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RELIGIONS ON TRIAL

A LAWYER EXAMINES BUDDHISM, HINDUISM, ISLAM, AND MORE

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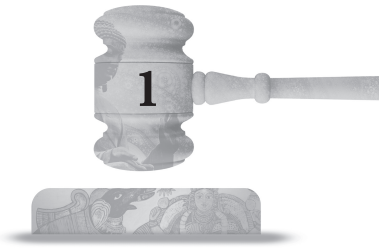

A LEGAL PRIMER

The american legal system may be only two hundred–plus years old, but its roots go much deeper. American courts use a jury system to determine factual truth. As early as the Magna Carta (1215), "a jury of peers" was seen as crucial to a just resolution of disputes. Over the centuries, courts have developed specific rules tailored to best ensure findings of truth. Society has enough confidence and experience in the system that it is used to determine who ran a red light, who defrauded whom, or who is or isn't a murderer.

People are put to death or incarcerated, with confidence that justice is meted out. This is because our court's and jury system, when they are working as designed, are society's best system for determining certain truths. The key is that they work as designed—without prejudice or bias, and with honesty and transparency.

If I were in trial today, I would likely hear the judge giving the jury certain instructions. These instructions are routinely given to guide the jury in their most important job: the jury must determine the truth about certain facts at issue.

In 2021, Pete Weinberger and I led the nation's first jury trial dealing with the opioid epidemic. This case, termed by the *New York Times* as "the most complex in American legal history," was greatly simplified by the judge's instructions to the jury.[1] A judge doesn't willy-nilly instruct

the jury on how they go about determining truth. The court's instructions have been sculpted over centuries of jurisprudence. Time has proven that these instructions best inform a jury, giving guardrails to make sure justice and truth stay on track.

These instructions are from a *civil case* rather than a *criminal case*. But other than the "burden of proof" (or weight of evidence needed to answer the accusations and charges), these instructions are basically what criminal juries use as well.

I pause to give these instructions because they are important. As the depth and requirement of high school government classes vary around the country, many don't think of courtrooms as paradigms or models of "proof." People tend to think "proof" comes from a laboratory or a chalkboard, but those places produce scientific or mathematical proofs. Nonscience truths that arise from questions like, Do I love my wife? or Who ran the red light? or Did the company defraud investors? can't find their proof in a lab.

As I discussed in *Atheism on Trial*, if one wants to prove the existence of God, no one should look for a laboratory or scientific kind of proof. It is akin to using a thermometer to prove the distance from A to B. A thermometer can be used to prove an accurate temperature but not a true distance from my front door to mailbox.

No laboratory or science experiment can prove the depth of my love for my wife. Similarly, in murder cases, I can't prove the perpetrator is guilty in a laboratory. Even lab evidence, like DNA found on the murder weapon, doesn't mean that the accused murdered the victim. The suspect might have picked up the weapon *after* the murder.

The law recognizes that different types and layers of proof are required by different circumstances. So over time, courts have refined careful rules and instructions for juries with a single goal in mind: to see that truth is found so that justice is met.

A just society requires that courts get this right. These questions lie at the root of any successful society, and misjustice is more than a travesty—it threatens everyone's way of life in countries built on justice.

In a very real sense, these instructions are the culmination of humanity's best efforts to find unvarnished truth on closely examined facts. So, I turn to these instructions in examining various world religions in hopes they better help me secure a just and truthful set of conclusions.

Below, I set out actual instructions provided by the court in the opioid case. If you had served on that jury, this is what the judge would have read to you, and also given you in a paper copy to guide your deliberations. The first instruction explains the duties of jurors.

JURORS' DUTIES

> It is your duty as jurors to follow the law as stated in the instructions of the Court, and to apply the rules of law so given to the facts as you find them from the evidence in the case. . . .
>
> Perform these duties fairly. Do not let any bias, sympathy, or prejudice that you may feel toward one side or the other influence your decision in any way. All parties are equal in the eyes of the law. . . . Both the parties and the public expect that you will carefully and impartially consider all of the evidence in the case, follow the law as stated by the Court, and reach a just decision regardless of the consequences.

This duty should extend to me and to you the reader as we consider the possibilities of various religious views. The strong tendency is to let our preconceptions determine our filtering of arguments and evidence. We must carefully and intentionally put those preconceptions aside. To do otherwise is to make a decision based on bias or prejudice.

BURDEN OF PROOF—PREPONDERANCE OF THE EVIDENCE

> Plaintiffs are required to prove all the elements of their claim "by a preponderance of the evidence." This duty is known as the burden of proof. To establish something "by a preponderance of

> the evidence" means to prove that something is more likely true than not true.
>
> A preponderance of the evidence is the greater weight of the evidence; that is, evidence that you believe because it outweighs or overbalances in your mind the evidence opposed to it. A preponderance means evidence that is more probable, more persuasive, more likely, or of greater probative value. Remember, it is the quality of the evidence that must be weighed, not the quantity of evidence.
>
> This standard does not require proof to an absolute certainty, since proof to an absolute certainty is seldom possible in any case.

People aren't used to thinking about proof in this way. This is the error many make by assuming that *proof* is just a sophisticated high school chemistry or geometry term. Geometry proofs work for math; a litmus strip can prove if a liquid is an acid or base. But both types are useless for other areas of proof.

I was watching the brilliant philosopher David Chalmers discourse on whether people have an immortal soul.[2] Chalmers uses his background as a philosopher and logician to conclude that people aren't simply atoms and molecules, but he wouldn't go so far as to say there is an immortal soul. From his perspective, there is no proof of that. Unfortunately, Chalmers holds a narrow field of proof from the perspective of a logician and philosopher. The jurisprudence system is much broader and knows proof exceeds his narrow fields of study. What in a courtroom can be proven as true is much different from what a logician might consider proven true.

