citing STARKIE, *supra* note 57, at 483, 548).

172. *Crawford*, 541 U.S. at 63 (2004) (discussing tests for reliability in, *inter alia*, *Crawford*, 2001 Wash. App. LEXIS 1723 at \*12 (citations omitted)).

173. TESTIMONY, *supra* note 5, § 47.

174. *Crawford*, 2001 Wash. App. LEXIS 1723 at \*13-16. *See generally supra* note 168. The credibility and reliability of the Gospel testimony are supported by traditional tests of reliability. Moreover, their content has withstood nearly two millennia of cross-examination by historic, archaeological, and cultural opponents. *See generally* STROBEL, *supra* note 11.

rigorous cross-examination. The result, it is confidently believed, will be an undoubting conviction of their integrity, ability, and truth.<sup>175</sup>

*Testimony* conducted a thorough and complete examination of the four Gospels using Greenleaf's factors. The standards remain unchanged; the conclusion must also remain unchanged. Greenleaf noted in particular that in these "true witnesses there is a visible and striking naturalness of manner."<sup>176</sup> In comparing the testimony among the four, along with external corroborating historical data, he concluded that the accounts provide "substantial truth, under circumstantial variety,"<sup>177</sup> with "no possible motive for [] fabrication."<sup>178</sup>

Most important, in "all the investigations and discoveries of travelers and men of letters, since the overthrow of the Roman empire, not a vestige of antiquity has been found, impeaching, in the slightest degree, the credibility of the sacred writers; but, on the contrary, every result has tended to confirm it."<sup>179</sup> This remains as true today as it was when Greenleaf first penned his *Testimony*. "[T]he longer people explore this, the more details get confirmed. Within the last hundred years archaeology has repeatedly unearthed discoveries that have confirmed specific references in the gospels."<sup>180</sup>

Moreover, external corroboration from historical documents and archeological evidence supports the fundamental credibility of the witnesses. The writings of historians, such as Josephus,

bear[] witness to Jesus's date, to his being the brother of James the Just, to his reputation as a miracle-worker, to his crucifixion under Pilate as a consequence of charges brought against him by the Jewish rulers, to his claim to be the Messiah, and to his being the founder of the "tribe of Christians."<sup>181</sup>

Works by the second generation of church authors attest to their investigation of the original sources. Papias in particular noted:

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175. TESTIMONY, *supra* note 5, § 42.

176. *Id.* § 40.

177. *Id.* § 34.

178. *Id.* § 31.

179. *Id.* § 43.

180. STROBEL, *supra* note 11, at 64-65 (citing an interview with Craig L. Blomberg, Ph.D.).

181. F.F. BRUCE, JESUS & CHRISTIAN ORIGINS OUTSIDE THE NEW TESTAMENT 40-41 (1974).

And if by chance anyone who had been in attendance on the elders should come my way, I inquired about the words of the elders—[that is,] what [according to the elders] Andrew or Peter said (*eipen*), or Philip, or Thomas or James, or John or Matthew or any other of the Lord's disciples, and whatever Aristion and the elder John, the Lord's disciples, were saying (*legousin*).<sup>182</sup>

The credibility and corroboration have also survived the intervening century and a half of “classical form criticism’s confidence in its ability to reconstruct the oral prehistory of the texts in detail.”<sup>183</sup> Today’s scholars are returning to the “study of cultural context—a type of investigation that was foreign to classical form criticism.”<sup>184</sup> Historical events (for example the persecutions under Caligula in 39-41 A.D. and the Jewish War in 66-74 A.D.) add context to the Gospels and corroborate the details of their testimony.<sup>185</sup> Moreover, such events add factual, secular evidence that should be readily acceptable on both sides of the natural/supernatural wall, and certainly evidence that further verifies the credibility of the Gospel testimony in any legal inquiry.

Greenleaf’s analytical framework and the rules of evidence both then and now support the credibility of the witness provided by the canonical Gospels. How, then, does the *Gospel of Judas* compare to the *Gospels of Matthew, Mark, Luke, and John*? If the four have been established as credible, is *Judas* unreliable simply based on its facial inconsistencies with the others? The following section again uses Greenleaf’s analytic construct, this time to examine *Judas* and judge its credibility.

### III. THE GOSPEL OF JUDAS

*“Over the years the sands of Egypt have surrendered countless treasures and archaeological wonders, and now they have yielded another spectacular find: the Gospel of Judas . . .”*<sup>186</sup>

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182. BAUCKHAM, *supra* note 68, at 293-94 (citing EUSEBIUS, HIST. ECCL. 3.39.3-4); *see supra* notes 103-06, 121 and accompanying text (noting Papias’ discussion of *Mark*).

183. GERD THEISSEN, THE GOSPELS IN CONTEXT: SOCIAL AND POLITICAL HISTORY IN THE SYNOPTIC TRADITION 2 (Linda M. Maloney trans., 1991).

184. *Id.*; *see also* BAUCKHAM, *supra* note 68, at 246-49; NICKLE, *supra* note 80, at 18-21.

185. THEISSEN, *supra* note 183, at 258-81; *see also* STERN, *supra* note 13, at 305 (citing Josephus *Antiquities of the Jews* in corroboration/explanation of arrival of “the Egyptian” cited in *Acts* 21:38).

