

The Dead Sea Scrolls Scandal: How I Was Convicted of a Crime

Approximately four years ago, I began what ultimately became a full-fledged internet campaign drawing attention to what I regarded as a social and intellectual injustice: namely, the cooperation of science museums with certain members of the academic community in systematically marginalizing one of the two salient theories of origins of the Dead Sea Scrolls. According to the “traditional” theory followed in the museum exhibits, the scrolls were written in the desert by a group of radical religious sectarians, usually identified as the “Essenes.” That theory has been defended for more than half a century by a longstanding “school” (often called the Dead Sea scrolls “guild” or “monopoly” by its opponents) but has been increasingly thrown into doubt by a variety of scholars who do their work independently, without the backing of the powerful foundations and other institutions that support the efforts of the older, “traditional” school. According to the newer theory, the scrolls are not the writings of a particular religious sect, but the remains of libraries from the Jerusalem region that were hidden away by Jews escaping from the capital shortly before or during the Roman siege and sacking of the city in 70 A.D; they contain works of many different Jewish groups (*including* some sectarian texts). Khirbet Qumran, the ancient fortified site lying near the caves where the scrolls were found, was itself not inhabited by any band of sectarian monks; rather, it was most likely a fort, inhabited by Jewish soldiers, pottery makers, or other non-sectarian individuals who had nothing to do with the scrolls’ authorship, but who likely assisted the escaping refugees in hiding their scrolls.

To the surprise of the “traditionalists,” the essential elements of this newer theory have, during recent years, been confirmed by the official archaeological team of the Israel Antiquities Authority, led by Yitzhak Magen and Yuval Peleg, after a decade of detailed research at Qumran. The theory was, however, originally developed before the work of the Magen and Peleg excavation team, by my father, Dr. Norman Golb of the University of Chicago.¹ It is one of the two theories of scroll origins featured in the *Cambridge History of Judaism* (1998), in an article written by my father. The theory has

¹ See N. Golb, “The Problem of Origin and Identification of the Dead Sea Scrolls,” *Proceedings of the American Philosophical Society* (1980), and the other articles listed in the bibliography of his book *Who Wrote the Dead Sea Scrolls* (Scribner, 1995). He had first proposed the theory in a lecture delivered in Jerusalem in 1970, which was reported on at length in the *Jerusalem Post*.

received the support not only of the Magen and Peleg team, but of a series of other major European and Israeli archaeologists, including Pauline and Robert Donceel, Yizhar Hirschfeld, and Rachel Bar Nathan. Many Hebrew manuscript scholars have also supported one or another variation of it. But this support carries an undeniable price, for the theory's religious implications are quite plain: they include, above all, the lack of any historical foundation for various tenets of orthodox Judaism (such as the "tradition" that Jewish laws were received from God by Moses and passed down orally from one generation to the next until they were written down by the early rabbinical authorities in the second century A.D.), as well as popular beliefs about Christian origins (such as the idea that early Christian doctrines developed from a particularly "pure" and "separate" form of Judaism).

I have followed this developing debate and the little hornet's nest of academic politics and recriminations that have accompanied it for many years, ever since my father began critiquing the traditional "sectarian" hypothesis in lectures, articles, and books. For almost 30 years, I have been aware of efforts to exclude, from the inner sanctum of closed "international conferences," my father and others who fundamentally reject the sectarian theory. Since 1994, I have been aware of an "official" policy of the guild to exclude them from museum exhibits. Through all this time, I have been aware of untruthful statements, both online and in the media, aimed at marginalizing my father and his role in research; of efforts by the creators of museum exhibits on the scrolls to fabricate a fake "consensus"; of spurious claims (including "DNA proof" of Essenes, the "latrine" of the Essenes, the "ostrakon" of the Essenes, or the "lost tomb of Jesus") disseminated in the media by defenders of the sectarian position; and of what appear to be systematic misrepresentations designed to conceal material evidence from the public and to convince people not to pay attention to the reality of the current polarization between two basic theories in scrolls studies.

I was aware, in short, of a pattern of academic conduct that struck me as unethical. This was not a simple disagreement among scholars. This was an abuse of power and of financial influence for purposes that directly violated the basic principles of free and open debate and of mutual collegiality.²

2 Readers who have any doubt as to the prevalence of such abuses in academia and the severe harm to scholarship

By 2006, it had become apparent to me that, frequently in connection with the biased museum exhibitions, defenders of the sectarian theory were using the *internet* as a publicity tool to disseminate propaganda in their favor. In response, I decided to myself use the internet to challenge the claims being made and to document the abuses involved. I chose to communicate my ideas in blogs and emails under a variety of “handles” and pseudonyms, in the hope of avoiding any embarrassment to my father, whose adversaries would undoubtedly seize upon the opportunity offered to them if they learned that I, my father’s son, had become involved in this dispute. In my various writings, I focused mainly on the overtly exclusionary policies implemented in museum exhibits on the scrolls.

My campaign had good and bad moments; I hope that some of my actions fell at least within the bounds of reason, others were juvenile, impolite, and as embarrassing to me as I can only imagine they would be to anyone who chooses to engage, under shield of anonymity, in a heated online “flame war” about issues involving a cherished member of his family. At times I documented serious institutional abuses. I was able to demonstrate that individuals affiliated with evangelical Christian educational institutions, along with orthodox Jews who shared their basic perspective, were playing a large role in the creation of allegedly “scientific” museum exhibits that actually catered to a religious audience, from which their secular, critical-minded opponents who fundamentally disagreed with the “sectarian” interpretation were being systematically excluded. At other times, I sent pseudonymous emails to many dozens of academics, pointing to the elements of what, in my view, can only be characterized as an ongoing pattern of misconduct taking place in their institutions.

Generally — and not surprisingly, given the discomfoting nature of the issues I was raising and my lack of any institutional platform — my writings received few responses. One of the individuals whose conduct I criticized, Robert Cargill, occasionally posted comments under an assortment of his own pseudonyms, darkly hinting at my true identity (an educated guess on his part, given that I live near NYU’s Bobst library where I posted many of my blogs), and the rumor quickly spread among those whom I was criticizing that I was the “Dead Sea Scrolls blogger.” As an ironical response to being

and society that they cause, may wish to consult some of the many works on this topic available online or in a local library, including, e.g., *Silencing Scientists and Scholars in Other Fields* by Dr. Gordon Moran.

needed about my relationship with Norman Golb, I split my online identity into dozens of shifting “aliases” or “sockpuppets.” When the museums and religiously-oriented scholars involved continued to refuse to address the concerns I was raising, I turned more and more to the techniques commonly known as irony, satire and parody, hoping in this way to finally draw attention to the situation — mindful as I was that the use of “satirical arrows drawn from the quiver of caustic criticism” is a useful way of ridiculing “what is chimerical and false.”³

I also chose to remind readers of specific allegations that were first put forward on January 29, 1993, by Dr. Avi Katzman, a prominent Israeli journalist who teaches at the Hebrew University in Jerusalem. In an article on the Scrolls controversy in *Haaretz*, Dr. Katzman accused Professor Lawrence Schiffman, who today serves as the chairman of the Jewish Studies department at New York University, of plagiarizing my father’s work. Plagiarism, of course, is a form of research fraud that not only deprives the victim of the credit due to him for his original ideas, but also tends to silence him by hurting his motivation to share his work with others. When I set myself to the task of raising the issue of Dr. Schiffman’s conduct again, it became difficult to separate emotion from reason, measured protocol from the deepest indignation. In a moment of blind enthusiasm for exposing what I regarded as itself a full-blown academic scandal within the broader scandal, I opened a “gmail” account in the name “Larry Schiffman.” From this account I sent out a batch of offensive caricatures in which Schiffman “confessed” that he had plagiarized my father’s work. These emails portrayed Schiffman as arguing that if he had credited Golb, he (Schiffman) would “never have been invited to give lectures around the world,” and instructed various recipients that they were “not to mention the name of the scholar involved,” i.e., Norman Golb.

