

BIBLICAL IMPOSTERS ON TRIAL:

IDENTITY FRAUD IN GENESIS

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Thesis Submitted in Partial Fulfillment of Requirements for Ordination

**Hebrew Union College-Jewish Institute of Religion
Graduate Rabbinic Program
New York, New York**

**January 20, 2004
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Advisor: Dr. David S. Sperling

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IDENTITY FRAUD IN GENESIS

Thesis by Taron Tachman

This thesis, *Biblical Imposters on Trial: Identity Fraud in Genesis* is a close reading and analysis of the biblical narratives of Lot's daughters, Jacob's deception of Isaac, Leah's wedding night, and Tamar's deception of Judah. Each of these stories has in common the theme of "identity fraud." When each of these characters is unable to obtain what he/she feels he/she deserves, the character puts on a disguise or manipulates a situation in order to hide his/her true identity. Under the cover of a new identity, the perpetrators are then able to abstract from the victim that which was desired. Each of the four narratives is approached as a criminal case with each of the offenders being placed on trial as criminal suspects. In this format, the thesis explores the circumstances, motivations, outcomes, and judgments of these various acts of deceptions. Each story was examined in light of contemporary biblical scholarship and rabbinic, medieval, and midrashic commentaries. Attention was also paid to current literary approaches.

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DEDICATED TO THE CHILDREN OF DECEPTION:

Moab and Ben-ammi, Perez and Zerah, and quite possibly, Reuben.

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Hugs and kisses for my loving girlfriend Ilona who stayed up night after night proofreading drafts of my thesis... even when she was so tired that "her eyelids felt like lead!" I love you sweetie!

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OPENING STATEMENTS

Jacob asked Rachel, "Will you marry me?" and she replied, "Yes, but my father is a trickster, and you cannot beat him in trickery." Jacob asked, "How would he trick me?" She replied, "I have an older sister, and he will not have me marry ahead of her." It was then that Jacob said, "In trickery, I am your father's brother." She asked, "But is it proper for a righteous man to resort to trickery?" He replied, "Yes, for we read: 'With the pure thou dost show thyself pure, and with the crooked thou dost show thyself wily' " (2 Sam. 22:27).¹

This Midrash captures the essence of this thesis which asks: Is it acceptable to deceive another person to get that which you feel you deserve? Do acts of deception constitute crimes worthy of trial or should they be applauded? In this thesis I play the role of "the investigator" who dares to ask some tough questions about the circumstances, motivations, outcomes, and judgments of five biblical figures in Genesis who apparently commit crimes of which we might today classify as "Identity Fraud"

The format that I chose was to try these five characters (Lot's Daughters, Jacob, Leah and Tamar) as if they were being arraigned in court. Therefore each of the four cases begins with the establishment of the following basic facts of the case: 1. Defendant's proper name 2. Essential facts of the alleged offence 3. Name and degree of offences alleged 4. Names of all witnesses to be called at trial 5. Time and place of offence 6. Statutes alleged to have been violated

¹ B. Meg 13b; BB 123a

and statutes that fix the penalty or punishment. I then seek to determine possible motives of each alleged offence. Sometimes the suspects directly voice their motives. For example, Lot's daughters say: "Our father is old, and there is not a man on earth to consort with us in the way of all the world. Come let us ply our father with wine so that we can maintain life through him." (Gen. 19:31-32). Other times the text indicates the motives. The biblical narrator, for example, provides the motive of Tamar's actions in Chapter 38. Tamar, the text explains, "....took off her widow's garb, covered her face with a veil, and wrapping herself up, sat down at the entrance to Enaim, which is on the road to Timnah; *for she saw that Shelah had grown up, yet she had not been given to him as wife.*" (Gen. 38:14)

There are also times when a character's motives are not stated directly by the text, but can be determined by examining the character's past history. Years before Jacob participated in the death-bed blessing deception, for example, he is portrayed as a child who is a victim of parental favoritism and as a sibling who is determined to dominate his brother. Both of these themes are tremendously helpful when trying to determine possible motives and probable cause for the particular crime he was suspected of committing.

Some challenging cases require speculation. Leah is a case in point. When she participates in the bride-switch caper on what was supposed to be her sister's wedding night, her thoughts and feelings on the matter are not mentioned in the text. However by looking at the story as a whole, one might be able to piece together possible motives. For example, I while trying to determine Leah's

motives for her alleged offence, I might ask questions such as "Does Leah demonstrate patterns of jealousy?" "Are there any indications that, if she did not want to go through with the deception, she would have had the courage to resist her father?"

I seek to assess possible blame for the alleged offences in other ways as well. The "Expertise section" identifies and discusses the various pieces of equipment and types of situations that aid the suspects in their deceptive ruses. The "Circumstantial Evidence" section makes mention of evidence that points the finger away from other suspects or a possible alibi. When Jacob wakes up after spending the night with a woman whom he thought was Rachel, the text states: "When morning came, behold there was Leah!" (Gen. 29:25) This statement leaves little doubt as to Leah's involvement in the alleged offence.

The "flight" section will discuss the various suspects' actions directly following an alleged crime. In some cases, when a suspect leaves the scene of a crime, there is a presumption of guilt. In the case of Tamar, for example, she immediately flees after her alleged encounter with Judah. Does this fact indicate that she is guilty of prostitution?

The final two sections of each case are a Ruling/Judgment section where guilt is assessed based on the information gleaned from the victims of the alleged offences as well as other important voices such as the great medieval rabbinical commentators, modern scholars, the Bible itself, and God.

Each case will conclude with a section entitled, "Court Reporter's notes" where I will provide my own view on the case. More often than not, these

thoughts address the following questions: 1. Why did the suspect resort to the particular crime of Identity Fraud? 2. What was it that the suspect really wanted and did he/she get that which was desired?

Although this format may be a bit out of the ordinary for a traditional thesis, I believe that the content is academically sound. In addition to my own perspective on each of the four examined biblical narratives, I integrate the thoughts of medieval commentators such as Rashi, Rashbam, Ramban, S'forno, Radak and Ibn Ezra. I also highlight the thoughts of great academic biblical scholars such as E.A. Speiser, Claus Westermann, Gerhard Von Rad, and Robert Davidson and Dr. David Sperling, my thesis advisor. Since 3 out of the 4 suspects are woman, I tried to also include relevant contributions from modern Feminist authors whenever possible. Some of these authors whom I found particularly helpful were Tikva-Frymer Kensky, Nehama Aschkenasy and Leila Leah Bronner. Finally, at times I also included the thoughts of modern religious scholars such as Nehama Leibowitz and Avivah Zornberg. Although I was only able to get to know most of the scholars mentioned through their works only, I feel connected to them and am grateful for their assistance with this endeavor.

Before beginning, I would like mention the following two points:

1. All translations of the Torah texts are from the JPS, unless otherwise noted.
2. The New Interpreter's Bible is sometimes represented with the letters (NIB)

LET THE TRIALS BEGIN!

Case # 1:

"THE NICE GIRLS OF THE CAVE NEXT DOOR"

Formal Charging

I. **Defendants' proper names:** Actual names are unknown. The text gives simply refers to the girls as Lot's daughters; the elder and the younger.

II. **Essential facts of the alleged offence:**

While living in a cave, following the destruction of Sodom and Gemorah, Lot's two daughters plied their father with wine and had intercourse with him on two consecutive nights in order to have children. Their actions, contends Carol Smith, have been characterized as the "closest approximation to a female's rape of a male."²

Genesis 19:30-38 provides Biblical Police with specific details of the crime:

30. Lot went up from Zoar and settled in the hill country with his two daughters, for he was afraid to dwell in Zoar; and he and his two daughters lived in a cave. 31. And the older one said to the younger, "Our father is old, and there is not a man on earth to consort with us in the way of all the world. 32. Come, let us make our father drink wine, and let us lie with him, that we may maintain life through our father." 33. That night they made their father drink wine, and the older one went in and lay with her father; he did not know when she lay down or when she rose. 34. The next day the older one said to the younger, "See, I lay with Father last night; let us make him drink wine tonight also, and you go and lie with him, that we may maintain life through our father." 35. That night also they made their father drink wine, and the younger one went and lay with him; he did not know when she lay down or when she rose. 36. Thus the two daughters of Lot came to be with child by their father. 37. The older one bore a son and named him "Moab," he is the father of the Moabites of today. 38. And the

² Smith further asserts: "Lot is not asked whether he consents to sexual intercourse, and is a passive victim of the conniving of his daughters in the events that take place." Athalya Brenner, ed. *The Feminist Companion to the Bible, Challenged by the text: Interpreting Two Stories of Incest in the Hebrew Bible*, by Carol Smith, (London: Sheffield Academic Press, 1997), 127

younger also bore a son, and she called him "Ben-ammi;" he is the father of the Ammonites of today.

III. Name and degree of offences alleged:

- **Identity Fraud:** The girls manipulated the situation so that their father did not recognize them as his daughters.
- **Deception:** Lot could never have expected that his daughters would attempt such a trick.
- **Disrespect of Father:** The girls get their father drunk, and trick him having sex with him; an act he would not have done sober.
- **Two counts of Incest:** The girls had sex with their father. Whether or not their actions constituted a crime, or an immoral act will be discussed in more detail later.
- **Date Rape:** By drugging their father, they took away his ability to consent to their offer or deny it. The crime is described as date-rape because the perpetrators were well-known to the victim.
- **Revenge:** Do the girls seek revenge after their father offers them to the townspeople of Sodom?

IV. Names of all witnesses to be called on at trial:

1. Lot
2. Abraham as a character witness for Lot.

V. Time and place of offence charged stated as specifically as possible:

The text (vs. 33) states that first offence occurred on the same night that the elder daughter suggested the plan to the younger. The next day, the elder daughter successfully convinced the younger daughter to commit the same alleged offence the following night.

The cave Lot and his daughters lived in, suggests Robert Alter, were "part of the forbidding landscape of cliffs and cave to the south and east of the Dead Sea."³

VI. Statutes alleged to have been violated and the section of the statutes which fix the penalty or punishment.

A. Exodus 20:12: "Honor your father and your mother"

B. Lev. 19:14, "You shall not insult the deaf, or place a stumbling block before the blind" Dt. 27:18 "Cursed be he who misdirects a blind person on his way..." The girls take advantage of their father's weakness to alcohol.)

C. Lev. 18:6: "None of you shall come near anyone of his own flesh to uncover nakedness: I am the Lord.", Lev. 18:17: "Do not uncover the nakedness of a woman and her daughter; nor shall you marry her son's daughter or her daughter's daughter and uncover her nakedness: they are kindred; it is depravity." The punishment for violating these two laws is laid out in Lev. 18:29: "All who do any these abhorrent things-such persons shall be cut off from their people."