186. THE GOSPEL OF JUDAS 7 (Rodolphe Kasser, Marvin Meyer & Gregor Wurst eds., 2006).

### A. *The Document*

In the spring of 2006, the National Geographic Society released an English translation of a papyrus manuscript known as the *Gospel of Judas*.<sup>187</sup> The release of the translation of this third-century tractate was staged with a very twenty-first century marketing campaign, the type that seems to accompany the frequent pre-Easter “astonishing” finds that challenge traditional Christian doctrine.<sup>188</sup> *Judas* is a Gnostic<sup>189</sup> text, most

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187. See, e.g., Andrew Cockburn, *The Judas Gospel*, NAT'L GEOGRAPHIC (May 2006), <http://ngm.nationalgeographic.com/2006/05/judas-gospel/cockburn-text>. See also Laurie Goodstein, *Document is Genuine, but is its Story True?*, N.Y. TIMES (Apr. 7, 2006), <http://www.nytimes.com/2006/04/07/us/07gospel.html>. Photographs of the tractate, the Coptic transcription, and National Geographic's English translations are available online at <http://www.nationalgeographic.com/lostgospel/document.html> (last visited Nov. 1, 2010).

188. Easter, 2010, occasioned another such revelation. See *The Real Face of Jesus?*, HISTORY.COM, <http://www.history.com/shows/the-real-face-of-jesus/articles/about-the-real-face-of-jesus> (last visited Nov. 1, 2010). In 2002, the *cause célèbre* was the discovery of the purported burial box of Jesus' brother James. See, e.g., Hillary Mayell, *Burial Box May Be That of Jesus's Brother, Expert Says*, NAT'L GEOGRAPHIC NEWS (Oct. 21, 2002), [http://news.nationalgeographic.com/news/2002/10/1021\\_021021\\_christianrelicbox.html](http://news.nationalgeographic.com/news/2002/10/1021_021021_christianrelicbox.html). National Geographic announced the find in October of 2002, followed by a flurry of media discussion about the box just in time for Easter 2003. See, e.g., Roger Highfield & Jonathan Petre, *Burial box "held the bones of Jesus's brother"*, THE TELEGRAPH (Apr. 18, 2003), <http://www.telegraph.co.uk/news/worldnews/northamerica/canada/1427854/Burial-box-held-the-bones-of-Jesus-brother.html>; Ben Witherington III & Hershel Shanks, *In the Name of the Brother*, USA WEEKEND, Apr. 11-13, 2003, at 8-9. Experts declared the artifact a “fake” later that year. Hillary Mayell, *“Jesus Box” Is a Fake, Israeli Experts Rule*, NAT'L GEOGRAPHIC NEWS (June 18, 2003), [http://news.nationalgeographic.com/news/2003/06/0618\\_030618\\_jesusbox.html](http://news.nationalgeographic.com/news/2003/06/0618_030618_jesusbox.html). Sensationalism also shows itself in the editing of such materials. In the preface to the second edition of his book *Jesus: The Evidence*, Ian Wilson noted:

When the first edition of this book was written back in 1984, it was as an accompaniment to London Weekend Television's subsequently notorious three-part television series of the same name. In the course of my working together with the series' makers it became apparent that they had some quite difference ideas from my own regarding what constituted a properly objective approach to the historical Jesus.

WILSON, *supra* note 17.

189. *Gnostic/Gnosticism*: from the Greek *gnosis* (meaning “knowledge”). The terms refer not to the pursuit of general knowledge but to a variety of religious movements directed toward personal salvation through attainment of knowledge of alleged ancient mysteries (usually pertaining to self-knowledge or awareness). As such, Gnosticism represents a variety of religious movements, many of which borrowed ideas from multiple sources and closely resembled aspects of ancient mystery religions, Zoroastrianism, Platonism, and Stoicism.

THE POPULAR ENCYCLOPEDIA OF APOLOGETICS 234 (Ed Hindson & Ergun Caner eds., 2008).

likely written in the early- to mid-second century.<sup>190</sup> Its tone and content are similar to other Gnostic documents, several copies of which were found in 1945 near Nag Hammadi, Egypt.<sup>191</sup> When author Dan Brown spun his *Da Vinci Code* tale, he relied on a number of the Nag Hammadi texts, treating them as of equal (or greater) credibility than canonical sources, without any analytical examination or confirmation to justify such recognition.<sup>192</sup>

Although copies of these documents have been found only relatively recently, the contents were well known at the time of their writing, and throughout the centuries since. Greenleaf himself references the apocryphal *Gospel of the Infancy*.<sup>193</sup> Early church scholars distinguished these Gnostic documents from the eyewitness accounts of the gospels that were ultimately accepted as canon.<sup>194</sup> By the time *Judas* was written, nearly a century after the eyewitness accounts, “most experts agree, a ‘Gospel’ said more about the group that produced it than about the facts of Jesus’ life and death or even the understandings of his earliest followers.”<sup>195</sup> Herbert Krosney

190. APRIL D. DECONICK, *THE THIRTEENTH APOSTLE: WHAT THE GOSPEL OF JUDAS REALLY SAYS* 4 (2007); see also KASSER ET AL., *supra* note 186, at 11; JAMES M. ROBINSON, *THE SECRETS OF JUDAS* 78 (2006). The *Gospel of Judas* was likely written around 150 A.D., as were several other Gnostic writings including the *Apocalypse of Adam*, and *Hypostasis of the Archons*. In contrast, Paul’s epistles were written between 49 and 62 A.D., *Matthew*, *Mark*, *Luke* and *Acts* were written between 60 and 90 A.D., and the *Gospel of John* is estimated to have been written between 90 and 100 A.D. See, e.g., APRIL D. DECONICK, *THE THIRTEENTH APOSTLE* xiv-xv (comparatively dating “Early Christian History” with “New Testament and Sethian Gnostic Texts”); see also WILSON, *supra* note 17, tbl. at 17; see generally *supra* notes 68, 80 discussing the dates of the Gospels.