In a highly noticeable manner, these email “confessions” linked recipients to a blog in which, writing under the pseudonym “Peter Kaufman,” I set forth specific grounds for believing that Dr. Schiffman had not only plagiarized some of my father’s key ideas and arguments, but had on numerous occasions misrepresented my father’s theory, attributing to him the implausible views of another scholar and

3 See Margaret Rose, *Parody: Ancient, Modern, and Post-Modern* (Cambridge University Press, 1993), pp. 26-28 (quoting D’Israeli, Fuzelier, and other authors).

thereby disseminating false and misleading information that obscured the history of scholarship in this field of studies. My father himself, following in the wake of Dr. Katzman, had made these precise same charges in 1995 (for details, see pp. 213-215 of *Who Wrote the Dead Sea Scrolls*), but Schiffman had never answered him, and the matter had been discreetly ignored at NYU, even during the process that led, in 1998, to Schiffman's appointment as department chair.

Remarkably, my postings and emails — along with the photocopies of various pages authored by my father and by Schiffman that I sent by snail mail to NYU officials — did produce an effect, albeit hardly one that might have been hoped for. Two former NYU deans (Richard Foley and Catherine Stimpson) testified at my trial that they merely chatted with Schiffman a few times on the phone and then decided not to pursue the matter because of his reputation for honesty and because the source of the allegations lacked “credibility.” But, towards the end of August 2008 — i.e., a few weeks after I posted my articles about his alleged plagiarism and sent out the maliciously worded “confession” linking those articles — Dr. Schiffman, after fifteen years of silence, drafted an 11-page “response to internet accusations,” i.e., to the plagiarism allegations originally leveled by Avi Katzman and by my father, and which had reemerged in my own unsettling and provocative communications. The document featured, at the top of its first page, a unilateral warning that it was a “confidential” text that was not to be shown to anyone other than the parties to whom it was “addressed.”⁴ Dr. Schiffman's “response,” which having been entered as an exhibit during my trial has now become accessible to the public, contains many paradoxical claims and surprising allegations: for example that my father is an “aggressive” man who tried to sue a museum (which is simply false); or that there was nothing new about certain fundamental concepts introduced into scrolls scholarship by my father (despite the fact that Schiffman presented them as his own in several publications appearing between 1990 and 1994, in which he described them as a “new understanding” and indeed called them “revolutionary”); or that my father argues that the scrolls came from the Jerusalem “Temple” (the theory of Karl Rengstorff, but

⁴ Schiffman also delivered this document to the prosecution in the fall of 2008, in response to an inquiry from them as to whether he had answered the plagiarism allegations. The prosecution withheld it for two years; and handed it over to us on the eve of my trial.

which Schiffman has frequently attributed to my father) on the second page of a 1996 “presentation” that my father never wrote or presented.

According to the testimony of Dean Emeritus Richard Foley, Schiffman was never required to submit this remarkable document to NYU officials, but did so on his own volition. My father, now 83 years old, has written a detailed response (which has been published on the Oriental Institute website)⁵ to some of the statements the document contains. I have no way of knowing whether there has been any discussion among members of the academic community, at NYU or elsewhere, of my father’s article, but it should be observed that the article is dated November 30, 2010. A press release dated January 12, 2011, issued by President Richard Joel of Yeshiva University, announced that Lawrence Schiffman was leaving NYU and had been appointed vice provost of undergraduate studies at Yeshiva.⁶

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One might have thought the matter would end there and remain, so to speak, within the austere confines of the academy. The plagiarism allegations had been “confidentially” denied by Schiffman, and ignored by NYU officials. But things soon took an altogether unexpected course. During September, 2008, moderators of the NowPublic website, on which I had posted many of my articles, wrote to me that they had received a “legal notice” informing them that I was the “subject of a criminal investigation in New York.” I assumed this was a hoax of some sort, no doubt perpetrated by those who had been trying to get my articles removed from the internet for at least a year.⁷ As it turned out, I

5 See N. Golb, “The Confidential Letter Composed by Prof. Lawrence Schiffman of New York University,” available at http://oi.uchicago.edu/pdf/schiffman_response_2010nov30.pdf. Schiffman’s letter itself can be viewed at <http://www.sirpeterscott.com/images/schiffmancorrespondence.pdf>.

6 See <http://blogs.yu.edu/news/2011/01/12/president-joel-appoints-vice-provost/>. The release included references to Schiffman’s “reputation as a scholar” and to his “collegial sensibilities” which, according to the release, made him the “ideal person” to “lead the effort to ‘re-imagine’ undergraduate education at Yeshiva.”

7 In testimony at my trial, prosecution witness Robert Cargill, coordinator of the “digital humanities” program at UCLA, admitted that it was he who sent this “notice” to NowPublic. I have never seen the actual document that he sent. By his own admission in various lectures and writings, Dr. Cargill had already previously contacted NowPublic employees with demands that they remove my writings from their site, just as he later contacted the University of Chicago with demands that an article by my father be taken down from the University website. This article was my father’s critique of the script accompanying Dr. Cargill’s “Virtual Qumran” video, provided to my father by the San Diego Natural History

was wrong. On March 2, 2009, some seven months after my NYU email antics and pursuant to a criminal complaint filed by Dr. Schiffman, Assistant District Attorney John Bandler prepared a search warrant affidavit aimed at getting a close look at my person and belongings, under the theory that I had committed “identity theft” by sending out the fake “confession.” Patrick McKenna, an investigating officer assigned to the New York County D.A.’s identity theft unit, signed this affidavit, and submitted it to New York Criminal Court Judge Carol Berkman, who granted the warrant. In the affidavit, Officer McKenna declared under oath that the “allegations of plagiarism are false.”

Let us be clear about the significance of this remarkable declaration. First, Mr. McKenna failed to explain to the judge that he had never investigated the truth of the allegations of plagiarism. Indeed, lacking the requisite academic training, he would not have had the competence to evaluate their truth even if he had investigated it. Second, by suborning, from an officer under his supervision, this statement — and, in fact, many other false and misleading declarations that the warrant also contained — concerning an academic controversy, Mr. Bandler, a prosecutor in the state of New York, took the unusual and indeed illegal step of endorsing one side in a heated dispute over scholarly ethics, one that has been playing out over the past twenty years. In effect, Mr. Bandler took on the role of private counsel to a professor who had been accused of research fraud.

Apparently, despite the preposterous nature of the email “confessions” that Mr. McKenna supplied to Judge Berkman, the offensive character of these communications kept her from regarding them as what they were: namely, ironical, boneheaded accusations intended to expose Dr. Schiffman’s plagiarism. She did not challenge the sworn statement that “the allegations of plagiarism are false,” but granted the warrant, and on the morning of March 5, 2009, the police raided my apartment in search of “evidence” of the allegedly criminal conduct in which I had engaged. As a New York Times reporter would later explain, I was a “guerilla fighter” who was “caught red-handed.” I had stayed up blogging until 5:30 in the morning (as shown by the timestamp of a comment I had posted on my article “Antisemitism and the Dead Sea Scrolls,” which had become a topic of discussion on several websites); two hours later I

Museum where the video was shown, and where the script, or something very close to it, was read out loud to thousands of visitors in a giant auditorium. The critique may be read at http://home.uchicago.edu/~ngolb/san_diego_virtual_reality_revised.pdf.

was awakened by a large man with a gun standing over my bed, accompanied by five more armed policemen. Shaking with fear, I was arrested, taken down to Centre Street in handcuffs, and placed in a cage with a convicted felon in transit.