D. Lev. 19:18: "You shall not take revenge."

VII. Relevant Past criminal Record (Relevant Past history)

One cannot fully understand the events of Genesis 19:30-31 without seeing them in the greater context of Chapter 19. The chapter opens with the story of two angels visiting the city of Sodom one evening. Lot greets the angels at the gate of the city and insists that they lodge at his house, as opposed to spending the night in the square, as they [the angels] had suggested. After the

³ Robert Alter *Genesis Translation and Commentary* (New York: W.W. Norton and Company, 1996), 87

angels ate, but before they could lie down, a mob⁴ formed outside of Lot's house and demanded that Lot bring out the men who were staying with him so that they could be intimate⁵ with them. Instead of giving up his guests to the crowd, Lot offered them an alternative; saying to the townspeople: "I beg you, my friends, do not commit such a wrong. Look, I have two daughters who have never known a man. Let me bring them out to you, and you may do to them as you please; but do not do anything to these men, since they come under the shelter of my roof." (Gen. 19:7-8) The townspeople declined Lot's offer and threatened him and advanced toward his door. At that moment the angels pulled Lot inside, struck the crowd with blinding light and advised Lot to leave the city before it was destroyed. Lot then tried to convince his sons-in-laws to leave the city with him, but they refused. When Lot lingered in the city, the angels grabbed his hands and the hands of his wife and his two single daughters and led them to the city outskirts warning them: "Flee for your life. Don't look behind you and don't stop anywhere on the plain. Flee to the high country lest you be wiped out." But instead of going to the high country, Lot pleaded with the angels that he go instead to Zoar. As Sodom and Gomorrah were being destroyed, Lot's wife looked back and turned into a pillar of salt, and Abraham looked on from afar. Although Lot was promised refuge in the town of Zoar, for reasons unspecified,

⁴ The bible records that this mob of townspeople consisted all the people of Sodom, young and old, to the last man. (Gen. 19:4)

⁵ Nachum Sarna asserts that the townspeople desired to commit homosexual rape upon the angels. Nahum M. Sarna, *The JPS Commentary, Genesis* (Philadelphia: The Jewish Publication Society, 1989), 135. Not only is this act an abomination according to Lev. 18:22 ("Do not lie with a male as one lies with a woman; it is an abhorrence), it is also an overt sign of gross inhospitality.

he decided to leave, preferring to live in a cave along with his two remaining daughters.

This past history is presented here, not to highlight past offences of the defendants (Lot's daughters), but to bring attention to the relevant events that may have contributed to their later behaviors. This section, therefore, focuses on Lot's act of offering of his daughters to the angry townspeople, the destruction of Sodom, and the death of the girls' mother.

Many scholars make a direct link between Lot's willingness to hand over his virgin daughters to the townspeople in verse 19:8 and his daughters' later actions in verses 19:31-38. What was Lot doing when he said to the crowd: "Look, I have two daughters who never consorted with a man. Let me bring them out to you, and you may do to them as you please"? (Gen. 19:8)

Lot offered his daughters to the townspeople as substitutes for the strangers who were guests in his home. The idea being that the girls would be subjected to rape while the guest would be protected from subjugation to homosexual gang rape. Lot's offer of his daughter recalls a similar event in Judges 19 where townspeople surround the house of an old man who is hosting a male traveler, the traveler's servant, and his concubine. When the townspeople demand that the old man bring out the man who has come into his house so that they could be intimate with him, he instead offers his virgin daughter and the concubine to "have pleasure of them" (Judges 19:24) and "do what you like with them" (v. 19:24) just as long as they "don't do that outrageous thing to this man." (v.19:24) Next, the old man pushes out the concubine and the

townspeople rape and abuse her all night long only letting her go when dawn breaks. In the morning the man found her at the door unable to answer him; presumably she was either unconscious or dead.

In the Lot narrative, the offer of the daughters is refused before Lot gets a chance to consider pushing his daughters out to the crowd, when the angels intervened, pulling Lot back into the house and blinding all the townspeople. Many interpreters suspect that Lot was adhering to the sacred duty of hospitality, demonstrated so well by his uncle, Abraham in Genesis 18. Once Lot took in the men as guests he took on the duty of protecting them at all costs; even if it meant giving away his own daughters. In her book, *From Eve to Esther, Rabbinic Reconstructions of Biblical Women*, Leila Leah Bronner writes:

Some traditional biblical scholars have explained the behavior of Lot and the old man [Judges 19] as a choice between allowing the commission of the supposedly lesser evil of rape and facilitating the greater sin of homosexuality (Lev. 18:22, 20:13) Some other scholars explain that the ancients may have placed the Middle Eastern value of hospitality and the protection of one's guests over the preservation of one's own family and interests.⁶

One way to explain why hospitality would take precedence over the preservation of one's own daughters is that women were held in low esteem at the time. As the girl's father, Lot had total control over their bodies, (their virginity) and their destinies. His offer of his daughters to the townspeople to give up their virginity to save the lives of his guests was well within his rights as a father. Again, Leila Leah Bronner is helpful:

⁶ Leila Leah Bronner, *From Eve to Esther: Rabbinic Reconstructions of Biblical Women*, (Louisville: Westminster John Knox Press, 1994), 115

The life of a young girl was dominated by considerations relating to her preparation and suitability for the state of matrimony that was her destiny. Marketability as a wife depended largely upon her virginity. (Ex. 22:15-16, Deut. 22:28-29) Her father was therefore very concerned with preserving her virginity and honor. Indeed, the law prescribes severe punishments for different forms of loss of virginity, which were sometimes applied to the girl, sometimes to the violator, and sometimes to both. (Deut. 22:13-29). The father's right to sell (Ex. 21:7-11) or give his daughter in marriage and to annul her vows (Num. 30:4-6) bespeaks his virtual control over her body, mind and destiny.⁷

Another perspective on the episode is to say that Lot never intended that his offer be acted upon. S'forno, for example, claims that Lot made his offer with the certainty that the men betrothed to his daughters would rise up and defend their honor, thereby creating tumult and deterring the crowd. Richard Elliot Friedman, author of *Commentary on the Torah*, suggests that Lot's offer was an act of bargaining.⁸ What he was doing was making an exaggerated extraordinary gesture that no one was supposed to actually take up. However, instead of backing down, the townspeople refused the gesture and become angry.

Not every commentator is sympathetic to Lot's situation or condones his actions. Many see Lot's eventual fate as a direct consequence of the various decisions he made in his life. In the episode of Lot offering his daughters to the townspeople for sexual abuse, Ramban condemns Lot, declaring that a man should face death rather than permit his wife or daughters to be dishonored. Alice Ogden Bellis points out that many feminists view the episode as "a

⁷ Ibid., 112

⁸ Richard Elliot Friedman, *Commentary on the Torah*, (San Francisco: Harper, 2003), 67

reprehensible action by a reprehensible man."⁹ Keeping comments such as these in mind, it makes sense that many scholars view the events of chapter 19:31-38 as retribution for Lot's indecent offer of his daughters. Leila Leah Bronner asks the question any decent Biblical investigator can not help but ask: "Could the young woman have had a different motive (or a compound motive), entailing revenge on the father who placed duties of host ahead duties of father and willingly gave them over to be violated? Where they exacting retribution by degrading him in incestuous intercourse?"¹⁰

Indeed when one considers both episodes whether or not one sees Lot's fate as the result of the girls own motivations or the narrator's creative justice, one cannot help but notice that various ironies abound. Nahum Sarna, comments:

At the beginning of the chapter he was willing to let the virginity of his daughters be forcibly defiled, without even informing them, in order to save lives. Now, in order to "maintain life,"¹¹ his daughters have lost their virginity by forcing themselves upon him without his knowledge.¹²

It may be possible that this is an example of a cosmic reversal with woman having mastery over men (instead of the other way around). When Lot offers his daughters to the townspeople, he makes mention that they had "never known" a man. However, in the later story, it is Lot who does not know as his daughters take advantage of him. In addition, Lot's daughters who have been

⁹ Alice Ogden Bellis, *Helpmates, Harlots, Heroes, Stories in the Hebrew Bible*, (Westminster John Knox Press 1994), 79

¹⁰ Leila Leah Bronner, *From Eve to Esther: Rabbinic Reconstructions of Biblical Women*, (Louisville: Westminster John Knox Press, 1994), 116

¹¹ Interestingly, Gen. 19:32, 34 both mention the girls' goal of *ne'cha'yeh Zereh* (translated by JPS as "maintain life.") This term has a positive connotation of hope and promise as in Gen. 7:3.

¹² Nahum M. Sarna, *The JPS Commentary, Genesis* (Philadelphia: The Jewish Publication Society, 1989), 140

offered to the entire male population of a town as sexual objects, now treat *him* like an object. Rashi, furthers this notion with a close reading of verse 19:33. Of the two daughters, Rashi sees the older one, who was the initiator the plan, as the more sexually aggressive of the two. He notes that in verse 19:33 the description of the elder daughter's seduction of her father can be understood in the accusative because of the Hebrew word ET, so that the proper understanding of the verse is not that "she lay *with* her father" (as can be said about the younger daughter vs.35) but instead "that she *laid her father*." In other words, her actions are described grammatically in such a way that her father becomes the direct object. *The Harper's Bible Commentary* furthers this notion that Lot's fate was to be objectified by his daughters:

There are two more indications of Lot's passivity in the story. First the Hebrew word used in the episode for sexual relations, *shakab* ("lie[with]"), generally has a masculine subject and a feminine object (as in 26:10, 30:15, 16, 34:2:7, 35:22, 39:7, 12, 14) In the story of Lot and his daughters, the sexual stereotype of a patriarchal culture is reversed when the five uses of *shakab* have Lot's daughters as subjects and their inebriated father as object.¹³

The writer of the Encyclopaedia Judaica article on Lot, agrees with many of the commentators who suggest that the narrative of Lot and his daughters may be an indication of retributive punishment for Lot offering his daughters to the townspeople. The irony that this author finds between the two episodes is that "just as he [Lot] had allowed the claims of courtesy to transcend morality, so his daughters permitted their concern for the propagation of the species to outweigh

¹³ James L. May, ed., *Harper Collins Bible Commentary, Genesis* by John S. Kselman (San Francisco: Harper Collins 1989), 95

moral considerations."¹⁴ Finally, Terence E. Fretheim of the *New Interpreter's Bible* notes that "A father who would offer them to the entire male population of the town for the purpose of sexual services could hardly have had an appropriate relationship with them, no matter how patriarchal the family structure may have been."¹⁵

Three additional pieces of past history that may have contributed to the events of 19:31-38 are the death of the Lot's wife, Lot's decision to pick the best land,(13:10-11) and his decision to leave Zoar.(19:30) In verse 19:17 the angel warned Lot, his wife and his daughters to "flee for your life! Do not look back behind you, nor stop anywhere in the plain; flee to the hills, lest you be swept away!" In 19:26, Lot's wife looked back and thereupon turned into a pillar of salt. Although the text does not directly mention how the girls reacted to the death of their mother, it not a far stretch to imagine that this tragic event influenced the girl's later decision to ply their father with wine and sleep with him. Had their mother been alive, such behavior would have been inconceivable. In addition, if the girls still mother had lived, they would not would have felt the need to be the ones to maintain seed. Another possibility suggested by Stephanie Teitelbaum, a licensed psychologist, is that the girls' incestuous behavior may have been a reaction to the trauma that they experienced while narrowly escaping an enormous disaster, and losing their mother and sisters.¹⁶ The loss of the girls' mother might also explain how Lot was able to have sex with them without

¹⁴ Encyclopaedia Judaica, CD-ROM Edition, s.v. "Lot."