191. See, e.g., THE NAG HAMMADI LIBRARY, <http://www.nag-hammadi.com/> (last visited Aug 14, 2010).

192. BROWN, *supra* note 23, at 266 (citing, e.g., the *Gospel of Philip*).

193. TESTIMONY, *supra* note 5, § 9. See generally EHRMAN, *supra* note 20, at 146-62 (discussing various texts referred to generally as “infancy gospels”). Similar texts include the *Gospel of Truth*, a Gnostic text that “does not relate stories about the life, death, and resurrection of Jesus. Instead, it celebrates the ‘good news’ of the salvation that Jesus has brought by revealing the knowledge that can lead to deliverance from this material world.” *Id.* at 83.

194. These early church writers have been referred to as “heresiologists” or “heresy hunters,” and included Irenaeus, Tertullian, and Hippolytus of Rome. EHRMAN, *supra* note 20, at 54; see also HINDSON ET AL., *supra* note 189, at 233. Prior to the Nag Hammadi discoveries, “[c]hurch fathers such as Justin Martyr (d. 165), Irenaeus (d. c. 225), Clement of Alexandria (d. c. 215)[,] Tertullian (d. c. 225), Hippolytus (d. c. 236), Origen (d. c. 254), and Epiphanius (d. 403) provide the most important non-Gnostic references to Gnostic leaders and beliefs.”

195. David Van Biema, *A Kiss for Judas*, *TIME* (Feb. 19, 2006), <http://www.time.com/time/magazine/article/0,9171,1161238,00.html>.

detailed the trail of *Codex Tchacos*, the tractate that contained the *Gospel of Judas*, along with three other documents.<sup>196</sup> He describes the atmosphere that likely surrounded the creation of this particular document:

Within this context of turbulence—between 330 and 380—the final framework of the Christian canon crystallized. It represented a significant step toward a defined single body of holy literature that was recognized by all Christians. Athanasius played the critical role in achieving this unified vision. In his thirty-ninth festal letter, written in 367, he basically defined what was acceptable and what was not. He gave his stamp of approval to the New Testament, *as it was already generally formulated*.

In his letter, which was read throughout Egypt in Christian churches, Athanasius delineated the canon: These are the four Gospels, according to Matthew, Mark, Luke, and John. . . .<sup>197</sup>

While *The Da Vinci Code* and its adherents portray the final canonization as yet another grand conspiracy,<sup>198</sup> Athanasius' letter merely provided recognition of what the church body at large already knew: the four Gospels chosen for the final canon contained the proven testimony of eyewitnesses, which is far preferable to alternative, speculative, and unsubstantiated texts proposed by other groups, including the Gnostic sects in Egypt.<sup>199</sup>

The National Geographic translation<sup>200</sup> portrays Judas Iscariot not as the evil, greedy “betraye” of Jesus, or the pariah depicted in the canonical

196. KROSNEY, *supra* note 20.

197. *Id.* at 200 (emphasis added); *see also* STROBEL, *supra* note 11, at 90 (citing an interview with Bruce M. Metzger, Ph.D.):

[T]he canon was not the result of a series of contests involving church politics. The canon is rather the separation that came about because of the intuitive insight of Christian believers. They could hear the voice of the Good Shepherd in the gospel of John; they could hear it only in a muffled and distorted way in the Gospel of Thomas, mixed in with a lot of other things.

198. *See, e.g.*, BROWN, *supra* note 23, at 250-51 (portraying selection of canon as political ploy by the Emperor Constantine).

199. *See* Lee Strobel's discussion with Bruce Metzger regarding the formation of the canon. STROBEL, *supra* note 11, at 86, 90.

200. Since the initial release of *Judas*, National Geographic has also released photographs and texts of the tractates and their transcriptions. A debate has arisen among Coptic scholars as to the accuracy of those portions of the translation that show Judas in a favorable light. For purposes of the analysis in this article, the exact translation is not critical, as the evidentiary analysis focuses on the author's credibility. If the author is not credible, the text becomes inconsequential in pursuit of the truth. *See* DECONICK, *supra* note

Gospels, but rather as a close and trusted confidant of Jesus who was the only one of the twelve disciples to truly understand what Jesus' death would accomplish.<sup>201</sup> But this concept of Judas as a necessary player in the crucifixion story is hardly new, nor does it challenge traditional Christian orthodoxy.<sup>202</sup>

The remainder of *Judas*, however, depicts an understanding of creation, the universe, and the relationship to a single deity not generally accepted by the world's Abrahamic religions. Rather than the monotheism evidenced in Judaism and Christianity,<sup>203</sup> the Gnostics believed that the creator of the human universe was just one of many divine beings, working in one of many realms.<sup>204</sup> These beliefs bear striking resemblance to the heavenly realms of the Platonic construct.<sup>205</sup> Indeed, there is a discernable progression from the Platonic realms to the Gnostic knowledge-based ideology, to the Enlightenment's challenge to "dare to know" with the "freedom to use one's own intelligence,"<sup>206</sup> all presupposing that one's own

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190; see also April D. DeConick, *Gospel Truth*, N.Y. TIMES (Dec. 1, 2007), available at <http://www.nytimes.com/2007/12/01/opinion/01deconink.html>; Marvin Meyer, *On the Waterfront with Judas*, NAT'L GEOGRAPHIC, [http://press.nationalgeographic.com/pressroom/index.jsp?pageID=pressReleases\\_detail&siteID=1&cid=1196942552919](http://press.nationalgeographic.com/pressroom/index.jsp?pageID=pressReleases_detail&siteID=1&cid=1196942552919) (last visited Nov. 1, 2010); M. J. Jacobsen, *Statement from National Geographic in Response to April DeConic's New York Times Op-Ed "Gospel Truth,"* NAT'L GEOGRAPHIC (Dec. 1, 2007), [http://press.nationalgeographic.com/pressroom/index.jsp?pageID=pressReleases\\_detail&siteID=1&cid=1196944434958](http://press.nationalgeographic.com/pressroom/index.jsp?pageID=pressReleases_detail&siteID=1&cid=1196944434958).