Only those who have seen or experienced what is commonly known as an “acute stress reaction” can understand the distorted emotional response, the exhaustion, the abnormal mental processes that I went through that morning of my arrest. Mr. McKenna told me several times that I had not yet been charged with a crime and that if I would agree to “speak with the D.A.” I would be allowed to go home. I then offered to be interrogated without an attorney. (Many have pointed out that the very fact that I, the recipient of a law degree from NYU, would agree to this is a sign I was suffering from an abnormal reaction.) As I was led in handcuffs into the interrogation room, I resolved that I would simply attempt to figure out what crime I was being charged with and refuse to cooperate in any manner. Eighteen months later, watching the tape of this “interview” during my trial, I was nothing short of sickened by the foolish manner in which I denied having anything to do with the emails. Mr. Bandler, who questioned and ultimately prosecuted me, handled the matter slyly. He repeated three different times that I had not been charged with a crime. As the interrogation wore on, I insistently began to demand that Bandler show me the text of the specific emails he was referring to. If he had shown them to me, I would, of course, have pointed out their satirical nature word by word. Today, I suspect he was simply afraid that I would explain what the email “confession” really meant. It would not have looked good to have me signaling on video, from the outset, all the obvious signs of an academic lampoon in those “gmail” texts. Bandler refused to show me the emails.

As soon as the interrogation was over, I was, however, shown a list of the crimes that I had of course in fact been charged with, and taken to the all-night lock-up or “tombs.” While I was incarcerated, then-District Attorney Robert Morgenthau — at the time over ninety years old, and who has served as chairman of the Museum of Jewish Heritage since its establishment in 1997 — announced that I had engaged in an illegal “scheme to influence a debate.”⁸ In violation of the ethical rules applicable to all

⁸ The Museum of Jewish Heritage (located in Battery Park) has hosted many interesting exhibitions, including one on loan from the Skirball Cultural Center. The Skirball Cultural Center, of course, is funded by the well-known Skirball

attorneys in New York, the press release put out by Morgenthau did not include a statement that I was innocent until proven guilty. As I found out the next day when I was released, this press release was picked up by hundreds of news services around the globe.

Thus, the machinery of the law was set in motion, with the manifest aim of punishing me for having used offensively satirical methods to “influence a debate.” A debate, that is, over museum exhibits, plagiarism, the monopolization of ancient sources by a group from which Jews were systematically excluded for over forty years; and many other ethical issues involved in Dead Sea Scrolls research.

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Normally, the core of the charges against me (hinted at in the assertion that the “allegations of plagiarism are false”) would be treated as a claim of *libel*, which, since 1965, has been dealt with in the civil courts, and not as a criminal matter. Be that as it may, the constitutional principle of due process must, of course, control any legal proceeding — including one based on the criminalization of satirical verbal communications. Oddly, however, on the day of my indictment (which came some five months after my arrest), the New York court rules regulating the judicial assignment of criminal cases were disregarded. Contrary to those rules, a judge was not randomly selected to preside over the case, despite its classification as a criminal matter. Rather, upon the prosecutor’s specific request, the case was sent directly to none other than Carol Berkman, the same judge who had signed the search warrant of March 2, 2009, on the basis of an affidavit that manifestly contained statements that, in their combined falsity, amounted to perjury.

Let us be clear: Rule 200.11(c) of New York’s Uniform Rules for criminal courts states that “upon commencement of a criminal action... the action shall be assigned to a judge by the clerk of the court in which it is pending pursuant to a method of random selection authorized by the Chief Administrator”

Foundation, which also contributes annual funds to New York University. Dr. Schiffman chairs the Skirball Department of Jewish Studies at NYU. — Mr. Morgenthau resigned from his position as district attorney some nine months after my arrest, and was replaced by his chosen successor, Cy Vance, Jr. Following my conviction, Mr. Vance issued the same type of statement as Morgenthau had issued, to the effect that I had engaged in an illegal campaign to “promote” my father’s views.

(underlining mine). On the basis of this rule, my attorney David Breitbart asked Judge Berkman to recuse herself from the case, but she refused, without providing any explanation of why she thought it was appropriate for her to remain. Apparently, I had no recourse against the assignment of my case to the specific judge who granted the search warrants, for at least one New York appellate court has held that criminal defendants have no “right” to have Rule 200.11(c) enforced. In essence, this means that application of the Uniform Rules is discretionary, an arbitrary matter for magistrates, prosecutors, and judges to handle as they see fit among themselves.

Once it was clear that Judge Berkman was assigned to my case, I was warned that I was in grave danger and must, above all, cease any blogging activities and not speak with the press, for anything I said could — and would — be used against me. I was told that she is considered by many to be a defendant’s “worst nightmare,” verbally abuses defense attorneys, and tends to slant cases towards the prosecution in an sharply biased manner. I learned that in 1999, the Legal Aid Society had publicly petitioned against her reappointment to the Criminal Court, to no avail.

Much of this struck me as hard to believe. But several months after my indictment, Judge Berkman — the very same judge who, I must emphasize, had granted the search warrant of March 2, 2009 despite the peculiar and, in large part, demonstrably false statements that it contained — ruled, in a three-page summary order, that for purposes of my trial, all that was necessary was that I had “assumed the name of another” with the intent to “obtain” any kind of a “benefit,” and the prosecution did not even need to specify what sort of “benefit” I intended to “obtain.” The truth or falsity of the allegations of plagiarism against Dr. Schiffman, she explained, was simply irrelevant, because, as she put it, “neither good faith nor truth is a defense to any of the crimes charged here.”

As one who now stands convicted of a crime predicated upon the further crime of engaging in a “scheme to defraud,” I must disagree. I authored the fake Lawrence Schiffman “confession” precisely in a context where serious accusations of plagiarism had been discreetly hushed up over a period of 15 years. This was a provocative verbal stunt, in the form of a blunt parody or satire. The emails had a sharp academic edge; they attributed outlandish statements to Dr. Schiffman; they contained a form of deadpan humor that, seen from Dr. Schiffman’s perspective, was malicious in tone. But the emails

were designed to *draw attention to those very accusations of plagiarism*. How, then, can the truth of the accusations be irrelevant to the meaning and intent of the communications? There is no parody without a parodied text; in my case, that text consisted of specific statements that Dr. Schiffman had made (both in his own writings and in newspaper interviews) over the years, but the judge had excluded all such information as “irrelevant.” Surely, had we been allowed to methodically introduce these statements and explain their logical nexus with my emails, no rational jury would have been able to conclude *beyond a reasonable doubt* that the emails were anything other than a satirical stunt.

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After Judge Berkman’s summary order, I was urged to accept a plea deal. The order, I was told, was deeply troubling, and it would be folly to proceed with Berkman presiding over the trial. Negotiations, however, broke down when it became clear that my right to express my opinion on the internet was going to be taken away from me for three years, as part of the probation I would be forced to accept. The deal being offered would predictably hamper my ability to express myself in any context, both on- and off-line, about issues involving academics, the history of religion, freedom of speech, and any number of other matters.

Then came the trial.⁹ During jury selection, the prosecution systematically eliminated persons who revealed any knowledge of the Dead Sea Scrolls controversy. They also eliminated actors and others with an artistic background. When one of my two attorneys, David Breitbart, asked a potential juror if she was familiar with the concept of parody, the prosecution immediately objected and the objection was sustained. Judge Berkman explained to the jury pool that the case dealt not with a financial crime, but with “the other kind” of identity theft. The jurors had no option but to take at face value that there actually does exist “another kind” of identity theft, in which the gain is not financial, but any kind of amorphous “benefit,” “gain,” or “advantage.”

⁹ The transcripts, which are filled with errors that reveal that much of the testimony was incomprehensible to the court stenographers, are available at <http://raphaelgolbtrialtranscripts.wordpress.com/>.