¹⁵ Leander E. Keck., ed., *The New Interpreter's Bible*, Vol. 1, *Genesis to Leviticus*, by Terence E. Fretheim (Nashville: Abingdon Press, 1994), 479

¹⁶ Stephanie Teitelbaum, in a discussion with the Brooklyn Heights Synagogue Chavuah study group, 15 November, 2003

knowing. This investigator's suggestion is that Lot, in his drunken stupor, may have thought that each of the girls in the moment, was actually her mother.

Another possible contributing factor is the fact that Lot left Zoar to go to the cave after successfully bargaining with the angel to be able to stay there. In verse 19:21 the angel replied to Lot's plea to go to Zoar: "Very well, I will grant you this favor too, and I will not annihilate the town of which you have spoken." However in verse 19:30 we read: Lot went up from Zoar and settled in the hill country with his two daughters, for he was afraid to dwell in Zoar." Various commentators cannot help but ask: Why did Lot leave after he was already promised refuge? Some commentators suggest that Lot was scared living in Zoar because he could still feel the aftershocks from the destruction of the two cities. Others condemn Lot for not having sufficient faith in God. Certainly had he stayed in Zoar, he may not have been in a position were he was alone with his daughters in quite the same way. Marilyn M. Schaub sees Lot's decision not to stay in Zoar as one more mistake Lot has made which contributed to his eventual downward spiral:

In the concluding scene, after the luxuriant land he had chosen had been totally destroyed and his wife had been turned into a pillar of salt because she looked back, we find Lot living in a cave with his two daughters because he is afraid to stay in Zoar which he had requested to be his refuge. A man of weak faith, destined to be controlled by events rather than to control them, Lot now in a drunken stupor unknowingly succumbs to an incestuous relationship with his aggressive daughters.¹⁷

¹⁷ Marilyn M. Schaub, "Lot and the Cities of the Plain: A Little about a Lot" *Proceedings Eastern Great Lakes Biblical Society*, 2 (1982) 3

An additional possible factor as suggested by Robert Davidson, is that Lot's eventual fate is due to his decision to selfishly choose the for himself better land than Abraham:

Although typically, the J narrator makes no comment, the final picture that we get of Lot lying in a drunken stupor in a cave and being used by his daughters, is in the sharpest contrast to the first mention of Lot setting out with Abraham as Abraham responds to God's call (12:5) There are those for whom the pilgrimage of faith ends tragically. In Lot's case the tragedy is traceable to the wrong and selfish decision he took to grasp for himself the best of the land. (13:10-11)¹⁸

One final factor that may have contributed to the events of 19:31-38 is Lot's lust for his daughters. Rashi, in his commentary, quotes Rabbi Levi who said whoever is inflamed by illicit desires (lewd sex) will in the end eat his own flesh.¹⁹ (or: "will end up getting his hunger saturated from his own flesh.") Here Rashi means to imply that no one offers his daughters (Gen. 19:8) unless he himself is full of desire for them. Perhaps the girls were therefore able to succeed because Lot desired them.

Of course, the fact that Lot moved his daughters to a cave did not help Lot to keep his distance from them. Leila Leah Bronner notes that the rabbis bring up the following verse while discussing who lusted after whom: "He who isolates himself pursues his desires." (Proverbs 18:1). Not only does Lot remove himself from other people, the sages, blame Lot for isolating himself from Abraham, his one positive influence in his life. For this reason, the rabbis maintain, it was no wonder that Lot would end up being caught up in the desire which brought him into sin with his daughters.

¹⁸ Robert Davidson, *Genesis 12-50* (Cambridge: Cambridge University Press, 1973) 78

¹⁹ Ber. Rab. 51, 9.

VIII. Additional considerations of probable cause

Some investigators assert that the motives of the girls are best understood while viewed in the context of a re-creation story. Zvi Jagendorf fits the story of Lot and his daughters in the framework of a world calamity motif. Such stories tend to have in common the following events: 1. There is a world calamity as punishment for a sin (but) 2. Life is somehow preserved during the world calamity and the world is renewed after the catastrophe. 3. A new race arises from incest after the world calamity.²⁰ Claus Westermann views the story of Lot and his daughters from a somewhat similar perspective. He sees the story as part of the same motif as that of the flood story. Although he points out that there are a few minor differences between the two narratives,²¹ he claims that the basic theme is the same; preserving and re-creating human life after annihilation.²²

In verses 19:31-32 the elder girl comments: "Our father is old and there is not a man on earth to consort with us in the way of all the world. Come let us ply our father with wine, then lie with him, in order that we may maintain life through our father." Rashi asserts that the eldest daughter and her sister thought that all the land was destroyed like the generation of the flood²³ and decided, based on this distorted view of reality, to have intercourse with their father. The girls' motivation, says Rashi, was to have children with their father either to repopulate

²⁰ Zvi Jagendorf, "In the morning, behold, it was Leah: Genesis and the reversal of sexual knowledge," *Prooftexts* 4 (1984), 187-92.

²¹ Some of minor differences he lists are 1. The destruction of the two cities was only partial and limited, while the flood engulfed the world 2. The children of Noah had the task of repopulating the earth while Lot's daughters, saw their task as preserving the family line

²² Claus Westermann, *Genesis 12-36*, (Minneapolis: Augsburg Publishing House, 1985)

²³ This understanding, derived from Breishet Rabba 51:8, was also held by Rashbam and Ibn Ezra.

the earth, or insure the survival of their family,²⁴ before it was too late.²⁵ E.A. Speiser, like Rashi, holds that the girls thought they were the last people on earth. About the girls' situation he writes: "From the recesses of their cave somewhere up the side of a canyon formed by the earth's deepest rift, they [the daughters] could see no proof to the contrary. Their concern was the future of the race"²⁶

Radak disagrees with this explanation that the girls thought they were the last ones on earth. Instead, he argues that the girls would have known that the entire world wasn't destroyed because they would have seen Zoar still standing and "would have heard from their father that Sodom and its suburbs were destroyed on account of the evil of its residents."²⁷ This understanding makes the most sense to this investigator. Why would the girls think the entire world was destroyed when they have already seen evidence to the contrary and would have known the specific reasons why Sodom and Gomorrah were destroyed? Along this line of reasoning, wouldn't they have also been familiar with God's pledge to Noah to never destroy the entire world again?²⁸

²⁴ Rashi does not specify.

²⁵ Rashi's Commentary to Gen. 19:31: Rashi suggests that what the girls meant by "our father is old" (vs. 19:31) was "If not now, when? He may die or cease having children!" In other words, the girls were worried that if they waited too long, they could miss having an opportunity to have children with their father.

²⁶ E.A. Speiser, *The Anchor Bible Genesis*, (Garden City: Doubleday and Company, Inc., 1964) 145

²⁷ Radak Commentary to Gen. 19:31

²⁸ Dr. David Sperling, my thesis advisor, explain that Radak is putting forth his explanation with the goal of presenting the text as a unified whole, when really "there is a source critical problem. Our present account is composite. In on version there was a probably a tradition that they left Sodom without stopping at Zoar." Interview by author, 22, December 2003

The concern, (or motivation) of the daughters, says Radak,²⁹ was finding husbands. He cites Rabbi Yosef Karah's understanding of the eldest girls thinking at the time: "we won't find anyone who will want to take us as wives because they will say they are from the people of that destroyed place and the men will not be friendly to us." Since they would not be able to find husbands, and since their father is old "and there is not more hope that he will take a wife and have children and if we die, (and have no offspring) there will be no (other) male beyond our father," The girls decided under the circumstances, they had no choice but to consort with their father so that there will be another male beyond their father³⁰ and "we will have offspring."

Sforno understood the girl's dilemma somewhat similarly to Radak. Their problem, he suggests, was that they could not find *proper* husbands to marry them, since father is old "and he will not exert himself to travel on to a different land (to find suitable husbands for them)."³¹

Another clue various commentators pick up on while trying to determine the girl's motivation for their acts of incest is their professed goal to "maintain life through our father." (Gen. 19:32). Ramban, suggests that the girls decided to consort with their father with the hope of sustaining the world by giving birth to a boy and a girl. They further hoped that God would view their actions mercifully, "since the world was built on grace,"³² and it is not in vain that God saved us."³³ In

²⁹ Radak Commentary to Gen. 19:31

³⁰ Radak later explains "one who does not leave behind offspring is regarded as dead, since he did not leave behind a thing to remember his name. Therefore, the girls, suggests Radak, are motivated in part to preserve their father's memory and name through children.

³¹ Sforno Commentary to Gen. 19:31

³² The word *chesed* is used by Ramban as a pun. Since *chesed* can either mean "grace" as in Ps. 89:3

other words, they hoped their actions wouldn't receive condemnation from God, but mercy and understanding.

IX. Expertise: recognition of tools of deception and discussion about each: *Police are trained to be able to recognize certain pieces of equipment that are associated with particular crimes. This is called "Expertise." If a police officer witnesses a suspect using a certain piece of equipment for a crime or if a tool of crime is found later on the scene and identified with the suspect, this can be used as evidence against the suspect.*

Lot's Daughters used wine and darkness as tools of deception. Although there is no mention of Lot drinking wine previously, the daughters seem to know in advance that plying their father with wine would accomplish their intended goal of getting him so drunk that he did not even recognize them when they had intercourse with him. This leads this investigator to believe that either his daughters knew in advance that their father was a drunkard or they knew the effect that wine could have on a person. In terms of Lot's drinking behavior, we can conclude that he did have something of an alcohol problem if he 1. Let himself drink so much that he did not know when his elder daughter "lay down or rose" and 2. He drank again apparently *the very next night* to a point when "he *again* did not know when his other daughter lay down or rose."³⁴ While Lot could not have possibly assumed that his own daughters would attempt such a feat

("Grace will be established forever.") or "scandal" as in Lev. 20:17: ("If a man marries his sister, the daughter of either his father or his mother, so that he sees her nakedness and she sees his nakedness, it is a disgrace") The Ramban here cites Sanhedrin 58:b where there is a discussion of the use of Psalm 89:3: to show that Adam did not marry his daughter as an act of kindness/grace even though he would have been permitted so that his son, Cain could marry his sister and build up the world. Another way to read this line is "the world is built by incest." The relevance is to demonstrate that the girls, who according to Ramban were aware of the cited Talmud passage-or at least what happened to Adam's family, knew that for them it would be legitimate for their father to marry them. Since other incestuous relationships seem to have been blessed by God, perhaps this one also would be.