This difference doesn't make the courtroom illogical. To the contrary, the courtroom is most logical. The difference stems from a practical recognition that not everything is given absolute unquestioning certainty. That doesn't mean one doesn't find comfortable certainty. This is better explained in the following instructions of the judge centering on "circumstantial evidence."

CONSIDERATION OF EVIDENCE

You should use your common sense in weighing the evidence. Consider it in light of your everyday experience with people and events, and give it whatever weight you believe it deserves. If your experience tells you that certain evidence reasonably leads to a conclusion, you are free to reach that conclusion.

DIRECT AND CIRCUMSTANTIAL EVIDENCE

Now, some of you may have heard the terms *direct evidence* and *circumstantial evidence*.

Direct evidence is evidence like the testimony of an eyewitness that, if you believe it, directly proves a fact. If a witness testifies that he saw it raining outside, and you believe him, that would be direct evidence that it was raining.

Circumstantial evidence is a chain of circumstances that indirectly proves a fact. If someone walks into the courtroom wearing a raincoat covered with drops of water and carrying a wet umbrella, that would be circumstantial evidence from which you could conclude that it was raining.

It is your job to decide how much weight to give the direct and circumstantial evidence. The law makes no distinction between the weight that you should give to either one; the law does not say that one is any better evidence than the other. You should consider all the evidence, both direct and circumstantial, and give it whatever weight you believe it deserves.

INFERENCES FROM EVIDENCE

The law permits you to draw reasonable inferences from the evidence that has been presented. Inferences are deductions or conclusions which reason and common sense lead the jury to draw from facts which have been established by the evidence in the case.

> In other words, while you should consider only the evidence in the case, you are not limited solely to what you see and hear as the witnesses testify. You are permitted to draw, from facts which you find have been proved, reasonable inferences that you feel are justified in light of your common experience.

As one considers the full range of evidence, one moves from the lab, the classroom, and the viewpoints of people like David Chalmers. One moves into the real common sense of life. In the judge's example above of whether it is raining based on circumstantial evidence, one might fairly ask, "But isn't it *possible* that someone walks into the courtroom wearing a raincoat covered with drops of water and carrying a wet umbrella, but it is because they are faking others out?" Yes, that is certainly possible. In a full-on logical analysis, one might say the evidence doesn't "prove" it is raining, yet the judge's instructions also bear on this issue. It is an issue of credibility. How believable is the witness or evidence?

CREDIBILITY OF WITNESSES

> Another part of your job as jurors is to decide how credible, or believable, each witness was. This is your job, not mine. It is up to you to decide if a witness's testimony was believable and how much weight you think it deserves. You are free to believe everything that a witness said or only part of it or none of it at all. But you should act reasonably and carefully in making these decisions.
>
> Let me suggest some things for you to consider in evaluating each witness's testimony.
>
> 1. Ask yourself if the witness was able to clearly see or hear the events. Sometimes even an honest witness may not have been able to see or hear what was happening and may make a mistake.
> 2. Ask yourself how good the witness's memory seemed to be. Did the witness seem able to accurately remember what happened?

3. Ask yourself if there was anything else that may have interfered with the witness's ability to perceive or remember the events. . . .
4. Ask yourself if the witness had any relationship to Plaintiffs or Defendants or anything to gain or lose from the case that might influence the witness's testimony. Ask yourself if the witness had any bias, prejudice, or reason for testifying that might cause the witness to lie or to slant the testimony in favor of one side or the other.
5. Ask yourself if the witness testified inconsistently while on the witness stand, if the witness said or did something, or failed to say or do something, at any other time that is inconsistent with what the witness said while testifying. If you believe that the witness was inconsistent, ask yourself if this makes the witness's testimony less believable. Sometimes it may; other times it may not. Consider whether the inconsistency was about something important, or about some unimportant detail. Ask yourself if it seemed like an innocent mistake or if it seemed deliberate.
6. And ask yourself how believable the witness's testimony was in light of all the other evidence. Was the witness's testimony supported or contradicted by other evidence that you found believable? If you believe that a witness's testimony was contradicted by other evidence, remember that people sometimes forget things; even two honest people who witness the same event may not describe it in exactly the same way.

These are only some of the things that you may consider in deciding how believable each witness was. You may also consider other things that you think shed some light on the witness's believability. Use your common sense and your everyday experience in dealing with other people. And then decide what testimony you believe, and how much weight you think it deserves.

These instructions on credibility give a well-rounded basis for using circumstantial evidence to assess truth.

In this book, I will rely on the reader to follow the judge's instructions. These instructions bear on various issues I examine. For example, witness credibility becomes especially important in the chapters that deal with the religions I group as "history based." Whether examining Islam, Judaism, or Mormonism, the credibility of those witnesses claiming to have received divine revelation and insight becomes important.

Similarly, sometimes direct eyewitness evidence is considered. Other times it is circumstantial evidence. In analyzing what I term "secular spiritualism," one cannot so readily use eyewitness testimony. This is also an area where the instruction of "common sense" takes center stage. The human tendency is to interpret evidence in ways that confirm already held beliefs. This tendency, generally termed "confirmation bias" must be overcome by deliberate mental decisions.

Armed then with this legal primer, as if instructed by an actual judge, let me begin guiding you through my examination of the evidence and witnesses of various world religions.

May it please the court . . .