Judge Berkman failed to explain to the jurors that my case was the first of its kind. She did not inform them that no one has ever stood trial for attempting to “influence a museum exhibit” and “falsify the business records” of a university by addressing, to a group of professors and graduate students, a series of allegedly “untruthful” accusations taking the form of ludicrous email “confessions.” She did not inform them that a California State Senate committee, in a report on an effort to enact legislation to counteract the phenomenon of malicious email impersonations, has warned that the proposed law will raise First Amendment concerns. She did not tell them that the same committee decided that the planned impersonation law should “not include an element that the defendant intended to obtain a benefit,” because “arguably, an impersonation that caused no harm but that created some sort of benefit or sense of satisfaction to the impersonator does not involve criminal conduct.”¹⁰ She did not inform them that the Texas legislature, in enacting a similar statute a year ago, also did not include the term “benefit,” and did include a provision requiring that the defendant intended readers of the email to “reasonably believe” that it was authored by the impersonated person. She did not inform them that many groups and individuals, ranging from the Yes Men to all sorts of individuals whose identity is unknown, have impersonated other people on the Internet for purposes of social criticism, and that their conduct, if what I did is a crime, would also be criminal.

Mr. Bandler began his opening statement to the jury by explaining that this was a “simple case” of impersonation, harassment, and identity theft, but soon he mixed in claims that while “pretending to be someone else” I made “false accusations” and “false complaints.” He added that my emails generated an “inquiry and a reaction” at NYU which were based on “false premises.” He asserted that I had proffered a “false allegation” of plagiarism that “smeared” Lawrence Schiffman who is a “lead [*sic*] scholar,” and that I had engaged in a scheme to “influence the Jewish Museum” because of a “disagreement” that was “mostly of [my] own mind.” He expressed contempt for the intellectual controversy at stake and reduced my motivations to a personal whim, explaining that

the defendant does not like the fact that many in the academic world do not agree with his father

¹⁰ See the Committee on Public Safety report on Senator Simitian’s proposed law at http://info.sen.ca.gov/pub/09-10/bill/sen/sb_1401-1450/sb_1411_cfa_20100412_141750_sen_comm.html.

or they don't acknowledge his father's theory properly, or perhaps he feels they misstate his father's theory or they don't give his father the credit his father deserves for developing that theory. [Underlining mine.]

Readers may judge for themselves how prepared government prosecutors are to evaluate complicated intellectual questions and debates, or how familiar they are with the fundamental reasons educational institutions are concerned by charges of plagiarism, fabrication of evidence, misrepresentation, and other forms of unethical conduct. Mr. Bandler explained to the jury that my exaggerated personal resentment over a natural little "disagreement" among scholars was my "motive" for "hatching" my illegal "scheme." In the course of examining his first witness, Dr. Schiffman, as well as several others who followed, Bandler echoed the undercurrent of his opening statement by casually eliciting testimony about the "false accusations."

Despite her ruling that "neither good faith nor truth is a defense," Judge Berkman allowed the prosecution's recurrent allusions to my "smears" and "false accusations" to pass without comment. The controversy, according to her and the prosecution, was merely irrelevant "background." As a result, the prosecution could elicit whatever they wanted to about this "background," but when my defense team began to challenge what had been elicited, they were carefully blocked from doing so. Berkman repeatedly prevented my attorneys from engaging in significant cross-examination of witnesses and, above all, from introducing evidence pertaining to the Dead Sea Scrolls controversy and what we regarded as the truth, and not "falsity," of the allegations of plagiarism against Dr. Schiffman. Berkman explained that Dr. Schiffman was "not on trial for plagiarism."

After being blocked at least eight times while attempting to cross-examine Dr. Schiffman about his alleged plagiarism and the nature of his association with members of the Dead Sea Scrolls monopoly group, Mr. Breitbart was blocked from questioning Mr. McKenna about how he came to swear under oath to the truth of various statements (e.g., "the allegations of plagiarism are false") in the search warrant affidavit he signed. Mr. Breitbart was blocked from asking Mr. McKenna if he knew what

parody was.¹¹ I myself was blocked from answering questions about Dr. Schiffman's 11-page, confidential "response to internet accusations"; the jury was left with the impression that Schiffman had successfully rebutted the charges. Worse, I was the only witness in the entire trial who was repeatedly forced to answer complicated questions concerning my motivations with a "yes" or a "no." Each time I asked for permission to explain my answer, Judge Berkman declined to grant it. She explained to the jury that she was "neutral," but she found ways of letting them know who was the culprit here, making faces at my attorneys and warning them that she would have them sit down if they continued to ask "irrelevant" questions. At one point, she declined to allow me to go to the bathroom to empty my bladder. Another time (albeit during the jury's absence) when I also needed to go to the bathroom, she sarcastically declared: "I'm not your mother." None of this was particularly surprising. Already on the day of my arrest, Mr. McKenna had stood guard over me as I went to the toilet. He was, he explained, just doing his job.

Mr. Bandler was also, no doubt, just doing his job as a government prosecutor when, in his closing summation, he told the jury that the "plagiarism accusations were untruthful"; that Lawrence Schiffman is "reputable and respectable," and would not "plagiarize someone with a different theory"; that I'm "obsessed" with "wanting [my] father's theory to get more credit"; that Avi Katzman's statements are "irrelevant"; that I'm an "angry and bitter" person who "knows how to twist language, stir up controversy," and that what I can do with this knowledge "is much more devious and disturbing than what a less educated person can do." He added many other similar statements, including: "there is no way to sugarcoat this, the defendant is a menace to anyone who gets in his way."

After these remarks by the man who had me arrested, Judge Berkman instructed the jury that the First Amendment is not an excuse for breaking the law; as she put it, "words can be the tools by which crimes are committed, as, for very obvious example, when a robber says, 'Your money or your life,' the First Amendment doesn't protect that." She did not point out that one could probably use even those words, 'Your money or your life,' in satirical contexts, including blogs or emails, without committing a

¹¹ In the jury's absence, Berkman told my attorneys that Mr. McKenna's perjury in signing the affidavit would not have prevented her from granting the search warrant; later, when Mr. Breitbart was giving his summation, she interrupted him to observe that there was no proof that Mr. McKenna was aware that the affidavit contained a false statement.

crime.¹² She briefly mentioned parody and satire, giving definitions of these terms that fall short of reflecting the range of meanings they have.¹³ Hence, she explained, Tina Fey would still be able to continue her delightful imitations of Sarah Palin if the jury found me guilty. She concluded this portion of her instructions by admonishing the jurors: “So the questions for you are not the legal issues of freedom of speech ... but rather whether the elements of a charged crime have been proved beyond a reasonable doubt.” She went on to indicate that if they decided that I had “assumed the name of another with the intent to gain a benefit,” they were indeed to find me guilty of identity theft. She explained that the word “benefit” means “any gain or advantage,” but she refused to specify what type of “gain” or “advantage” was meant, despite my attorneys’ repeated requests for her to do so. In effect, Judge Berkman instructed the jury to find me guilty. And so I was also not surprised when, after a mere five hours of deliberation over a case that involved hundreds of pages of detailed documents — most of which they did not request to see — the jury did, in fact, find me guilty. Nor was I surprised when Berkman again brushed aside our constitutional arguments and sentenced me to six months in prison and five years’ probation, during which time my free-speech rights will be impinged upon by all sorts of stringent conditions.¹⁴

12 E.g., I could have written, instead: “I, Larry Schiffman, say to all of you, my dear colleagues at NYU, ‘your money or your life!’ Because that’s what our endeavors here are all about, are they not? It’s all about money, not the search for the truth, isn’t it?” Etc.

13 For parody, she gave: “the close imitation of the style of an author or a work for comic effect or in ridicule”; and for satire: “a **form of humor** where a writer tries to make the reader have a negative opinion of another by **laughing** at that person or making that person seem ridiculous or foolish, and the like.” Cf. the following definitions and descriptions of both terms, which Berkman did not use:

A parody (also called send-up or spoof), in contemporary usage, is a work created to **mock, comment on, or** poke fun at an original work, its subject, author, style, **or some other target**, by means of humorous, **satiric or ironic imitation**.

Satire is **trenchant wit, irony, or sarcasm** used to **expose and discredit** vice or folly; it arouses laughter **or scorn** as a means of ridicule and derision, with the avowed intention of correcting human faults. Common targets of satire include individuals (‘personal satire’), types of people, social groups, institutions, and human nature.