³³ Ramban Commentary to Gen. 19:32

³⁴ Rashi provides the following commentary: Gen. 19:33: "And when she got up": of the older one, this is written with a dot on top of it. In order to say that when she got up-HE KNEW, and nevertheless, he didn't take care the second night not to drink

even if he were drunk, the girls used Lot's tendency to get drunk to their advantage.³⁵

The girls may have known well the powerful affect of alcohol. Prior to this time, Genesis records another incident involving alcohol and sex:

Noah, the tiller of the soil, was the first to plant a vineyard. He drank of the wine and became drunk, and he uncovered himself within his tent. Ham, the father of Canaan, saw his father's nakedness and told his two brothers outside. But Shem and Japheth took a cloth, placed it against both their backs and, walking backward, they covered their father's nakedness; their faces were turned the other way, so that they did not see their father's nakedness. When Noah woke up from his wine and learned what his youngest son had done to him, he said, "Cursed be Canaan; the lowest of slaves shall he be to his brothers." (Gen. 9:20-25)

When most interpreters look at the verse 25 they assume that whatever Ham's crime was, it would have had to be severe enough to merit such a curse upon his son. One generally held assumption is that Ham sexually abused his father either through sodomy or castration. What is interesting in this case is that similar to Lot, Noah doesn't seem to know what's happening to him in his drunken stupor, he must learn what happened to him the next day. In each case both Noah and Lot become crime victims when they drink to the point where they loose their ability to know what's happening. An important difference between the two stories is that Lot, unlike Noah, is expected to sexually perform even in his drunken state. Surprisingly, he is able to do so on two occasions!

The second tool of deception that the girls made use of was the dark of night. In the dark of the night it would have been easier for Lot to mistake the

³⁵ From here the investigator had determined that the girls placed a stumbling block before the blind. His weakness was alcohol and they used it to purposely manipulate him.

girls for someone else. Later in Genesis the darkness of night was again used to a trickster's advantage:

And Laban gathered all the people of the place and made a feast. ***When evening came***, he took his daughter Leah and brought her to him; and he cohabitated with her. Laban had given his maidservant Zilpah to his daughter Leah as her maid--***When morning came, there was Leah!*** So he said to Laban, "What is this you have done to me? I was in your service for Rachel! Why did you deceive me? (Genesis 29:22-25)

In each case sexual acts were performed on the wrong person in part because the dark acted as a cloak of disguise preventing the victim from recognizing the perpetrator.

X. Circumstantial Evidence/Information: *Circumstantial Evidence is evidence that points the finger away from other suspects or an alibi. Information refers to statements by witnesses and victims.*

The biblical narrator clearly states the daughters were each present at the times of each crime. Additional evidence that points the fingers at the girls was the fact that they were so isolated that they may have thought they were the last people on earth. With this in mind, it seems unlikely that anyone else could have been involved in the crime.

XI. FLIGHT: *In evidence law, attempting to flee, evade or elude, provides a presumption of guilt.*

Neither daughter attempted to flee the scene of the crime following each of the two alleged offences. On the contrary, each daughter proudly owned up to her actions by choosing a name for her child which served as a reminder of her incestuous union: The elder daughter named her son "Moab" as though me-ab

"from my father," and the younger daughter named her son Ben-ammi, as though "son of my (paternal) kindred." Gerhard Von Rad suggests that one reading of the text could even be understood as a Moabite glorification of the incestuous union which was only later negatively understood by the Israelites:

The fact that Lot's daughters are in no ways ashamed of the origin of their children, but rather proclaim it openly and fix it forever in the son's names, leads to this interpretation. The sons who are born to such a bed, however, "proudly proclaim the heroism of their mother and the purity of their blood: they were not begotten from foreign seed, but from father and daughter, purest thoroughbreds."³⁶ ³⁷

XII. Ruling/Judgment

Given the various perspectives on the girls' decision to sleep with their father, how was this episode judged by the talmudic and medieval commentators, by modern scholars, by the Bible, and by God?

In general, the rabbis do not place much blame on Lot's daughters for their actions. Instead, they blame Lot. Their interpretations were each, in part influenced by the Talmud's understanding of the incident which is sympathetic to the girls' situation. According to Nazir, 23a, girl's intention was to do a *Mitzvah*. Although the girl's actions were improper, they were credited while Lot was condemned. The reason being, the girls intended to do a mitzvah, while Lot intended to commit a sin.³⁸ Lot, the Talmud states, was steeped in immorality and had a propensity to licentiousness. Although the Torah does not state outright that Lot was immoral, the rabbis of the Talmud find clues in the text that

³⁶ Gerhard Von Rad, *Genesis, A Commentary*, (Philadelphia: The Westminster Press, 1973) 224

³⁷ This interpretation is later denounced by Von Rad who writes: Without a doubt the narrative now contains indirectly a severe judgment on the incest in Lot's house, and Lot's life becomes inwardly and outwardly bankrupt. *Ibid.*, 224

³⁸ The Talmud (Nazir 23a) cites the verse? The righteous shall walk in them, whereas, he (Lot) who intended to (commit) a sin, (exemplifies the verse) the transgressor shall stumble in them.

hint at Lot's immorality and propensity to licentiousness. For example, the rabbis looked at the verse " So Lot raised his eyes and so the entire plain of Jordan, that it was well watered everywhere" in light of Judges 14:3 and Genesis 34:2 which each provide examples of immoral gazing motivated by lust.³⁹ The Talmud further finds Lot innocent for sleeping with his first daughter, but guilty of drinking again the second night after knowing what he did the night before.

While evaluating the outcome of the incestuous union, the rabbis also try to make sense of the story in light of the latter legislation of Deuteronomy 23:4 which forbids a Jewish born woman, from marrying an Ammonite or Moabite convert. This law, the Talmud suggests is to be an everlasting reminder of Lot's sin. (Nazir 23B) The Talmud further suggests, that because the elder daughter named her son Moab, which recalls her union with her father, the Israelites were prevented from battling with the Moabites, but were permitted to harass them. However since the younger daughter was more modest and did not choose a name recalling the union, the Israelites were not allowed to battle or to harass the Ammonites. Finally, the Talmud sees the children as a reward to the daughters for acting out of pure motives and performing a mitzvah. Therefore, since the elder daughter took the initiative and first slept with her father, her line, the line of the Moabite people, is rewarded with kingships before the Ammonite progeny are given the same reward.

³⁹ Judges 14:2 reads "Then his father and his mother said to him, 'Is there no woman among the daughters of your brothers, or among all my people, that you go to take a wife of the uncircumcised Philistines?'" And Samson said to his father, "Get [her] for me, for he is fine in my eyes." Just as Samson followed his eyes lustfully, Lot is blamed for doing the same in other situations, such as the choosing the choice land, and his consorting with his daughters. Similarly, Genesis 34:3: "And Shechem the son of Chamor, the Chivite, prince of the country, saw her, and took her, and lay with her, and abused her" is another example where seeing is linked to immoral gazing.

Rashi, while also using the explanation found in Nazir 23a, blames the elder daughter for the sleeping with her father, but blames Lot for drinking the next night and sleeping with his younger daughter.⁴⁰ As mentioned in an earlier section, Rashi implies that Lot must have always desired his daughters. Still at the same time, by suggesting that it was God who provided the wine for the daughters,⁴¹ Rashi further hints that God supported the entire endeavor. Rashi also concludes that the daughters' choices of names for their children were brazen and flaunt the fact that they were from their father.

Radak⁴² asserts that the girls knew they were doing something wrong that their father would not approve. This explains why they got him drunk for "if he knew, he wouldn't sleep with his daughters." He calls what they did "an abomination that even gentiles distance themselves from." The reason this text appears in the Torah in the first place, says Radak, is to inform the Israelites about the ancestry of Moab and Ammon so that the Israelites would realize that God gave them their land out of love for Lot's uncle (Abraham) and to prevent the Israelites from harassing them and provoking them into war. Like Rashi, Radak places some of the blame on Lot himself. Lot, says Radak, should not have gotten so drunk the first night that he didn't even notice his elder daughter getting up and he certainly should not have drank the second night.

⁴⁰ Rashi comes to this conclusion while interpreting an extraneous cantillation dot that appears on top of the word B'cuma. In the case of the older daughter, Lot did not know when she lay down but (as the dot indicates) Lot did know when she got up. The inserted dot puts a comma between *secvah* (she laid down) and *uvkumah*, (she got up) creating the question: what happens between the lines? The answer is that HE KNEW! Lot was innocent the first time he laid with his older daughter but guilty when he later knowingly put himself in an uncompromising position by drinking the second night.

⁴¹ Rashi Commentary to Gen. 19:33

⁴² Radak Commentary to Gen. 19:31-35

Ramban⁴³ suggests that the girls decided to consort with their father with the knowledge that what they were about to do was permitted, but repulsive, but in their situation, necessary. In light of the situation, the girls acted modestly, not insisting to their father that he marry them.

Sforno's evaluation of the girls' behavior, like the Talmud, takes into consideration the choices of names the daughters pick for their sons. The elder daughter, says Sforno, named her child Ben Ami (son on my people) to indicate that she had not conceived from one that was not unworthy/improper.⁴⁴ Because the motivations of these women were acceptable, their offspring became two nations who were partially Abraham's heirs.

Most Modern biblical commentaries that this investigator read were also sympathetic to Lot's daughters' situation. Speiser, for example, considers the girls as being more praiseworthy than blameworthy because their intentions were to preserve the future of the race. He writes that under the circumstances the girls were "resolute enough to adopt the only desperate measure that appeared to be available."⁴⁵ Likewise, Claus Westermann also saw the girls as being motivated by true concerns about posterity under desperate circumstances and therefore believes that they "should not be morally judged."⁴⁶ He sees the story of Lot and his daughters in the context of the other patriarchal stories where there is an act of rebellion by a woman against prevailing standards of morality in order to enable the woman to have a child and secure her future. As

⁴³ Ramban Commentary to Gen. 19:32

⁴⁴ Sforno Commentary to Gen. 19:37

⁴⁵ E.A. Speiser, *The Anchor Bible Genesis*, (Garden City: Doubleday and Company, Inc., 1964) 145

⁴⁶ Claus Westermann, *Genesis 12-36*, (Minneapolis: Augsburg Publishing House, 1985) 293

Westermann points out: "Gen. 16, 19, 27 indicate that by way of exception and in cases of extreme necessity, the woman could take the initiative. In any case woman had a greater importance in patriarchal times than is generally acknowledged."⁴⁷

For a number of reasons, it is difficult to assess the Biblical narrator's judgment of the daughter's actions. Whether their actions are condoned, admonished, rewarded, or punished is never directly stated in 19:31-38. Gerhard Von Rad notes: "no judgment is expressed concerning the happenings. The reflective reader must make his own judgment."⁴⁸ Davidson similarly writes: "there is no necessary hint of moral censure implied on Lot's daughters for plying their father with wine till each in turn has an incestuous relationship with him."⁴⁹ Indeed, 19:31-38 does seem laid out in a matter-of-fact, neutral manner which seems non-judgmental. Nowhere do we read that the girls or their actions "are evil." Nowhere is there a follow-up story where the girls get their "just desserts" for their seduction of their father. On the contrary, the girls' story ends with what seems to be a reward for their actions.