201. KASSER ET AL., *supra* note 186. An annotated translation appears at pages 17-45 and the remainder of the volume includes essays discussing the tractate, the translation, and the significance of the find. Photographs of the tractate, along with the Coptic transcription and National Geographic's English translations, are also available online at <http://www.nationalgeographic.com/lostgospel/document.html> (last visited Nov. 1, 2010).

202. See *Matthew* 26:14, 24-25 (Judas identified as the betrayer of Jesus); see also *Acts* 1:16-20 (Judas' betrayal fulfilled Jewish prophecy).

203. These Gnostic sects and writings pre-date by five centuries the rise of another monotheistic religion, Islam, which was founded in the early- to mid-600s. HINDSON ET AL., *supra* note 189, at 278-79.

204. DECONICK, *supra* note 190, at 25, 32-33.

205. *Id.* at 27.

206. Allen, *supra* note 16, at 6. Kant's theme is best captured in his opening paragraph:

Enlightenment is man's emergence from self-imposed immaturity for which he himself was responsible. Immaturity and dependence are the inability to use one's own intellect without the direction of another. One is responsible for this immaturity and dependence, if its cause is not a lack of intelligence, but a lack of determination and courage to think without the direction of another. *Sapere aude! Dare to know!* is therefore the slogan of the Enlightenment.

intelligence will not lead to a monotheistic God. Today's naturalists are quick to accept at face value documents that purport to challenge traditional sacred orthodoxy, even though such documents provide far less natural proof for their suppositions than the eyewitness testimony of the Gospels. Heavenly realms are certainly more speculative and conjectural—and the rest of the documents thus more suspect and less credible—than the eyewitness experiences of thousands of first-century Judeans as related in the canonical Gospels.

### B. Evidentiary Analysis

#### 1. *Judas* is Also an Ancient Document

Like the canonical Gospels, there is little doubt that the papyrus on which the copy of *Gospel of Judas* was written is authentic, dating to between A.D. 220 and 340.<sup>207</sup> The papyrus and the leather binding have been dated using radiocarbon dating,<sup>208</sup> and similar scientific analysis revealed the ink to be consistent with inks of that time period, possibly an “iron-gall ink that included a small amount of carbon black (soot). If so, it could be a previously unknown ‘missing link’ between the ancient world’s carbon-based inks and the iron-gall alternatives that became popular in medieval times.”<sup>209</sup> The National Geographic team also examined the document for handwriting, text, and context, and determined that a “modern forger would not be able to duplicate such a document.”<sup>210</sup>

The tractate’s physical authenticity is also supported in part by historical references. The content of a “*Judas Gospel*” was addressed by Irenaeus in his *Refutation of All Heresies*, written in Lyon, France in or about A.D. 180.<sup>211</sup> Irenaeus credited the work to a Cainite Gnostic sect:

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*Id.* (quoting Immanuel Kant, *An Answer to the Question: What is Enlightenment?* (1784), reprinted in KANT: POLITICAL WRITINGS 54 (H.S. Reiss ed., H.B. Nisbet trans., 2nd ed. 1991)). See also DECONICK, *supra* note 190, at 25-28.

207. See generally *Authentication*, NAT’L GEOGRAPHIC, <http://www.nationalgeographic.com/lostgospel/authentication.html> (last visited Nov. 1, 2010).

208. *Radiocarbon Dating*, NAT’L GEOGRAPHIC, [http://www.nationalgeographic.com/lostgospel/auth\\_dating.html](http://www.nationalgeographic.com/lostgospel/auth_dating.html) (last visited Nov. 1, 2010).

209. *Ink Analysis*, NAT’L GEOGRAPHIC, [http://www.nationalgeographic.com/lostgospel/auth\\_ink.html](http://www.nationalgeographic.com/lostgospel/auth_ink.html) (last visited Nov. 1, 2010).

210. *Paleography*, NAT’L GEOGRAPHIC, [http://www.nationalgeographic.com/lostgospel/auth\\_paleo.html](http://www.nationalgeographic.com/lostgospel/auth_paleo.html) (last visited Nov. 1, 2010). See also *Contextual Evidence*, NAT’L GEOGRAPHIC, [http://www.nationalgeographic.com/lostgospel/auth\\_evidence.html](http://www.nationalgeographic.com/lostgospel/auth_evidence.html) (last visited Nov. 1, 2010).