I have taken these statements from Wikipedia, Merriam-Webster, and the *Writer’s Guide* of the University of Victoria; many other similar ones can easily be found online.

14 They include the inability to use any pseudonyms, “whether historical, fictional,” or otherwise, apart from the term

* * *

The first thing that needs to be said about this verdict and the costly two-year investigation and prosecution that preceded it, is that they were perhaps a wee bit out of proportion with any “harm” caused. During the trial, NYU’s own deans testified that they found the emails “weird,” that they did not take them seriously, and that, apart from a few conversations on the phone with Dr. Schiffman, they failed to investigate the allegations of plagiarism because the source was not “credible.” Dr. Schiffman himself testified that he had suffered no financial harm. Interestingly, he also insisted that he had never before been accused of plagiarism, despite the accusations in the 1993 article by Avi Katzman and in my father’s 1995 book.

Once again, let us be entirely clear. Under oath, Lawrence Schiffman, a distinguished NYU department chairman, testified that the assertion by a prominent Israeli journalist that he had “adopted portions of Golb’s theory and presented them as his own without giving him appropriate credit” did not constitute an accusation of “plagiarism.”¹⁵ Both NYU deans, as well as two other witnesses for the

“anonymous,” when blogging about the Dead Sea Scrolls controversy. — Not content with imposing a prison sentence, Berkman declined to grant me a “stay,” by which she meant that I must immediately be incarcerated in the penitentiary located at Rikers Island. Only vigorous punishment, she suggested, would teach me not to “imitate someone in that manner.” While I was waiting in handcuffs, however, in the “tombs” under the courthouse in Manhattan, Judge Rosalyn Richter of the First Appellate Division issued an order staying the sentence. Mr. Bandler, the prosecutor, had followed my attorney Ron Kuby over to Richter’s chambers, had opposed staying the sentence on grounds of my moral turpitude and propensity for “stirring up dispute,” and had demanded that bail, if granted, should be set in the amount of \$500,000. Richter set it at \$25,000. She rejected Bandler’s arguments and explained that this was a case of “first impression,” meaning that the issues involved had never arisen before. Her statement was, of course, an implicit rebuke to Berkman, who had treated the case as simply an ordinary, run-of-the-mill example of the “other” kind of identity theft. Meanwhile, I had no idea what was going on, and was taken in an armored bus to Rikers, where I was held incommunicado for 24 hours before being allowed to make a phone call to Kuby’s office. I was released 12 hours later, after a total of 41 hours spent standing and, when possible, sitting in various cages and holding areas in the company of hardened convicts and heroin dealers who were serving sentences in the order of 10 to 20 days.

15 Here are some of Dr. Schiffman’s exact words as rendered in the official transcript of his testimony as a prosecution witness at my trial: questioned about Dr. Katzman, he says: “I do not see that he charged me with impropriety” (p. 103). He translates Katzman’s statement as follows: “But you also in various articles that you published did not hesitate to adopt pieces of the theory of Golb, without admitting it or acknowledging it, and without giving him appropriate credit” (p. 175), and then, in reaction to another question, asserts that this is merely “an accusation of too few footnotes to a guy... Norman Golb is footnoted in everything I’ve written. I have written seven books on the scrolls. I have written 139 scholarly articles. No one has ever accused me of plagiarism” (p. 176).

Readers may wish to evaluate Schiffman’s assertions in light, for example, of his 1994 book *Reclaiming the Dead Sea Scrolls*, a 529-page work which contains exactly one footnote (on p. 413) mentioning, in six lines of text, my father’s

prosecution, contradicted Dr. Schiffman by testifying that such an allegation would fall under NYU's definition of plagiarism — but the possible validity of the allegation, of course, was irrelevant to whether or not I had committed the felony of “identity theft.”

Beyond the unsavory facts of the case, much lies at stake here for all Americans. To begin with, it is my belief that governmental authorities have no right to police, regulate, or patrol the type of seething controversies and complicated disputes over all sorts of issues that, often in the form of email accusations boomeranging around the internet, have come to play a part in our nation's academic and intellectual life. And it is my belief they have no right to police, regulate, or patrol the verbal means used to draw attention to claims made in the context of such controversies.

To hold otherwise — to hold that the provocative verbal act constituted by a blatantly fake “confession,” despite the element of irony and caricature that is obviously involved in it, constitutes “identity theft” — is to send the government down the slippery slope of controlling the form and content of speech, of the expression of ideas. Somewhere down that slope, *any* caricature or parody, on account of the element of “deceit” or falsity in it, can become “identity theft” — as long as some sense of personal satisfaction, “influencing of a debate,” or other ill-defined “benefit” or “advantage” is obtained.

In the context of prosecutions brought under the federal mail fraud and, more recently, the “honest services” mail fraud statutes, the United States Supreme Court has repeatedly held such sweeping interpretations of fraud to be “void for vagueness” (i.e., too vague for a defendant to have known that he was committing a crime) unless limited to bribes and kickbacks or, we may assume, to some other illicit form of monetary gain. My attorneys submitted lengthy arguments (totaling over 150 pages in length) pointing out this and other problems to the judge and demanding that the case be dismissed on First and Fourteenth Amendment grounds. She responded in a three-page order that there was no need to address our arguments. Only towards the end of the trial did she inform the prosecution that she was

writings. The footnote, in pertinent part, reads: “The hypothesis that the scrolls are the library of the Jerusalem Temple is put forward by Golb in [here he lists a few of my father's articles].” My father, however, has never put forward any such hypothesis; in fact, he has specifically rejected it on many occasions (see, e.g., the sources cited above in note 1). Similar misrepresentations concerning my father's research are found in other writings of Schiffman's.

having difficulty understanding the object of the “scheme to defraud” in which I was alleged to have engaged. Apparently, after explaining to the jury, at the outset, that this case involved “the other kind” of identity theft, she actually checked the books, and found that under New York law, a “scheme to defraud” required that the defendant defraud one or more people of the minimal sum of \$1,000.

* * *

Since we had raised this issue at length in our legal memorandums submitted a year earlier, the prosecutors were, of course, already aware of the difficulty. And so, in order to try and fit the criminalization of the fake “confession” into known legal precedent involving “schemes to defraud,” they had prepared an ad hoc argument. They had never presented this argument to the grand jury or to the public before we raised the “void-for-vagueness” issue, but they ran it by the judge when she announced, in the jury’s absence, that she was having difficulty understanding what I was accused of doing; and, after they obtained her approval, they proposed it to the jury at the conclusion of the trial. The core of this argument was the claim that my intent in sending the emails to Dr. Schiffman’s colleagues must have been to induce The Jewish Museum in New York to cancel a lecture that he was scheduled to give there, and to get my father invited instead. Hence, they argued, since Schiffman was paid \$650 to give his talk, and since travel and hotel expenses would presumably be involved for my father, I had actually intended to defraud Schiffman and the Jewish Museum of at least \$1,000.

However, in my own writings on museum exhibits,¹⁶ I myself had frequently defended a policy of *inclusion* of representatives of both of the two basic theories of scroll origins: that is, I had never suggested that anyone’s lecture should be canceled, but had merely argued that scholars who favor the non-sectarian theory should also be invited to participate. What is more, one of the prosecution’s witnesses, Susan Braunstein, the curator of the Jewish Museum scrolls exhibit, testified that I never contacted her about Schiffman or any other matter during the course of the exhibit; that I never even

16 This material (comprising all sorts of detailed articles published on various websites under a variety of pseudonyms such as “Charles Gadda” and “Robert Dworkin”) was introduced as evidence during the trial, but the jury hardly had time to read any of it during their five hours of deliberation.

met her until the exhibit was over, several months after Dr. Schiffman gave his talk; and that when I did meet her, at a lecture that *she* gave, we simply discussed the content of the exhibit in an utterly polite manner. (I note in passing, that Dr. Braunstein also testified that there are indeed “two basic theories” of Dead Sea Scroll origins, the “sectarian” theory and my father’s, and that the Jewish Museum scrolls exhibition was the first to break with the approach taken by various museums over recent years and make this fact systematically known to the exhibition’s visitors.)