What makes the question of the daughters' guilt in the matter difficult is the Bible is silent on the question. What seems to be at stake is not the daughters' guilt but their fathers'. Tal Ilan and others take interest in the fact that Lot's daughters are not given individual names but are identified as *his daughters*. Ilan believes that whenever a woman is identified in such a manner (as someone's wife, daughter or mother) this implies that "her sole significance

⁴⁷ Ibid., 290

⁴⁸ Gerhard Von Rad, *Genesis, A Commentary*, (Philadelphia: The Westminster Press, 1973) 223

⁴⁹ Robert Davidson, *Genesis 12-50* (Cambridge: Cambridge University Press, 1973) 78

lies in her connection to a male relative."⁵⁰ If in fact, the girls' sole significance is their connection to their father, then Lot's daughters are simply to be considered as *agents* who act upon the drama of Lot's life. With this in mind, it would make sense that the Biblical narrative seems less concerned about the results of their actions than those of the main male character, Lot. It is a story that chronicles Lot's appropriate ending, not the daughters' who are just players in Lot's drama. Had they been more important, they would have been named, and their stories would have continued.

Of course not every scholar sees the story in this light. The Etz Hayim commentary, for example, interprets the fact that the girls are not individually named not as a way to deem them as insignificant, but as a way to judge them. Their lack of personal identities suggests the commentary, implies censure.⁵¹ Similarly the fact that the girls' story does not continue after the birth of their sons, could also be seen as the Biblical narrator's punishment for their crimes.

Another consideration is whether or not the story is meant to be understood as a means of mocking or praising the Moabites and Ammonites, who were the results of the daughter's actions. If the story was written as a means to poke fun at and to disgrace Israel's neighbors while highlighting Israel's superior moral values (as personified by Abraham) then Lot and his daughter's are indeed meant to be judged negatively. Calum M. Carmichael asserts that

⁵⁰ Tal Ilan, *Mine and Yours are Hers, Retrieving Women's History from Rabbinic Literature*, (Leiden: Brill 1997) 279

⁵¹ David L. Lieber, ed., *Etz Hayim Torah and Commentary, Genesis Commentary*, by Nahum M. Sarna (New York: The Rabbinical Assembly The United Synagogue of Conservative Judaism 2001) 109

the origin story of the Moabites and Ammonites helps the biblical reader to understand later unfavorable legislation regarding to the two peoples:

After double seduction of father by daughters bastard children come out..."Hence the Deuteronomist, after his law that prohibits a man from taking his father's wife and one that prohibits a eunuch entrance into Israel's assembly; sets down the law: 'No bastard shall enter the assembly of the Lord; even to the tenth generation none of his descendents shall enter the assembly of the Lord.'the very next law also excludes for all time ('even to the tenth generation) the Ammonites and the Moabites from Israel's assembly. The reasons for their exclusion are given in terms of their harsh treatment of the Israelites at the time of the exodus.....The can infer the interesting belief that the quality of a later generation is judged by that of the first. The Ammonites and Moabites had nothing going for them from the very beginning; no wonder that they behaved badly at the exodus and one can expect nothing from them in the future.⁵²

If on the other hand, one either sees the story as a chronicle of the origin of two peoples or praises of the people, then Lot and his daughters are not meant to be judged negatively. Although the story can easily be understood as one of abomination because it involves incest, one must also take into consideration other cases in the Bible where righteous children were created through incestuous unions. The most famous example being Isaac who was conceived by Abraham and his half-sister, Sarah

A final judgment over the daughter's behavior to consider is that of God. Although nowhere in 19:31-38 is there any direct evidence of divine intervention the Bible seems to suggest that the events are in part guided by the Divine Hand. Of course, if God never destroyed Sodom, Lot would have never ended up in the cave with his daughters. As mentioned earlier, Rashi sees God's role as providing the wine for the girls. God, who in other Genesis stories is considered

⁵² Calum M. Carmichael, *Women, Law, and the Genesis Traditions*, (New York: Columbia University Press, 1979) 54

a "womb-opener," may have also been instrumental in enabling the daughters to get pregnant after only one night of sex each with their drunken father.⁵³ In addition to helping to make the events come about, it also appears that God blesses the daughter's actions. Not only do both children grow up to be founders of entire nations, each with their own lands, along Moab's line will come King David and later, the messiah.⁵⁴

XIII. Court Reporter's Notes

Lot's two daughters were dissatisfied of their father's treatment of them to say the least. They expected more. They *deserved* more from their father. He was a rotten father and they were determined to get what was owed to them by hook or crook. This sense of anger and frustration developed over the course of a number of events. When Lot offered them to the angry crowd to be sexually abused, they felt as though the earth was pulled from under their feet. They had no say in the matter. When Lot said: "Do with them as you please." (Gen. 19:8) his actions proved how little he valued them. Their very own father cared more about two absolute *strangers* than his own daughters. When the angels, who had saved their lives warned Lot to take his wife and daughters and evacuate the city lest he be swept away (Gen 19:15) Lot, again demonstrated his lack of concern for his daughters by delaying. (Gen. 19:16) In fact he may have never left had not the angels again saved him and his family by grabbing them by

⁵³ Gen. 17:16, 21:17, 25:21, 30:22

⁵⁴ Ruth, was a Moabite woman, (Ruth 1:4) who married Boaz and conceived a child with him, (Ruth 4:13). Ruth 4:16 states: "They named him [the child of the union] Obed; he was the father of Jesse, father of David."

hands and leading them out. (Gen. 19:16) Instead of staying in Zoar where his daughters could have a chance at having a normal life, potentially meeting new husbands and having children, Lot brings his neglected daughters to a cave. What did the daughters want? They wanted Lot to be the father he never was, to take interest and responsibility over them. The most important thing Lot could have done for his daughters was find for them husbands so that they could have sex (as did all other women in the world) and eventually have what they (like so many other biblical women) ultimately wanted; children. Having a baby would mean more than maintaining life for the family or for all of humankind. For Lot's daughters having a baby meant maintaining their *own lives* since, for them, a life without hope of children would not be worth living. One day Lot's daughters simply refused to wait around for their father to do the right thing and they took matters into their own hands: If their father wouldn't give them husbands from which to have children, *he* would have to provide children for them on his own. They manipulated the situation so that he wouldn't recognize them for who they really were and with the aid of wine, rendered their father who always controlled them, helpless. In a manner of speaking they date-raped their father drugging him to a point that he was unable to say no to their advances. They wanted his love and attention but he refused to give. Now they were stealing it from him. They wanted him to provide husbands for them so they could have children, now they were stealing his seed.

Their plan worked because they were finally able to have control over their own destinies and they were finally able to get what they wanted. Verse 20:36

reads "Thus the two daughters of Lot came to be with child by their father." The text does not state that Lot came to be with children. The children belonged to the daughters and they even took upon themselves the power to name their children. Each child subsequently went on to become his own nation. Whether or not the daughters ever felt that they had won their father's love and attention, however, is open to interpretation.

Case #2:

"I AM ESAU, YOUR FIRST-BORN" (WINK, WINK!)

Formal Charging

I. Defendant's proper name: Jacob son of Isaac (alias-Israel)

II. Essential facts of the alleged offence:

Jacob, with the urging and assistance and of his mother Rebecca, disguised himself as his older brother Esau and tricked his father, Isaac, into giving him the death-bed blessing that was intended for his brother, Esau.

Below is a copy of the Original Officer's report on the matter:

26:34. When Esau was forty years old, he took to wife Judith daughter of Beerî the Hittite, and Basemath daughter of Elon the Hittite; **35.** and they were a source of bitterness to Isaac and Rebekah.

27:1 When Isaac was old and his eyes were too dim to see, he called his older son Esau and said to him, "My son." He answered, "Here I am." **2.** And he said, "I am old now, and I do not know how soon I may die. **3.** Take your gear, your quiver and bow, and go out into the open and hunt me some game. **4.** Then prepare a dish for me such as I like, and bring it to me to eat, so that I may give you my innermost blessing before I die."

5. Rebekah had been listening as Isaac spoke to his son Esau. When Esau had gone out into the open to hunt game to bring home, **6.** Rebekah said to her son Jacob, "I overheard your father speaking to your brother Esau, saying, **8.** 'Bring me some game and prepare a dish for me to eat, that I may bless you, with the Lord's approval, before I die.' **8.** NOW, my son, listen carefully as I instruct you. **9.** Go to the flock and fetch me two choice kids, and I will make of them a dish for your father, such as he likes. **10.** Then take it to your father to eat, in order that he may bless you before he dies." **11.** Jacob answered his mother Rebekah, "But my brother Esau is a hairy man and I am smooth-skinned. **12.** "If my father touches me, I shall appear to him as a trickster and bring upon myself

a curse, not a blessing." 13. "But his mother said to him, "Your curse, my son, be upon me! Just do as I say and go fetch them for me."

14. He got them and brought them to his mother, and his mother prepared a dish such as his father liked. 15. Rebekah then took the best clothes of her older son Esau, which were there in the house, and had her younger son Jacob put them on; 16. and she covered his hands and the hairless part of his neck with the skins of the kids. 17. Then she put in the hands of her son Jacob the dish and the bread that she had prepared.

18. He went to his father and said, "Father." And he said, "Yes, which of my sons are you?" 19. Jacob said to his father, "I am Esau, your first-born; I have done as you told me. Pray sit up and eat of my game, that you may give me your innermost blessing." 20. Isaac said to his son, "How did you succeed so quickly, my son?" And he said, "Because the Lord your God granted me good fortune." 21. Isaac said to Jacob, "Come closer that I may feel you, my son—whether you are really my son Esau or not." 22. So Jacob drew close to his father Isaac, who felt him and wondered. "The voice is the voice of Jacob, yet the hands are the hands of Esau." 23. He did not recognize him, because his hands were hairy like those of his brother Esau; and so he blessed him.

24. He asked, "Are you really my son Esau?" And when he said, "I am," 25. he said, "Serve me and let me eat of my son's game that I may give you my innermost blessing." So he served him and he ate, and he brought him wine and he drank. 26. Then his father Isaac said to him, "Come close and kiss me, my son"; 27. and he went up and kissed him. And he smelled his clothes and he blessed him, saying, "Ah, the smell of my son is like the smell of the fields that the Lord has blessed. 28. "May God give you Of the dew of heaven and the fat of the earth, Abundance of new grain and wine. 29. Let peoples serve you, nations bow to you; Be master over your brothers, And let your mother's sons bow to you. Cursed be they who curse you, blessed be they who bless you."

30. No sooner had Jacob left the presence of his father Isaac—after Isaac had finished blessing Jacob—than his Esau came back from his hunt. 31. He too prepared a dish and brought it to his father. And he said to his father, father sit up and eat of his son's game, so that you may give me your innermost blessing." 32. His father Isaac said to him, "Who are you?" And he said, "I am your son, Esau your first-born!" 33. Isaac was seized with very violent trembling. "Who was it then," he demanded, "that hunted brought it to me? Moreover, I ate of it before you came and I blessed him; now he must remain blessed!" 34. When Esau heard his father's words, he burst into wild sobbing, and said to his father, "Bless me too, 35. But he answered, "Your brother came with guile and took away your blessing." 36. [Esau] said, "Was he, the named Jacob that he might supplant me' these two times? First he took away my birthright and now he has taken away my blessing!" And he added, "Have you not ed a blessing for me?" 37. Isaac answered, saying to Esau "But I have made him master over you: I have given him all his brothers for servants, and sustained him with grain and wine. 38. What, then, can I still do for you, my son?" 38. Esau said to his father, "Have you but one blessing, Bless me too. Father!" And Esau wept aloud. 39. And his father Isaac answered, saying to him, ¹ "See, your abode shall "-enjoy the fat of

the earth And the dew of heaven above. 40. Yet by your sword you shall live, And you shall serve your brother; but when you grow restive, You shall break his yoke from your neck."