211. ROBINSON, *supra* note 190, at 53; DECONICK, *supra* note 190, at 3.

They declare that Judas the traitor was thoroughly acquainted with these things, and that he alone, knowing the truth as no others did, accomplished the mystery of the betrayal; by him all things, both earthly and heavenly, were thus thrown into confusion. They produce a fabricated work to this effect, which they entitle *The Gospel of Judas*.<sup>212</sup>

The *Judas* tractate thus qualifies as an ancient document and, as such, is excepted from hearsay objections.<sup>213</sup>

## 2. *Judas* as Witness

The credibility of the author of *Judas*, however, is an entirely different matter. The author is essentially unknown, and there is no claim of authorship in the document or elsewhere. “Contrast [the Gospel authors] with what happened when the fanciful apocryphal gospels were written much later. People chose the names of well-known and exemplary figures to be their fictitious authors—Philip, Peter, Mary, James.”<sup>214</sup>

At its earliest, the original content of the *Gospel of Judas* was likely written in the mid-second century, perhaps 150 years after the events it describes, compared to the canonical writers’ contemporaneous observations. *Judas* claims to be a “secret account of the revelation that Jesus spoke in conversation with Judas Iscariot during a week three days before he celebrated Passover.”<sup>215</sup> It ends with Judas’ interaction with the high priests, where Judas “received some money and handed [Jesus] over to them.”<sup>216</sup> It is filled with purported conversations between Jesus and Judas Iscariot to which there were no other witnesses.<sup>217</sup> In attempting to determine the author’s credibility as a witness, such a lack of corroborating witnesses is particularly troubling. It is generally accepted that Judas

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212. ROBINSON, *supra* note 190, at 54 (quoting IRENAEUS, REFUTATION OF ALL HERESIES, at 1.31.1).

213. FED. R. EVID. 803(16).

214. STROBEL, *supra* note 11, at 27 (citing an interview with Craig L. Blomberg, Ph.D.).

215. *Gospel of Judas* 33 [hereinafter *Judas*] (unless otherwise indicated, page numbers refer to tractate pages). The National Geographic translation incorporating the tractate pages is available at [http://www.nationalgeographic.com/lostgospel/\\_pdf/GospelofJudas.pdf](http://www.nationalgeographic.com/lostgospel/_pdf/GospelofJudas.pdf) (last visited Nov. 1, 2010); cf. DECONICK, *supra* note 190, at 66-91 (DeConick’s translation of each page of the tractate shown by line).

216. *Judas*, *supra* note 215, at 58.

217. *E.g.*, *Judas*, *supra* note 215, at 35 (“Knowing that Judas was reflecting upon something that was exalted, Jesus said to him, ‘Step away from the others and I shall tell you the mysteries of the kingdom. It is possible for you to reach it, but you will grieve a great deal.’”).

committed suicide immediately after he left Jesus.<sup>218</sup> Yet, there is no suggestion in the new document that Judas discussed these conversations with any confidant of his own, or that he shared his unique knowledge with anyone else before he took his own life. Nor is there a suggestion that he lived beyond the end of this “gospel.”<sup>219</sup> The silence on these issues is deafening, particularly with no corroboration in any of the four canonical Gospels or in other sources, even for the events with the rest of the disciples that preface these conversations.

The comparison of *Judas* to the canonical texts supports their credibility while undermining the credibility of *Judas*. Greenleaf particularly noted the naturalness of the actions of the disciples and other characters in the Gospels, and of the authors’ writings.<sup>220</sup> Descriptions of the disciples’ questions and human concerns, their egos and attitudes, the response of the crowds—all ring true across the centuries to our own humanity. We can readily see and understand the occasional outbursts and doubts of the disciples, followed by moments of growing understanding and faith, particularly in the confirming appearances of the post-crucifixion Jesus. Yet the Judas of the newly translated gospel is pictured as being resented by the other disciples for being the only one with any intelligence or sense, while the remaining eleven dither in confusion and blasphemy.<sup>221</sup>

Analyzing *Judas* using either Greenleaf’s five factors<sup>222</sup> or the *Crawford* reliability criteria<sup>223</sup> yields the same result. The testimony offered here bears none of the indicia of reliability required to be deemed credible. Those events that could have been witnessed are portrayed in a way that is contradictory to all known credible corroborated testimony. The people involved are barely described; there are insufficient details on which to base cross-examination of the testimony.

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218. *Matthew* 27:5 (Complete Jewish Bible) (“Hurling the pieces of silver into the sanctuary, [Judas] left; then he went off and hanged himself.”). *See also Acts* 1:18-20.

219. *Judas*, *supra* note 215, at 58.

220. TESTIMONY, *supra* note 5, § 46.

221. *Judas*, *supra* note 215, at 34. *But see* DECONICK, *supra* note 190, at 103-05. DeConick suggests that the *Judas* portrayal mirrors that found in *Mark*. *Id.* However, the humanity and growth in faith demonstrated by the disciples in the canonical Gospels is a far cry from the simplistic and uni-dimensional characterization in *Judas*.

222. Honesty, ability, number and consistency of testimony, conformity of testimony with experience, coincidence with collateral circumstances. TESTIMONY, *supra* note 5, § 29 (quoting STARKIE, *supra* note 57, at 480, 545; *see supra* Table 1.

223. *Crawford v. Washington*, 541 U.S. 36, 63 (2004) (discussing tests for reliability in, *inter alia*, *Washington v. Crawford*, 2001 Wash. App. LEXIS 1723 at \*12 (citations omitted)). *See supra* notes 27, 168, 174.

While the evidence regarding the authors of the canonical Gospels rings credible in light of all these considerations, the story offered by the *Gospel of Judas* fails to ring at all. There are no corroborating witnesses to support its premise; there is no physical evidence or contemporaneous experience to endorse its claims.

### 3. Content and Context

While the Gospel testimonies are replete with particularized details that have withstood cross-examination for nearly two thousand years, there are few such details in *Judas* to be examined or corroborated. Because the Gnostic themes and beliefs were disparate from those of the early church, it is not surprising that documents such as those contained in the Nag Hammadi codices or the *Codex Tchacos* disappeared from sight. The *Judas* document in particular presents testimony contradicting that of the Gospels. And while the focus of the media has been primarily on the redemption of Judas' image, the focus of the canonical testimony has always been on the redemption of believers.