On the other hand, Dr. Braunstein explained that Daniel Friedenber, an art collector and curator emeritus at the Museum who is a friend of my family, did have lunch with her before the exhibit opened; that he urged her to invite my father to participate in the museum’s lecture series — even offering to fund the lecture and my father’s travel expenses himself — but that he never as much as hinted that the Museum should drop Schiffman from its roster. And, significantly, she also testified that she was aware, *before* inviting Schiffman to lecture, that my father had accused him of plagiarism in his 1995 book, *Who Wrote the Dead Sea Scrolls*. Neither in any of this, nor in the multitude of emails rapidly flitting across a screen before twelve jurors who seemed increasingly bored, was there nothing to establish any direct link between my mock “confession” and any intent to get Schiffman’s lecture canceled. There was no email in which I expressed or suggested such an intent, whether to my family or anyone else. There was, to be sure, a blog of September 25, 2008, in which I announced Schiffman’s upcoming lecture and asked whether the Jewish Museum was aware of allegations that he had committed plagiarism. But there was no document of any sort in which I said, for example, “Dr. Schiffman has confessed to plagiarism, and you still invite him to lecture?” or “I have attributed a fake confession to Schiffman; let us hope this convinces the Jewish Museum to drop his lecture.”

Thus, since there was simply no concrete, factual evidence that I had authored the mock confession with the specific intent of getting people to somehow rely on it as a fact and to cancel Dr. Schiffman’s lecture, the prosecution was obliged to appeal to a different sort of argument. By the sum total of my emails and blogs, they suggested, I had “created new developments,” ones that *must have been* designed to get the lecture canceled. In other words, the jury was implicitly asked to speculate as to the nature of my calculations as to how readers of my communications would react, and to conclude,

beyond a reasonable doubt, that I had calculated that word would somehow reach the Jewish Museum that Schiffman had himself “admitted” to being a plagiarist, and that this would lead the exhibitors to cancel his lecture.

Or, as Bandler put it: “thus the defendant’s elaborate scheme of deception was hatched.” Speculation about a defendant’s calculations as to the effects of his speech was held unconstitutional by the United States Supreme Court in *Ashton v. Kentucky* (1964), in which the Court held Kentucky’s criminal libel statute to be void for vagueness. My attorneys pointed this out in our First Amendment memorandum, but Judge Berkman did not address *Ashton*’s implications for the prosecution’s strategy in my trial.

A defining moment came when the prosecution asked me if did not “resent” the fact that Schiffman was invited to give a lecture at the Jewish Museum. In response, I attempted to explain that what I (justifiably) resented was not that fact alone, but rather that Schiffman was regularly invited to lecture at nearly every Dead Sea Scrolls exhibit, while his academic opponents, including my father, whom he is alleged to have plagiarized, have been systematically excluded; all of this, in direct violation of Chapter 9 of the Code of Ethics of the Museums Association.¹⁷ Judge Berkman cut me off and instructed me that if I resented the fact that Schiffman lectured at all the exhibits, then I also, by definition, resented the fact that he lectured at the Jewish Museum. Pursuant to the judge’s instructions, I was forced to dutifully answer the question: “Yes, I resented the fact that Dr. Schiffman was invited to lecture at the Jewish Museum.”

Thus, part of my punishment for writing a “confession” that “put words into Schiffman’s mouth,” was

17 According to Chapter Nine of that code, the duties incumbent on museum governors and employees include: “Enable ... others to keep up to date with developments in their field”; “Make the museum a forum in which ideas can be discussed and tested”; “Cultivate a variety of perspectives ... to reflect the diversity of the communities served by the museum”; “Represent ideas, personalities, events and communities with sensitivity and respect”; “Respect the views of others and their right to express those views...”; “Strive to dispel prejudice and indicate clearly the part played by opinion or conjecture in interpretation”; and “Reflect differing views striking a balance over time.”

See <http://www.museumsassociation.org/publications/10963>. Needless to say, each and every one of these duties has been egregiously disregarded by all but two or three of the institutions that have hosted a Dead Sea Scrolls exhibit over the past fifteen years. At least 2,000,000 people have visited these exhibits in the United States alone.

the silencing or reduction of my legitimate indignation, or the putting of words into my own mouth by forcing me to answer only “yes.” My confession of “resentment” became a key part of the prosecution’s closing argument that the emailing of the false “confession” was, beyond a reasonable doubt, timed to produce the effect of having Schiffman’s lecture canceled. In actual fact, I had decided to expose the plagiarism allegations at least a year before that lecture, as one step of an ongoing campaign challenging the conduct of an entire group of scholars involved (1) in silencing opposition to their favored theory, (2) in creating a biased series of museum exhibits designed to conceal the current state of research on the Dead Sea Scrolls from the public, and (3) in rigging an accompanying series of one-sided lectures that have been taking place all over the United States during the past five years.

The prosecution’s argument, of course, collapses as soon as it becomes clear that the email “confessions” were satirical in nature, and that no one was intended to seriously believe Schiffman had authored them. New York’s felony identity theft statute says that the crime of “identity theft” occurs if one assumes a name with the intent to defraud, i.e., to deceitfully obtain someone’s money or some other illicit tangible benefit.¹⁸ Accordingly, since the socially controversial intent involved even in the most offensive forms of parody and satire is protected by the First Amendment, the prosecution also had to take a further step — they had to deny the satirical intent of the emails. And this too, just like the speculative claims about my calculations as to the reactions of recipients of the communications, put the jury in the role of conducting an inquisition into my mental state on the basis of inconclusive evidence and accusations that were not only unsubstantiated, but fundamentally unverifiable.

The jury, in other words, was obliged to literally conduct what the French language calls a *procès d’intention* or “trial by intent.” Oddly, we have no direct equivalent for this term in English. It refers to accusations based not on any harm that someone has actually done, but on an unverifiable alleged intent to commit such harm. The strength of this type of accusation lies in the fact that by its very nature it cannot be disproved.

¹⁸ As many authors have indicated, the term “identity theft” is in fact a misnomer. This crime does not involve the stealing of an identity; it involves the borrowing of an identity with the intent to steal something else: namely, money.

The hidden logic involved here actually goes like this: because the accusation is not entirely implausible, it must be true. Any attempt to cast doubt on the accusation can be recast as an additional act of dishonesty. To describe it pointedly, this is the same logic that has been at work in various inquisitional episodes including the Salem witch trials and the charges instigated by Senator Joseph McCarthy. It is not all that difficult to put this type of argument past a group of perfectly decent people who, lacking information on a particular controversy, are probably not in a position that would allow them to verify the existence of a *legitimate* intent related to that controversy — in this instance, my actual intent to aim a satirical barb at a specific academic audience that is informed about that controversy.

* * *

For good measure, the prosecution added a second felony identity theft charge, to the effect that I had authored the emails with the fraudulent intent of “falsifying NYU’s business records.” This accusation again rests on the assumptions (1) that I calculated that people would actually believe that Schiffman had “confessed” to plagiarism and had pointed colleagues towards an accusatory article in a “weird” message emanating from “larry.schiffman@gmail.com,” and (2) that they would somehow make false entries to NYU’s “business records” on account of that belief. The speculative nature of this accusation is equally clear; yet of this too I was found guilty.

Other crimes were also alleged.

Stephen Goranson is a “stacks maintenance” employee at Duke University, who received a Ph.D. in religion at Duke in 1991. Dr. Goranson’s dissertation dealt with the writings of Epiphanius, a church father of the 4th century A.D. Although he does not appear to have any scholarly training in the decipherment of Hebrew manuscripts, he has published a few articles about the Dead Sea Scrolls and the “Essenes” — and, over the years, has posted many extremely hostile comments about my father on various websites, including the suggestion that my father should “retract” his book, offer refunds to those who had purchased it, and issue an apology to them for having written it. Dr. Goranson has been removed from several websites; at one point, scholars at the University of Copenhagen rebuked him for

what they perceived to be the antisemitic implications of some of his statements. Using one of my pseudonyms, I sent polite emails to several Duke University officials asking whether it was appropriate for Dr. Goranson to use Duke U. computers to regularly smear a respected historian; the Duke provost did not ask me what was the nature of my connection with the matter, but thanked me for letting him know, and explained to me that he had taken steps to inform Dr. Goranson of his responsibilities.