41. Now Esau harbored a grudge against Jacob because of the blessing which his father had given him, and Esau to himself, "Let but the mourning period of my father come, and I will kill my brother Jacob." 42. When the words of her older son Esau were reported to Rebekah, she sent for her younger son Jacob and said to him, "Your brother is consoling himself by planning to kill you. 43. Now, my son, listen to me. Flee at once to Haran, to my brother Laban. 44. Stay with him a while, until your brother's fury subsides—45. until your brother's anger against you subsides—and he forgets what you have done to him. Then I will fetch you from there. Let me not lose you both in one day!" 46. Rebekah said to Isaac, "I am disgusted with my life because of the Hittite women. If Jacob marries a Hittite woman like these, from among the native women, what good will life be to me?"

28:1 So Isaac sent for Jacob and blessed him. He instructed him, saying, "You shall not take a wife from among the Canaanite women. 2. Up, go to Paddan-aram, to the house of Bethuel, your mother's father, and take a wife there from among the daughters of Laban, your mother's brother, 3. May El Shaddai bless you, make you fertile and numerous, so that you become an assembly of peoples, 4. "May He grant the blessing of Abraham to you and your offspring, that you may possess the land where you are sojourning, which God assigned to Abraham."

5. Then Isaac sent Jacob off, and he went to Paddan-aram, to Laban the son of Bethuel the Aramean, the brother of Rebekah, mother of Jacob and Esau. you shall serve your brother; 6. When Esau saw that Isaac had blessed Jacob and sent him off to Paddan-aram to take a wife from there, charging him, as he blessed him, "You shall not take a wife from among the Canaanite women," 7. and that Jacob had obeyed his father and mother and gone to Paddan-aram, 8. Esau realized that the Canaanite women displeased his father Isaac. 9. So Esau went to Ishmael and took to wife, in addition to the wives he had, Mahalath the daughter of Ishmael son of Abraham, sister of Nebaioth.

VI. Name and degree of offence alleged:

- **Identity Fraud**⁵⁵ culminating in the theft ⁵⁶of Isaac's death-bed blessing,⁵⁷ which was intended for Esau.
- **Disrespect of Father:** Jacob lied to his father claiming that he was Esau, taking advantage of his father's blindness.

VII. Names of all witnesses to be called on at trial: Isaac, Rebekah, Esau.

V. Time and place of offence charged stated as specifically as possible:

Although the text does not specify the approximate time of day the alleged offence took place, various clues seem to indicate it took place sometime in the afternoon.⁵⁸ It appears from Gen. 26:33 that Isaac and his family lived near the well Isaac named Shibah, which, the text explains, was later known as Beer-sheba. Gen. 28:11 confirms this suggestion: "Jacob left Beer-Sheba, and set out for Haran."

⁵⁵ Jacob pretended to be someone else, (his brother Esau) in order to get what he wanted.

⁵⁶ Since the blessing, intended for Esau, could not be rescinded after being given to the wrong child, Jacob seemingly *stole* the blessing intended for his brother by putting himself in the position where the blessing was bestowed upon him, and not Esau.

⁵⁷ **Death Bed Blessing:** In the case of Jacob's blessing, the value of it was that it comprised fertility, national and familial dominance and especially the Yahweh heritage. The power of the blessing, according to Sarna, was that the blessing would seal the destiny of its recipient. Although the blessing as described by Isaac to Esau, was to come from Isaac and pass his "innermost blessing," the same blessing as understood by Rebekah would be accompanied with Divine approval. Once given, the blessing could not be rescinded, even though it had been intended for another. Although the blessing was traditionally reserved only for the eldest child, on occasion children other than the firstborn also received blessings from their father.

⁵⁸ In Gen. 27:3, Isaac tells Esau hunt and prepare a meal for him. Since it seems likely that Isaac would have given Esau sufficient time before dark to make his catch and to prepare the meal, it would seem therefore likely that Isaac requested a dinner and made his request in the early afternoon. The efforts that Jacob and Rebekah put forth to prepare the meal for Isaac, although easier than Esau's task, would have also taken at least a few hours. Jacob greets his father and time passes as Isaac eats and drinks. Esau probably comes in at the time Isaac was accustomed to eating dinner. Isaac and Esau speak, time passes and the report of their discussion reaches Rebekah, who summons Jacob and warns him to flee. Time again passes when Isaac blesses Jacob once again and sends him out. There is no indication which time of year this event took place, but it would seem that Jacob would have had at least a few hours of light left in the day to get far enough away from Esau to feel safe. Jacob stopped for the night after the sun sets as stated in 28:11.

IX. Statutes alleged to have been violated and the section of the statutes which fix the penalty or punishment.

- A. Exodus 20:12: "Honor your father and your mother"
- B. Lev. 19:14, "You shall not insult the deaf, or place a stumbling block before the blind" Dt. 27:18 " Cursed be he who misdirects a blind person on his way..."

VII. Relevant Past criminal Record (Relevant Past history)

There are a number of possible motives for Jacob's theft of his father's death-bed blessing. The possible motives are based on Jacob's past behaviors as recorded in the Bible. One of the leading theories is that Jacob stole the blessing in order to gain superiority over his brother and rival, Esau. Perhaps, suggest some textual detectives, what Jacob wanted most at the time was to hear from his father the very words Isaac intended to bless Esau with: "*Be master over your brothers.*" There is substantial relevant history to support this claim. According to the Bible, Jacob and Esau struggled against one another for dominance their entire lives; with their adversarial relationship beginning soon after *conception*. Genesis 25:22 describes Rebekah's difficult pregnancy; "the children *struggled* in her womb." Nahum Sarna points out that the Hebrew verb (*va-yitrotsetsu*) for "struggle" literally means "they crushed, thrust at one another and which foretokens the future hostile relationship between the children who are about to be born."⁵⁹ What were the two baby brothers fighting over? Which one of the two would come out of the womb first and receive the title of "first born"

⁵⁹ Nahum M. Sarna, *The JPS Commentary, Genesis* (Philadelphia: The Jewish Publication Society, 1989), 179

and therefore obtain the birthright.⁶⁰ Whoever had the birthright would receive, after the death of their father, the honored position as the head of the family (Gen. 27:29; 49:8) and a double and preferential share of the inheritance (Dt. 21:17).⁶¹ In addition, modern commentator Gunther Plaut notes that the child with the birthright "had a special relation not only to his parents and siblings, but also to God."⁶²

When Jacob emerged from the womb second, after Esau, "he was holding on to the heel of Esau; so they named him Jacob." (Gen. 25:26). Presumably, Nahum Sarna⁶³, points out, "Jacob was attempting to forestall the prior birth of his twin."⁶⁴ Rashi goes a step further, suggesting that of the two boys, it was Jacob who was *conceived* first, and he was therefore simply fighting for what was rightfully his.⁶⁵ This notion, of Jacob trying to take back that which he considered rightfully his, would become one of the driving forces of Jacob's life. The later theft of his brother's blessing would be no exception to this rule.

Jacob's struggle to obtain superiority over his brother continued as he grew from boyhood to adulthood. Although Esau obtained the birthright legally, by being born first, Jacob wanted the birthright and knew that it could be bought

⁶⁰ S'forno claims the cause of the struggling was that the children were destined to be two nations with opposing ideas of religion and nationalism. (S'forno commentary on 25:23)

⁶¹ Ibn Ezra also explains that the birthright refers to the double share of the father's wealth which belongs to the first born. He also mentions that some think that the younger must rise before and serve the older son as he would his father.

⁶² Gunther Plaut, ed., *The Torah, A Modern Commentary*, (New York: Union of American Hebrew Congregations, 1981) 175

⁶³ Nahum M. Sarna, *The JPS Commentary, Genesis* (Philadelphia: The Jewish Publication Society, 1989), 180. Sarna also points his readers to Hosea 12:4: "In the womb he tried to supplant his brother."

⁶⁴ Claus Westermann notes that the birth of twins would indeed create a special situation begging the question : which of the two is worthy of the birthright? Could not the one born at least on the same day claim the same right? (Claus Westermann, *Genesis 12-36*, (Minneapolis: Augsburg Publishing House, 1985) 413-414)

⁶⁵ Dr. David Sperling points out that Rashi uses the story of Jacob and Esau as a polemic against Christianity. The rabbis see Esau as a code word for Christianity mock and vilify his character.

and sold between brothers. When an opportunity to obtain Esau's birthright was presented to Jacob, he took full advantage of the situation:

Once when Jacob was cooking a stew, Esau came in from the open, famished. And Esau said to Jacob, "Give me some of that red stuff to gulp down, for I am famished"-which is why he was named Edom. Jacob said, "First sell me your birthright." And Esau said, "I am at the point of death, so what use is my birthright to me?" But Jacob said, "Swear to me first." So he swore to him, and sold his birthright to Jacob. Jacob then gave Esau bread and lentil stew; he ate and drank, and he rose and went away. Thus did Esau spurn the birthright. (Genesis 25:29-34)

What are some possible reasons why he cheated his brother out of the birthright? As was already mentioned, Jacob was locked in a struggle for dominance with his brother and believed that having the birthright would likely elevate his sibling status and ensure his superiority over his brother. With this in mind, Jacob was likely to have been interested in the rights, responsibilities and benefits that would come with the birthright such as being the head of the household, and getting a double portion or larger share of his father's inheritance. Jacob may have also thought that if he possessed the birthright, Esau would have to serve him, as was the custom of other Near Eastern societies at the time.

Jacob may have also felt, as Rashi suggests, that the birthright was rightfully *his*, stolen from him at birth. By trading lentil soup for the birthright, he was simply taking back that which was due to him.⁶⁶ It may also be possible that Jacob felt that although the birthright did not belong to him legally, he was more

⁶⁶ Gunther Plaut notes: "Jacob's acquisition of the birthright is given a legal basis. This was hermeneutically derived from Ka-yom in Gen. 25:33. The lentil stew was considered a token of the sale, not the true price." (Gunther Plaut, ed., *The Torah, A Modern Commentary*, (New York: Union of American Hebrew Congregations, 1981) 175)

worthy of it than Esau since he, unlike Esau, valued it more. After all, Esau spurned the birthright (25:34) seemingly having little concern about its loss. Ibn Ezra suggests Esau had no interest in the birthright because Isaac at the time was poor.⁶⁷ Other commentators suggest that Esau, unlike Jacob, had no interest in carrying on Abraham's legacy. While Esau hunted, Jacob studied Jewish lore in his tents. In fact what Jacob wanted most, assert some interpreters, was to be one to maintain God's covenant after the death of Isaac. Obtaining the birthright was one more step toward achieving that goal.