*Judas* “echoes the Platonic conviction that every person has his or her own star and that the fate of people is connected to their stars.”<sup>224</sup> Judas is portrayed in an unusually positive light, the only one of the disciples to be taken into Jesus' confidence and the only one to understand the real reason Jesus was on the earth. The undertone throughout *Judas* lies in sharp contrast to the Gospel testimony, which was relied on by the early church, even before canonization. Of equal contrast is the view of the Gnostic sects regarding specialized esoteric knowledge as the road to salvation, rather than the sacrifice of Jesus. In fact, *Judas* ends with Judas handing Jesus to the priests, and does not include the crucifixion or the resurrection.<sup>225</sup> Only in the discussion between Judas and Jesus does Jesus allude to the act that will “sacrifice the man that clothes me.”<sup>226</sup> Instead of the multiple, public, explicit discussions among Jesus and all of his disciples about the sacrifice Jesus is preparing to make for all humankind, relayed in the Gospels, *Judas* portrays one clandestine comment to a man whose image was in need of rehabilitation by the time the document was written, foretelling an act that would benefit only Jesus.

Even beyond its sanitization of the man himself, *Judas* is a decidedly Gnostic creation. As Jesus imparts his special knowledge to Judas, it is laced with a supernatural Gnostic tale of creation and the cosmos, stars and

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224. KASSER ET AL., *supra* note 186, at 10.

225. *Judas*, *supra* note 215, at 58.

226. *Id.* at 56.

clouds, and the mysticism associated with those beliefs. Bart Ehrman describes the central themes of *Judas*:<sup>227</sup>

For Gnostics, a person is saved not by having faith in Christ or by doing good works. Rather, a person is saved by knowing the truth—the truth about the world we live in, about who the true God is, and especially about who we ourselves are. In other words, this is largely self-knowledge: knowledge of where we came from, how we got here, and how we can return to our heavenly home.<sup>228</sup>

The god of the Gnostic vision diverges quickly from the God of Abraham. The Gnostic world portrayed in *Judas*

is not the creation of the one true God. The god who made this world—the God of the Old Testament—is a secondary, inferior deity. He is not the God above all who is to be worshipped. Rather, he is to be avoided, by learning the truth about the ultimate divine realm, this evil material world, our entrapment here, and how we can escape.<sup>229</sup>

There is also disagreement as to the presence and form of Jesus here on earth:

Some Gnostics taught that he was an aeon from the realm above . . . that he came from above only in the *appearance* of human flesh. . . . [A] phantasm who took on the appearance of flesh to teach those who were called (i.e., the Gnostics, who have the [divine] spark within) the secret truths they need for salvation. Other Gnostics taught that Jesus was a real man, but that he did not have a typical spark of divine within.<sup>230</sup>

The Gnostic Jesus would be touched with the spark for as long as he was on earth, in order to teach his lessons, then it would leave him when his earthly ministry was complete. *Judas* incorporates this attitude when it describes Jesus as not appearing “to his disciples as himself, but he was found among them as a child.”<sup>231</sup> The majority of the content of *Judas* is

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227. Bart D. Ehrman, *Christianity Turned on its Head: The Alternative Vision of the Gospel of Judas*, in KASSER ET AL., *supra* note 186, at 77-120.

228. *Id.* at 84.

229. Ehrman, *supra* note 227, at 86.

230. *Id.* at 87.

231. *Judas*, *supra* note 215, at 33.

similarly speculative, with no natural foundation or evidence of support. When viewed in total, whatever statements are made about the man Judas cannot be considered any more credible than the rest of the document.<sup>232</sup>

Further, the supernatural world portrayed in *Judas* can hardly be proved with natural evidence, and thus the context of these disparate documents is critically important in evaluating the veracity of each. The four canonical Gospels, written in the first century, “were written for, or addressed to, certain churches or individuals” in that place and time.<sup>233</sup> Their content was intended to address specific questions and needs of the immediate readers.<sup>234</sup> By contrast, *Judas* was written well into the second century by someone with an entirely different agenda from the testimony that met the needs and answered the questions of the early church. While the canonical Gospels provide first-person and first-generation accounts of the life, teachings, and sacrifice of Jesus, *Judas* appears to have been written solely to propagate the teachings of Gnosticism.<sup>235</sup> In the process (possibly in retaliation or response to what was becoming the official orthodoxy), Judas is portrayed not as the lone betrayer, but as the only disciple who understood Jesus. At the very least, Jesus is seen through a Gnostic lens. Judas from K’riot, the only non-Galilean, stands alone again, now in a place of honor rather than infamy.<sup>236</sup>

After Peter’s attestation at Caesarea Philippi that Jesus was the Messiah,<sup>237</sup> Jesus and his *talmidim* traveled from the northern heights (Golan) to Jerusalem. Quite unlike the lone witness portrayed in *Judas*, all twelve were provided an insight into what lay ahead for Jesus. On at least three occasions, Jesus shared with them that he would be betrayed, condemned, and killed, but ultimately resurrected.<sup>238</sup> Unlike the surreptitious, solo performance just for Judas, there were at least twelve

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232. See FED. R. EVID. 106 (informally known as the rule of completeness).