In addition, in what was meant as a private joke between myself and my brother, I opened a “gmail” account in the name of, precisely, “Steve Goranson.” I never sent any messages from this account. Rather, I used the account to store the email addresses of the academics I intended to contact (I sent them all notices of the NowPublic article on the plagiarism allegations, directly through the NowPublic site, signing with the name “Sam Edelstein”). In the trial I testified that the use of the name “Steve Goranson” was a private joke. I also used this address when opening one of the blogs about the plagiarism allegations (one must always fill in an email address when opening a blog, for automatic verification purposes). Again, this was visible to no one but myself. The prosecution, however, suggested to the jury that I did it to “pass the blame to Stephen Goranson.”

The suggestion rests on at least three speculative suppositions: (1) that I felt there was something to “blame”; (2) that I expected investigators to subpoena information on my blogs dealing with the Dead Sea Scrolls, and on an email account that had never been seen by anyone apart from myself; and (3) that I calculated that they would believe that it really was Stephen Goranson himself who had either asked someone at NYU to open an account in the name “Steve Goranson,” or who had traveled all the way from Durham, N.C. to the Bobst Library in New York to open a “gmail” account using that name. Dr. Goranson always signs his internet writings with the name Stephen Goranson, not Steve, and his actual email account, well known to bloggers, bears a “duke.edu” academic address.

But the prosecution offered a purportedly conclusive argument. While rapidly scrolling through hundreds of emails on a large screen, they occasionally focused in on isolated sentences they wished the jury to see. In one of those sentences, I asked my brother if he wanted to “finish Goranson off,” or if I should do it. As I testified, this statement referred to an online debate we were engaged in with Dr. Goranson, in which we were defending our father against Goranson’s attacks. By “finish him off,” I

was referring to a decisive answer we had thought of to one of his points, and I was asking my brother if he wanted to post it, or if he wished to leave that honor to me. This, like all of the other “evidence” in the case, was twisted out of context by the prosecutors, but my explanations were to no avail: the jury found me guilty of “criminal impersonation” and “aggravated harassment” of Stephen Goranson.

Similarly, I was found guilty of “aggravated harassment” of Robert Cargill, on the grounds that I asked several dozen UCLA faculty members whether it was appropriate to award a Ph.D. to a doctoral candidate in their department who had refused to answer my father’s detailed critique of a film script that he authored, which had been supplied to my father by the San Diego Natural History Museum after it had been read aloud to some 100,000 visitors. In fact, not only had Dr. Cargill failed to respond to the critique; but, in numerous emails addressed to University of Chicago officials, he had assaulted my father’s right even to quote from the film script, and had demanded that the University remove my father’s critique from his page on the University website. Judge Berkman, however, blocked my attorney Ronald Kuby from questioning Dr. Cargill about a letter in which Russel Herron, the University of Chicago legal counsel, had warned Cargill that his email complaints would be regarded as “threats of nuisance litigation.” Berkman explained that the University of Chicago’s defense of my father’s right to engage in free and open scholarly criticism was a mere question of opinion that was not relevant to the case. (I note, again as an aside, that in his testimony at the trial, Robert Cargill acknowledged having participated with the curator of the San Diego scrolls exhibit, Risa Levitt Kohn, in an agreement to avoid any mention of my father’s name or of his theory in the exhibit — this, apparently as a direct response to my father’s critique of the film script and exhibition catalog. This is precisely the sort of conduct that my campaign was designed to expose.)

The strangest of all the charges concerned a pseudonym I *invented*, “Jonathan Seidel.” I used this name to send out a satirical email *attacking* my father, and to write to museum curators inquiring about a forthcoming Dead Sea Scrolls exhibit. Like many of my pseudonyms (Joshua Reznick, Simon Adler, Jesse Friedman, Albert White, Peter Kaufman, Sam Edelstein...), it turns out that there are many people who actually have this name. In this instance, there happens to be a rabbi in Oregon named Jonathan

Seidel, who apparently once almost studied with Dr. Schiffman, who has never published anything on the Dead Sea Scrolls, but who once gave a seminar on the topic in a college in California.

Coincidence: he graduated from Oberlin College four years before I did. Even stranger coincidence: he testified that he was introduced to my father in England in 1986 and discussed the Jews of Rouen (and not the Dead Sea Scrolls) over a coffee with him.

I had never heard of this man, not from my father and not from anyone else, yet the jury convicted me of several counts of “criminal impersonation” on the grounds that I “assumed his name with the intent of obtaining a benefit or injuring another.” The conclusive, doubt-removing proof in this instance seems to have been the fact that I asked my father in an email if he had any contacts at the Jewish Theological Seminary, in the hope that such a person might have some influence with the curators at the Jewish Museum (my father replied that he had no such contacts). Bandler argued that this showed I had an “unusual interest” in the Jewish Theological Seminary, and therefore that somehow I must have known of the existence of Jonathan Seidel, a rabbi in Oregon who had received his degree there in 1981 (the year I got my degree from Oberlin). I have no hard feelings towards Rabbi Seidel, and I’m sorry if he was offended by my use of a name that happens to be his; but I must repeat what I explained on the witness stand — namely, that when I invented this pseudonym I had the poet Frederick Seidel in mind, and not a rabbi in Oregon.

I cannot help but wonder if the verdict — guilty on 31 of 32 counts — resulted not only from the judge’s instructions, but if it was perhaps also a reaction to the jurors’ sheer fatigue at the sight of hundreds of incomprehensible emails rapidly flitting past on a screen, and at sitting through so much testimony about all sorts of recriminations whose truth my attorneys were not even allowed to examine. The ultimate implication, of course, was that I was automatically guilty because I had sent all these emails. The single count on which I was *not* convicted involved Jeffrey Gibson, another internet blogger who has been hostile to my father. I opened an account in his name too which, exactly like the “Steve Goranson” account, I never used to send any messages, and which I also used for automatic verification purposes when opening a blog. There is no difference at all between my use of these two email accounts, yet I was convicted in the one instance and not the other.

Perhaps the jury spared me on this particular count because Dr. Gibson testified that he had been convicted of draft evasion during the Vietnam War period; or perhaps it was because at one point, I testified that I could probably settle my differences with him over a cup of coffee. The same, of course, is true of all the other complainants, but since my sense of humor is far too quirky, and since I *must* have intended to “gain a benefit or injure another” by “assuming” all these names, my combined email antics are punishable by a lengthy prison term.

* * *

Obviously, in sending many of my emails, I behaved in an imprudent and offensive manner. But whatever the view taken of my activities as a matter of academic etiquette, I nevertheless believe that my response to the conduct I had observed corresponds to the kind of internet campaign described as a positive social phenomenon by Dr. Ron Robin in his book *Scandals and Scoundrels: Seven Cases that Rocked the Academy*. The outcome of my case — which, distilled to its essence, involves the criminalization of irony and of alleged libel — poses several dangers both to freedom of speech and to the rule of law.

The reach of the nation’s criminal laws must be clear and predictable. To commit a legally cognizable “crime,” it does not suffice to do something that seems “unkosher” or despicable; the act has to fall within the terms of a recognizable criminal interdiction. People offend each other in the most abominable ways every day, without thereby committing felonies or other crimes. Nor must the terms of a statute, whether it be “identity theft,” “forgery,” or anything else, be stretched too far at the discretion of one or another zealous prosecutor. Civil disputes involving issues of reputation, libel, plagiarism, the dissemination of offensive claims through “annoying” emails, obnoxious parodies and the like, which cause no tangible injury or harm, are appropriately adjudicated in civil law suits, not criminal actions.