233. HENRY M. HALLEY, HALLEY’S BIBLE HANDBOOK 458 (23d ed. 1962).

234. See, e.g., *Luke* 1:1-4; NICKLE, *supra* note 80, at 7-9; FEE & STUART, *supra* note 151, at 128-31.

235. DECONICK, *supra* note 190, at 17-42.

236. *But see* DECONICK, *supra* note 190, at 46-47. DeConick questions National Geographic’s initial translation: “I began to become concerned with their English translation of several passages of the Coptic, translations that appeared to me not only faulty, but faulty in a certain way. . . . [M]y translation of the Gospel suggested that Judas was as evil as ever . . .” *Id.*

237. *Matthew* 16:13-20; *Mark* 8:27-30; *Luke* 9:18-20.

238. The three discussions are each reported in all three synoptic Gospels: (1) *Matthew* 16:21-23; *Mark* 8:31-33; *Luke* 9:21, 22; (2) *Matthew* 17:22, 23; *Mark* 9:30-32; *Luke* 9:43-45; (3) *Matthew* 20:17-19; *Mark* 10:32-34; *Luke* 18:31-34.

witnesses to these lessons. More important, Jesus' purpose in undergoing these trials was far different from that portrayed in *Judas*. Rather than undergoing trials to give glory to God,<sup>239</sup> the Jesus described in the *Gospel of Judas* is using the crucifixion as a means to his own end, merely to "sacrifice the man that clothes me."<sup>240</sup>

Fee and Stuart focus the study of any narrative at three levels—first, through the individuals' stories or narratives, then as the story of "God's redeeming a people for his name," and, finally, in the big picture or "meta-narrative" of God's universal redemptive story.<sup>241</sup> In evaluating witness credibility, this perspective aids in comparison of context and content between the canonical Gospels and the *Gospel of Judas*. As discussed *supra* in Section II.B.2, the individual testimonies of Matthew, Mark, Luke, and John complement each other, being substantially similar in tone and content, yet containing the minor discrepancies that would be expected among witnesses to the same events, particularly when writing to different audiences with different purposes. In that respect, they stand in stark contrast to *Judas*. While the Gospels show a very human, multi-dimensional group of men with all their personalities, foibles, and reactions to the events during Jesus' ministry, *Judas* portrays a monolithic bloc of disciples totally unaware of why they devoted three years of their lives trying to emulate their teacher. The focus of *Judas* is only incidentally on Jesus, and much more on Judas and the Gnostic cosmos.

In the same way, in *Judas* there is no redemption of a people. Instead of the sacrifice of Jesus for the salvation of "whosoever [will] believe,"<sup>242</sup> Jew and Gentile alike, Judas' handing over merely allows Jesus to be released from his human shell. Others who also hold the Gnostic divine spark within them may ultimately join him in the heavens, but his presence or absence from this world will have no impact on anyone else's ultimate fate. *Judas* posits that the "creator of this world is not the one true God; this world is an evil place to be escaped; Christ is not the son of the creator; salvation comes not through the death and resurrection of Jesus, but through the revelation of secret knowledge that he provides."<sup>243</sup> *Judas* asserts an agenda

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239. *John* 17:1.

240. *Judas*, *supra* note 215, at 56.

241. FEE & STUART, *supra* note 151, at 90-91.

242. *John* 3:15.

243. Ehrman, *supra* note 219, at 102.

with no link to history or community; the Gospels proffer testimony of promise fulfilled.<sup>244</sup>

#### IV. CONCLUSION

More than a century and a half has passed since Greenleaf first challenged his legal colleagues to consider the testimony of the first century evangelists, to “try their veracity by the ordinary tests of truth, admitted in human tribunals.”<sup>245</sup> He demonstrated the credibility of the canonical Gospels, relying on evidentiary standards that remain essentially unchanged today, “for it is by such evidence alone that our rights are determined, in the civil tribunals; and on no other evidence do they proceed, even in capital cases.”<sup>246</sup> The standards have not changed, and indeed the corroborating evidence is even stronger today than when Greenleaf completed his analysis. The conclusion, therefore, remains the same as well. Moreover, the strength of the evidentiary legal standard and its support for the credibility of the testimony allows today’s objective juror to take the final step over the natural/supernatural wall to view all of the evidence.

Faced with such cogent evidence, those who wish to avoid God—or any hint of the sacred—will struggle to find an alternative explanation, while offering not a shred of the evidence they demand from others. For some, even extra-terrestrial aliens are accepted more readily than the God portrayed in the Gospels.<sup>247</sup> A naturalist may suggest:

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244. Complete Jewish Bible, *supra* note 93, at xliii-xlvii (listing *Tanakh* prophecies fulfilled by Jesus).

245. TESTIMONY, *supra* note 5, § 35.

246. *Id.* § 41.

247. EXPELLED: NO INTELLIGENCE ALLOWED (Rampant Films 2008). In an interview with Ben Stein, atheist professor and author Richard Dawkins stated:

[I]t could be that at some earlier time somewhere in the universe a civilization evolved, by probably some kind of Darwinian means, to a very very high level of technology, and designed a form of life that they seeded onto perhaps this planet. That is a possibility, and an intriguing possibility, and I suppose it’s possible that you might find evidence for that if you look at the details of bio-chemistry, molecular biology, you might find a signature of some sort of designer . . . and that designer could well be a higher intelligence from elsewhere in the universe.

*Id.* See also *Ancient Aliens Theory*, HISTORY.COM, <http://www.history.com/shows/ancient-aliens/articles/ancient-alien-theory> (last visited July 30, 2010); *Evidence of Ancient Aliens?*, HISTORY.COM, <http://www.history.com/shows/ancient-aliens/articles/evidence-of-ancient-aliens> (last visited May 1, 2010); George Sassoon & Rodney Dale, *The Manna Machine*, <http://www.fernhouse.com/book-pages/mannamachine.html> (last visited May 1, 2010).

The reason some people switch to faith in these areas [of human nature, consciousness, freedom, and the like] is that they may not like the answers science provides, and they find the answers of faith more reassuring. So, here's the question: do you want the empirical truth that's backed up by evidence . . . ?<sup>248</sup>

But this is precisely the question the naturalist must answer: Do you want the empirical truth that is backed up by the evidence of the Gospels? If the evidence is credible by a legal standard, does it not lead to the truth?<sup>249</sup>

“There may be other values, and at the end of the day they may outweigh the gains to factual accuracy that may be at play in some policy choice, but it is our job to ensure that the primacy of facts is never neglected.”<sup>250</sup> Thus, the primacy of the evidentiary analysis, i.e., the search for the facts, should not be neglected simply because the analysis takes the inquirer to the other side of the wall. “Let the witnesses be compared with themselves, with each other, and with surrounding facts and circumstances; and let their testimony be sifted, as if it were given in a court of justice, on the side of the adverse party, the witness being subjected to a rigorous cross-examination.”<sup>251</sup> Such rigor should also be applied to conflicting theories, especially for those who would ignore the existence of credible evidence while at the same time holding onto *Da Vinci* conspiracy theories without any factual basis whatsoever. Religion cannot be used to impugn credibility,<sup>252</sup>

[b]ut the Christian writer seems, by the usual course of the argument, to have been deprived of the common presumption of charity in his favor; and reversing the ordinary rule of administering justice in human tribunals, his testimony is unjustly presumed to be false, until it is proved to be true. This treatment, moreover, has been applied to them all in a body; and, without due regard to the fact, that, being independent historians, writing at different periods, they are entitled to the support of each other: they have been treated, in the argument, almost as if the New Testament were the entire production, at once, of a

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248. CENTER FOR NATURALISM, *supra* note 15.

249. FED. R. EVID. 102 (stating that the Rules of Evidence “shall be construed . . . to the end that the truth may be ascertained . . .”).

250. Allen, *supra* note 16, at 16.

251. TESTIMONY, *supra* note 5, § 42.

252. FED. R. EVID. 610.

body of men, conspiring by a joint fabrication, to impose a false religion upon the world.<sup>253</sup>

This may be the greatest irony of the naturalistic inquiry. As Greenleaf's evidentiary analysis continues to demonstrate, facts and secular evidence exist on the supernatural side of the wall, proving credible the testimony of the Gospels. Yet, because naturalism expressly eliminates consideration of the "supernatural,"<sup>254</sup> its questions encompass only half an inquiry; its answers are founded on only half the data. Its "self-imposed convention"<sup>255</sup> can never yield a complete answer because it does not allow a crossing of the wall to find factual, natural evidence on the other side. As demonstrated by Greenleaf's analytical construct, and in complete contrast to *Judas*, the testimony of the life, times, and message of Jesus presented by Matthew, Mark, Luke, and John is credible "evidence to the end that the truth may be ascertained,"<sup>256</sup> despite the testimony's being found in sacred text.

And so we consider now the testimonies from a lawyer's perspective, as evidence presented to a jury, weighing "the veracity of the witnesses and the credibility of their narratives."<sup>257</sup> Examine the evidence, draw the inferences, make the deductions, reach the conclusions. Certainly, some readers of this Article will never be able to lay aside their preconceptions or to view the testimony as objective jurors. Some, having long since accepted the Gospels in faith, will not rely on legal argument to convince them of the credibility of the testimony. But those who have read this Article to the end, with an open and objective mind, surely now realize that the evidence presented by the canonical Gospels is credible even under current rules of legal evidence; that the testimony presented there has not been successfully challenged or impeached in nearly 2000 years; and, finally, that the testimony credibly demonstrates that the Jesus who walked those pages, and worked miracles, and claimed to be the Son of the living God,<sup>258</sup>—

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253. TESTIMONY, *supra* note 5, § 28.

254. See *Worldview Naturalism: A Status Report*, NATURALISM.ORG, <http://naturalism.org/landscape.htm> (last visited October 18, 2010).

255. *Kitzmiller v. Dover Area Sch. Dist.*, 400 F. Supp. 2d 707, 735 (M.D. Pa. 2005) (noting the so-called "scientific method" is based on the "self-imposed convention" of solely natural observation).

256. FED. R. EVID. 102.

257. TESTIMONY, *supra* note 5, § 48.

258. See, e.g., *John* 10:22-30; *John* 12:20-26; *John* 17:1-5.

indeed, the Messiah of prophecy<sup>259</sup>—is, in fact, the very man he is portrayed to be in the recorded testimony of the four Gospels.

The Rules of Evidence create a framework to determine the truth, and Greenleaf's analytic construct still serves the rules in that search. We should not be afraid of where the truth leads us, however strange, disconcerting, or challenging it may be. Now, as in Greenleaf's day, as in the days of the testimony, "If you obey what I say, then you are really my *talmidim*, you will know the truth, and the truth will set you free."<sup>260</sup>

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259. See, e.g., *John* 4:24-26. This "answers everyone who questions whether Yeshua proclaimed his own Messiahship. The declaration, 'I am,' echoes *Adonai's* self-revelation, 'I am who I am' (*Exodus* 3:14). Yeshua says this 'I am' nine times in [John's] Gospel (here; 6:20; 8:24, 28, 58; 13:9; 18:5, 6, 8), implying a claim even greater than being the Messiah." STERN, *supra* note 13, at 168.

260. *John* 8:31-32 (Complete Jewish Bible) (quoting Jesus in the temple in Jerusalem, speaking with those who had come to believe in Him).