If an act of satirical “impersonation” can be criminalized under the pretext that it can, through an absurdly literal reading of New York’s fraud statute, be construed as a crime on account of any unspecified “benefit” that was allegedly obtained, this could ultimately allow the criminalization of

forms of *true* intellectual dishonesty, or what is commonly known as “research fraud.” Indeed, under the exact same peculiar monetary logic employed against me, since the plagiarist himself seeks to make money from his theft, and uses the mails to submit his plagiarized works to the publisher, any plagiarist could be prosecuted for “mail fraud” under the United States Criminal Code. Thus, Dr. Schiffman himself, under such a theory, could himself be criminally prosecuted for “intellectual property theft.” If a prosecutor could convince a jury that Schiffman intentionally plagiarized my father and used the mail to engage in this act, then Schiffman would, under that theory, be guilty of the crime of fraud. Thus, if we decide to criminalize what I did, then by the same token we have moved towards criminalizing exactly what I accused Dr. Schiffman of doing.

But to stretch our laws to cover plagiarism — or, indeed, other acts of research fraud — would run counter to our entire tradition of intellectual freedom and institutional independence. I have consulted numerous works on academic fraud; in none of them could I find a single case that has ever been treated as a criminal matter. All such cases, ranging from the fraudulent “Piltdown man” claim, through the famous “Sokal hoax,” to the most egregious falsifications of historical and scientific data, have always been handled on the academic, institutional level, or at the most as civil disputes — and rightly so, because our tradition draws a line between offenses that take place in the intellectual realm and the type of tangible — and for the most part bodily or financial — harms, or threats to safety, that the criminal laws are meant to punish and deter.

My conviction opens the door to sweeping these principles aside. If, for example, I post a blog in someone’s name containing the most preposterous and unbelievable confessions, or even simply announcing that I had eaten an orange, this would be “identity theft,” conceivably even a felony, as long as I had intended to derive some “benefit” or pleasure from doing so. For even the most infantile pleasure, let alone the pleasure obtained in seeing people take note of an accusation, is a “benefit,” and such pleasures can always, in theory, be speculatively translated into a desire to see someone lose a job or an invitation to give a lecture. And if I take the witness stand (as I did during my trial) and deny that I had such an intent, and explain that my actual intent was simply to lampoon the individual in question, or to refer readers to a set of accusations charged with emotional indignation, the jury must

decide whether what I did really constituted a legally cognizable parody, or (bearing in mind Judge Berkman's pointed reminder that the First Amendment is not an excuse for breaking the law) whether instead I was motivated, beyond a reasonable doubt, by a more sinister, fraudulent "intent."

Jurors in criminal trials are ill equipped to reach such determinations; by asking them to do so on the basis of quickly formed judgments about what someone's intent "must" have been, the government does violence to their own integrity, and ultimately to the integrity of the judicial process itself. For example, an alternate juror in my case explained to a reporter that she was leaning against me because if these emails were parody, "why wasn't anyone laughing?" Lacking a full understanding of the concepts of parody, humor, and satire, she did not have the tools with which to comprehend my actual intent. I never claimed that the emails were comical, or intended to provoke innocent laughter. Both satire and humor have many registers; that does not detract from the socially constructive role that they play in all sorts of contexts. None of these issues were discussed during my trial, just as nothing was said of the difference between civil disputes and criminal prosecutions. We had no opportunity to explore the nature of parody, nor were the jurors shown any of my writings in light of the many scholarly discussions of this complex phenomenon. As indicated above, Judge Berkman read out the most "innocent" definitions she could find of the words "parody" and "satire" to the jurors, but notably, in view of the numerous counts of "criminal impersonation" that accompanied the identity theft charges, she failed to read out the definition of "impersonate," which includes: "To imitate the appearance, voice, or manner of; mimic: [e.g.,] an entertainer who impersonates celebrities."

Does one actually need to be an "entertainer" to engage in this form of impersonation? Does a popular entertainer or any other person who "benefits" from this type of impersonation commit the crime of *criminal* impersonation? If one is not an entertainer, and "imitates the manner" of Professor Lawrence Schiffman, a well-known department chairman at New York University, with the intent of raising doubts about Schiffman's academic reputation, does one thereby commit that crime? None of these issues were raised during the trial. As indicated above, Judge Berkman rejected our First Amendment arguments without analysis.

I am convinced neutral observers will conclude that if the verdict stands, *The People v. Raphael Golb*

will have created extraordinarily bad law. It produced a disproportionate result: the potential to spend years in jail for causing no legally cognizable harm at all, when the alleged victim, to make out a civil case for defamation, would have had to demonstrate that he had actually incurred monetary damages. Those who regard themselves as victims of the Yes Men or any other similar activist group can now rush to the local district attorney because their cases would be rejected by the civil courts. It used to work the other way around — in the America I know. Our justice system rests in part on the distinction between two standards, that (criminal) of “reasonable doubt” and that (civil) of the “preponderance of the evidence,” the former harder to meet than the latter.

More importantly, the decision created *new* bad law. I have accumulated a file of dozens of cases involving online “impersonation,” and what is most remarkable in it is the total lack of any criminal prosecutions. These controversies are all handled as civil disputes, with parody being judicially recognized as a constitutional defense against a charge of defamation. As far as I have been able to tell, there is one exception. Dr. Howard Fredrics, a well-known professor of music, opened a blog in the satirical name “Sir Peter Scott.” Sir Peter Scott is, in fact, a knighted British scholar who serves as the vice chancellor of Kingston University — controversial information and questions pertaining to which were published on Dr. Fredrics’ blog. Initially Scott filed a complaint with the World Intellectual Property Organisation, in relation to the domain name registered by Dr. Fredrics, “sirpeterscott.com.” WIPO determined that Scott held no trademark rights in this name, and dismissed the complaint. Then Scott complained to the police, and a British court convicted Dr. Fredrics in absentia of “harassment.” But the conviction was overturned by appellate judges, precisely on the grounds that anti-harassment laws were not intended to protect an individual’s reputation, and that the blog contained information of public interest and therefore belonged to the highest category of protected speech.¹⁹

Apparently, Judge Berkman concluded that the issue of Dr. Schiffman’s alleged plagiarism is not a question of public interest — indeed, that the public interest of this issue was so slight that she should preside over my trial in violation of the Uniform Rules. And, since any electronic communication,

¹⁹ Following the verdict in my case, Dr. Fredrics opened a Facebook page “to overturn the wrongful conviction of Raphael Golb.” I am grateful to him and to those who have signed the page.

whether it be sent from Beijing, Mumbai, Sofia or Aix-en-Provence, can physically pass through New York (such is the nature of the world-wide web), anyone who engages in “impersonation” in the public interest on the internet — anywhere in the world — and thereby gains some undefined and intangible “benefit,” can be prosecuted for “criminal impersonation” in New York.

The ultimate outcome? Either an appellate court will overturn my conviction, or the academic “gatekeepers” will succeed in retaliating against me by having me locked away in prison for having gotten carried away in the midst of a heated campaign of criticism which I directed against a group of scholars who, as I argued at length, have been engaged in what appears to be a pattern of unethical conduct. The duplicitous museum exhibits on the Scrolls that I criticized are likely to continue, scamming a significant portion of the American public out of millions of dollars (a sum easily reached by multiplying the number of visitors to these exhibits by the average \$20 entrance fee). And NYU will continue to discreetly ignore the allegations of plagiarism directed at Dr. Schiffman.

Will this alarming legal episode serve some higher purpose? Only time will tell. I continue to believe that as the appeals process unfolds, the appropriate conclusions will be drawn from the deplorable proceedings engaged in during this trial; and I continue to hope that members of the public will weigh the considerable amount of evidence contained in my internet pieces that are still available online: evidence regarding an ongoing campaign of smears, plagiarism, exclusion, and silencing directed against my father and other independently-minded scholars who have confirmed the results of my father’s research.

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