Although they were twins, Jacob and Esau couldn't have been any more different from one another. Physically, Esau was red and hairy (Genesis 25:25) and Jacob was smooth skinned (Gen. 27:11). They had divergent personalities, and they chose contradictory occupations: "Esau became a skilled hunter, a man of the outdoors; but Jacob was a mild⁶⁸ man who stayed in camp." (Genesis 25:28) Esau, the hunter, stalked game with his hunting gear (27:3) and Jacob, the shepherd, tended the flock (27:9)⁶⁹. Differences such as these and others served to exacerbate the already tense relationship between Jacob and Esau.

While the verses 25:25,28 and 27:9,11, are somewhat informative in determining who each of these characters were as people, we only get the full picture of these brothers' personalities when we consider these verses along with those of the sale of the birthright. In the birthright story, Esau acted like a live-in-

⁶⁷ The Ramban disagreed strongly with this conclusion and provides a lengthy explanation to prove Ibn Ezra wrong.

⁶⁸ The Hebrew word used to describe Jacob is *tam*. Speiser explains *tam* as "of simple tastes, quiet retiring" (E.A. Speiser, *The Anchor Bible Genesis*, (Garden City: Doubleday and Company, Inc., 1964) 195)

⁶⁹ Genesis 25:25, Gen. 27:11 (Genesis 25:28) (27:3) 27:9)

the-moment brute; an uncouth glutton who greedily gulped-down the soup instead of eating it. He lacked manners and judgment and was impulsive with his decisions. In a flash he stupidly gave away his birthright and later spurned it. In this portrayal of Esau, he only had himself to blame for practically giving away something so valuable.⁷⁰

Jacob in comparison was refined, culturally advanced and clever. Having learned that he could not physically overpower his brother by forcing him to give him what he wanted, he outwitted him. The Bible describes Jacob as *tam*, which generally refers to a person who is morally innocent and who has integrity, however in Jacob's case, as Donald B. Sharp asserts, *tam* must have meant something different:

...in light of Jacob's buying of the birthright and the possible scheme of deception which may have taken place, this meaning of *tam* in the moral sense of one who is blameless, as was the case of Job, would be hardly applicable to Jacob. Here, apparently, the meaning of the word would apply to his manner of life.⁷¹

According to the Speiser, Jacob's manner of life was one of simple tastes. Jacob was quiet and retiring. He spent his time not terrorizing the animals of the fields, but sitting in tents. He was orderly and settled as opposed to his undisciplined and wild brother.⁷² As mentioned earlier, the Midrash understood Jacob as a pious, learned Jew who divided his time between attending Yeshiva

⁷⁰ Ramban saw Esau as a fool for selling his honorable birthright for a small dish without thinking about the possible future consequences: Ramban writes: "Therefore was his name called Edom since they mocked him for having sold an honorable birthright for a small dish- *for a drunkard and the glutton shall come to poverty (Proverbs 23:21)*. This then is what Scripture says: And he did eat and drink, and he rose and went, and he despised, for, after having eaten and drunk, he returned to his hunt in the field which was the cause of the despising of the birthright. *For there is no desire in fools expect to eat and drink and to fulfill their momentary desire, not giving a care for tomorrow.*

⁷¹ Donald B. Sharp, "In Defense of Rebecca?" *Biblical Theology Bulletin* 10 (1980): 164-168

⁷² E.A. Speiser, *The Anchor Bible Genesis*, (Garden City: Doubleday and Company, Inc., 1964) 195

and studying in his tent. Sarna asserts that Jacob did not carry weapons⁷³ as did Esau. Avivah Zornberg claims that Jacob was a man who chose the opposite role of his brother. "Instead of being a man of physical action he was a man of the mind: 'the passive limb-less scholar, absorbed in the worlds of his father and grandfather. If Esau was a hairy man, then he must be a smooth, sincere man, capable of periodic at-one-ment, unmenaced by ambiguity.'⁷⁴ This portrayal of Jacob, however does not seem to describe the Jacob who acts in the story of the sale of the birthright. In this story, Jacob was much more assertive. He knew exactly what he wanted and was disciplined enough, clever enough, and calculating enough to get it.

Another factor that fueled the rivalry between the brothers, suggests modern commentator Harvey Fields, was the boys' competition for parental love. He writes: "The two brothers are portrayed as jealous of each other and in constant competition for their parents' interest and affection."⁷⁵ Instead of helping matters, Isaac and Rebekah seemingly contributed to the brotherly struggle through their blatant favoritism of one child over the other.

Genesis 25:28 reads: "Isaac favored Esau because he had a taste for game; but Rebekah favored Jacob, (Genesis 25:28.) How did the parents' behaviors contribute to the events that transpired in relation to the blessing drama?

⁷³ Nahum M. Sarna, *The JPS Commentary, Genesis* (Philadelphia: The Jewish Publication Society, 1989), 181

⁷⁴ Zornberg notice how Esau is clearly visible using his limbs, while Jacob sits in his tent essentially limb-less. In other words, Esau is a physical action person while Jacob is a thought person. Avivah Gottlieb Zornberg, *Genesis, The Beginning of Desire*, (Philadelphia: The Jewish Publication Society, 1995) 166

⁷⁵ Fields, Harvey J. *A Torah Commentary For Our Times, Volume One: Genesis*, (New York, UAHC Press, 1990) 64

When Isaac became old he expressed his wish to give his death-bed blessing to his eldest and favored son, Esau.⁷⁶ Rebekah, on the other hand, had other plans. She wanted the blessing and all of its benefits to go to Jacob. One could say that Rebekah favored Jacob even before he was born.

In the months preceding the birth of the twins Rebekah suffered through an extremely uncomfortable pregnancy and went to inquire to God as to the reason. God responded to her with an oracle:

Two nations are in your womb,
Two separate peoples shall issue from your body;
One people shall be mightier than the other,
And the older shall serve the younger. (Genesis 25:23)

It was from this oracle that Rebekah learned that she was carrying twins, each child being the future progenitor of a people. She also learned from this oracle that the movements in her womb were a result of a sibling rivalry for priority of birth, and that while the younger son would be born second, the elder would serve him. Tikva Frymer-Kensky suggests that Rebekah would have known by hearing the oracle from God that she was supposed to act upon it:

Oracles are expected to lead to action. If the oracle predicts evil to come, the petitioner is expected to try to avert it. Some Mesopotamian collections of oracles even contain the "solution," the ritual to perform to avert the doom. ...In the same way, a petitioner will try to ensure that nothing will prevent the predicted good fortune. Rivka takes a prominent role in fulfilling her birth oracle, acting to guarantee that her younger son will achieve his destiny as the preeminent heir. That moment comes as it is time to transfer the family heritage from Isaac to the next generation.⁷⁷

⁷⁶ In addition to loving Esau for the game that he put in his mouth, Isaac, according to the Midrash loved Esau because of his strength. The Radak on the other hand, believed that Isaac favored Esau for the opposite reason; he saw Esau as weak and of the two children the one who most needed his support. Isaac hoped the extra attention paid to Esau would overcome Esau's wild and undisciplined nature

⁷⁷ Tikva Frymer-Kensky, *Reading the Woman of the Bible*, (New York: Schocken Books, 2002), 16

With this in mind, it makes sense that Rebekah's favoritism toward Jacob was heavily influenced by this Divine prediction which would subsequently inspire her to intervene on Jacob's behalf, all the while knowing that helping Jacob to get the blessing meant helping to bring about God's will. In a manner of speaking she even reveals this goal. After overhearing Isaac's request to Esau, Rebekah relays back to Jacob the essentials of Isaac and Esau's conversation, noting that Esau had gone out to hunt game. The New Interpreters Bible notes that Rebekah adds the words "before Yahweh" (vs 7). This interpretation "sets Isaac over against God's speech (25:23) and establishes Rebekah's theological motivation; she responds to the word of God, which Esau's behaviors have reinforced."⁷⁸ At the top of Rebekah's grievance list against Esau was the fact that he married two Hittite women (Gen. 26:34). Esau's decision to marry these women was a source of bitterness to Isaac and Rebekah and may have solidified Rebekah's resolve to trick Isaac into blessing Jacob instead of Esau.

Rebekah may have also helped Jacob secure the blessing for other reasons as well. Ramban asserts that Rebekah found Jacob the more worthy child for the blessing because she considered him the more righteous of the two children. Bledstein (pg 283) contends that Rebekah wanted to choose the child who was both clever and persistent enough to handle the blessing and would best suited to carry on Abraham's legacy to get the blessing⁷⁹

⁷⁸ Leander E. Keck., ed., *The New Interpreter's Bible*, Vol. 1, *Genesis to Leviticus*, by Terence E. Fretheim (Nashville: Abingdon Press, 1994) 517

⁷⁹ The fact that Esau married two Hittite women (Gen. 26:34) was a source of bitterness to Isaac and Rebekah and may have solidified Rebekah's resolve to trick Isaac into blessing Jacob instead of Esau.

With any or all of these reasons in mind, Rebekah became Jacob's co-conspirator and the mastermind behind Jacob's theft of Esau's blessing. She quickly worked out a plan to ensure that her beloved Jacob gained his father's blessing. It was Rebekah who informed Jacob of Isaac's plan to bless Esau and it was her that set up Jacob with all the information and materials he would need to pull off the deception. When Jacob initially balked at the plan fearing that his true identity would be revealed, Rebekah offered to take upon *herself* any curse that would come about as a result of his actions. Her plan was daring and would put her at considerable risk if discovered. In a sense, Rebekah's actions were rebellious, suggests Westermann. He describes Rebekah's actions as "a revolt against the social injustice of the exclusive prerogative of one son over the other." Rebekah, Westermann contends, "resists with all means at her disposal a privilege of the 'great' which excludes the 'small.'" She was a woman ahead of her time since the privilege of the eldest, which excludes all others, did not prevail."⁸⁰

Rebekah also was a clever woman who used her wit to help level an unequal power balance between her and her husband. Since Rebekah, as a woman, did not have equal power of her husband, she had to resort to trickery as a means of bringing about what she knew was right based on what God told her in Genesis 25:23. She could not persuade Isaac that he was wrong about the respective merits of their sons and she realized that Isaac favored Esau. Her

⁸⁰ Claus Westermann, *Genesis 12-36*, (Minneapolis: Augsburg Publishing House, 1985) 438

actions, suggests Adrien Janis Bledstein,⁸¹ were intended not only to bring about the result of Jacob getting the blessing but also to spare Isaac any unnecessary humiliation of a wife having more prophetic powers than her husband.⁸²

Many modern scholars believe that the conflict between Jacob and Esau extended well beyond the competition between two brothers. Accordingly, Jacob and Esau actually characterize not two individuals, but two competing cultures: that of a hunter (Esau) and that of a shepherd (Jacob). Gerhard Von Rad writes:

As they grew up, the boys lived completely separated from each other, for they personified two ways of life typical for Palestine, which at that time was more wooded; that of the hunter and that of the shepherd. These two groups encountered each other particularly at the borders of civilization. From the viewpoint of cultural history the hunter is, of course, the older; the shepherd appeared only after a certain deforestation and working of the soil. But they lived for a long time contemporaneously and encountered each other especially on the borders of civilization in the East. They were unable to achieve a real symbiosis because of the profound differences in their needs. The relationship was, in general, rather tense.⁸³

⁸¹Brenner, Athalya, ed. *The Feminist Companion to the Bible*, "Binder, Trickster, Heel and Hairy Man: Rereading Genesis 27 as a Trickster Tale Told by a Woman." by Adrien Janis Bledstein, (London: Sheffield Academic Press, 1997)

⁸² Another interesting theory shared in a class discussion led by Dr. Carol Ochs (Comparative Religions, Fall 2003) is that Rebekah and Isaac conspired together against Jacob in order to (finally) get him out of the house: It wouldn't be the first time that these two have worked together to deceive someone. In the story that follows the sale of the birthright, Isaac and Rebekah teamed up to deceive King Abimelech; both claiming that Rebekah was Isaac's sister. The plan worked exactly as planned until the two of them got caught sharing their affection for one another. Accordingly, this theory suggests that Rebekah and Isaac start to worry about Jacob who was at least 40 years old, unmarried and still living in the house. Since they were less concerned about Esau, who already had two wives and could take care of himself, they knew that they needed a drastic plan to force Jacob into leaving the house, growing up quick and going to Laban to get married. Some of the supports for this theory are: 1. Isaac was not really on the brink of death; he goes on to live many years later. 2. There are a number of places in the exchange between Isaac and Jacob where it seems likely that Isaac really knew who was before him. 3. In spite of the deception, Isaac still gives Jacob the blessing of Abraham. 4. When Rebekah scares Jacob into going to Laban's to escape his brother, he is heading to just the place that they want him to go. 5. Perhaps Esau also was in on the scheme and participated in an attempt to regain favor with his parents after his marriages to the Hittite women. As a skilled hunter Esau could have easily caught Jacob after he left Beersheba. In addition, why does Esau so easily later forgive his brother?

⁸³ Gerhard Von Rad, *Genesis, A Commentary*, (Philadelphia: The Westminster Press, 1973) 261

Claus Westermann explains that the motif of two brothers with differing occupations is prevalent throughout the whole of world literature. Often these stories are representative of historical developments when a new form of civilization first coexists with another with one gradually becoming the preferred of the two. In the case of Jacob and Esau: "Here living in tents (not in houses) claims to be the civilized life-style; different from this is "the man of the open field" (or wilderness) who for the most part spends the night in the open."⁸⁴ Another difference between the two cultures is pointed out by Von Rad: "The hunter, in contrast to the shepherd with his much more economic and careful way of life, often does not have enough to eat. If he takes no prey, he goes hungry."⁸⁵ Therefore, the negative caricature of Esau "makes good sense when the narrative is understood as portraying rivalry between two states; the aspiring shepherd speaks, triumphant and mocking as he makes fun of the crude, clumsy and stupid hunter. Similarly, Davidson asserts, "Shepherds may well have chuckled as they listened to the story of how a smart young shepherd outwitted the hunter."⁸⁶ Viewing the story in this context, the rivalry between the brothers represents something much greater: a rivalry between two peoples, the Israelites and Edomites. It represents the rivalry of two civilizations.

⁸⁴ Claus Westermann, *Genesis 12-36*, (Minneapolis: Augsburg Publishing House, 1985) 414-415

⁸⁵ Gerhard Von Rad, *Genesis, A Commentary*, (Philadelphia: The Westminster Press, 1973) 261

⁸⁶ Robert Davidson, *Genesis 12-50* (Cambridge: Cambridge University Press, 1973) 137

VIII. Additional considerations of probable cause

Although the impetus and motivation behind the crime of stealing the blessing came from Rebekah, Jacob did, nevertheless, by his own will, decide to engage in the deceptive scheme. In doing so, Jacob seemed to infer that the notion of stealing the blessing was indeed a good idea. His only concern was not about the morality of the act, but what the consequences might be if he got caught. (Gen. 27:11-12) After Rebekah informed him that she would bear any curse the act might bring about, Jacob quickly agreed to her plan.

What did Jacob hope to achieve through this deception? It has often been said that the best way to predict future behavior is to examine past behavior. Jacob deceived his father and stole Esau's blessing for many of the same reasons that he cheated his brother out of the birthright. Like the birthright, Jacob may have viewed the blessing as a means to assure his superiority over his brother. Like the birthright, the blessing carried with it its own set of benefits. Of course, Jacob was probably interested in receiving the benefits that would accompany the blessing intended for the favored son, and Jacob would have wanted his destiny to be sealed with promises of dominance, material prosperity, family aspirations and spiritual hopes. Also similar to the birthright, Jacob may have felt that the blessing rightfully belonged to him. Taking it back wouldn't be stealing, it would simply be reclaiming. Jacob may have even felt that he deserved his father's blessing more than did Esau because he cared more about it and was willing to even go to extreme measures to demonstrate his desire for it. Certainly Esau, who had already demonstrated to Jacob that he cared little

about the birthright, probably didn't care too much about his father's blessing. Perhaps if he wanted his father's blessing, Jacob may have thought, he wouldn't have upset his parents by marrying the wrong women.

Jacob's theft of the blessing was not only about his relationship with his brother, it was also about his relationship with his father. The Bible tells us that Isaac favored Esau. That is why, as Jacob probably understood, Isaac told Esau that he was to receive the blessing. Jacob would have likely known that in spite of the fact that he now possessed the birthright, his brother was still being chosen over him. In Jacob's eyes he may have felt that he should have been the recipient of his father's innermost blessing, in which his father would bless him with his very being. This blessing would give Jacob that which he always craved, his father's love, attention and respect. But now his father was going to give away his innermost blessing, to Esau, that "fool" who wouldn't value it anyway. If his father would not give Jacob what he deserved willingly, he would have to trick his father into giving it to him.⁸⁷

Of course the ultimate source of blessing was to come from God, not from Isaac. Although some commentators claim that Jacob was after God's blessing and the Covenant of Abraham, this notion should be re-examined. It seems hard

⁸⁷ Although Jacob didn't own an advance copy of the Torah, he probably was aware of the fact that the like the birthright, the blessing could on occasion be transferred from the actual firstborn to another considered more suitable by the father. This is the case in Genesis 48:17-21 when Jacob knowingly gives the primary blessing to Ephraim, the younger over Manasseh, the eldest. Sarna notes that: This practice also noted in Hurrian society where, "birthright was often a matter of the father's discretion rather than patriarchal priority." It is also important to note that in other ancient Near Eastern societies, such as Babylon and Nuzi, the selling of the birthright among brothers was practiced. (Nahum M. Sarna, *The JPS Commentary, Genesis* (Philadelphia: The Jewish Publication Society, 1989), 181. Dr. David S. Sperling adds, "About 10 years ago, David Own from Cornell published a birthright sale from Nuzi, which had a Hurrian Society (14th and 13th BC)

to prove that Jacob was motivated by a desire to please God, when he apparently wasn't aware of the oracle and as far as the Bible records and he did not yet have a relationship with God. Although Rebekah tells Jacob that his father will bless him in the Lord's presence⁸⁸ (27:7), to his father, Jacob refers to God as "the Lord your God," not to *his* God. It is not until the next chapter that Jacob is personally introduced to God. Through a dream God says to Jacob "I, the Eternal, am the God of Abraham your father and the God of Isaac." This seems to imply again that Yahweh is not yet, Jacob's God. In addition, after his dream, Jacob later says: "If God remains with me, if He protects me on this journey that I am making, and gives me bread to eat and clothing to wear, and I return safe to my father's house, the Eternal shall be my God." (Gen. 28:20-22) Robert Alter suggests that here Jacob "wants to be sure that God will fulfill His side of the bargain before he commits himself to God's service."⁸⁹ Keeping these later verses in mind, it seems unlikely that Jacob would take such a profound risk before his father to serve a god that he has not yet personally adopted, and doesn't yet seem to fully trust.

It is important to not only examine Jacob's possible motive in this caper but to also consider why Jacob chose to acquire the blessing through trickery. Jacob had to resort to deceptive means of getting the blessing because he lacked the power to get it by other means. Unlike the birthright, Jacob couldn't con Esau into selling the blessing to him. The blessing would have to come from

⁸⁸ Rebekah added these words "in the Lord's presence" even though Isaac never said them.

⁸⁹ Robert Alter, *Genesis Translation and Commentary*. (New York: W.W. Norton and Company, 1996) 150

his father. However, regardless of the fact that Jacob possessed the birthright, (whether or not his father knew it) Isaac promised the blessing to Esau who he still apparently regarded as his favored child. No matter what Jacob might do, his father didn't seem to acknowledge him as worthy of the blessing. Jacob at the time was at least 40 years old and had not been able to convince his father to give him the blessing up until that point. There would be no reason to try now. Jacob also had to contend with the long history of a father passing on his blessing to the eldest son. Although there are a few exceptions to the rule in the Bible, these exceptions are rare. Isaac may have simply wanted to follow the tradition of blessing the eldest child. In addition, Jacob's ally, Rebekah, also seemed to have lacked sufficient power to convince Isaac. Jacob simply could not receive the blessing as long as Isaac recognized him as Jacob. His only chance was to convince his father that he was Esau.⁹⁰

IX. Expertise: recognition of tools of deception and discussion about each: *Police are trained to be able to recognize certain pieces of equipment that are associated with particular crimes. This is called "Expertise." If a police officer witnesses a suspect using a certain piece of equipment for a crime or if a tool of crime is found later on the scene and identified with the suspect, this can be used as evidence against the suspect.*

Although Isaac was old and his eyes were "too dim to see," Jacob put to use a number of tools of deception which sought to not only deceive Isaac's sense of sight but

⁹⁰ Or at least put on a sufficient enough show so that Isaac could later claim that Jacob tricked him too and save face with Esau. Whether or not Isaac really knew that he was blessing Jacob is the subject of much debate.

each of Isaac's other senses as well. This section will provide a brief analysis of each of these tools of deception.

Exhibit A: Food/wine:

27:14 *"And he went and took and brought to his mother, and his mother prepared a dish such as his father liked."*

27:25: *"So he served him and he ate, and he brought him wine and he drank."*

Although the meal was indeed used as one of the tools of deception (Isaac ate it without comment, (Gen. 27:25) It was prepared at Isaac's request (27:4). Why did Isaac make such a request of Esau? What was the point of the bedside meal? Westermann asserts that was a constituent part of the blessing ritual.⁹¹ Dr. David Sperling adds, "Eating is found in covenantal settings."⁹²

**Example of food in covenantal settings include, Gen. 31:54, Davidson comments that the meal "may have been intended to strengthen the vitality which has already begun to ebb from Isaac"⁹³ The New Interpreter's Bible figures the meal "is shared meal for communion, not strength."⁹⁴

What this investigator finds suspicious about this tool of deception is that Isaac did not recognize that it was goat meat, prepared by his wife, and not game meat prepared by his son. Wouldn't Isaac, who loved Esau for the very reason that Esau "put game in his mouth," be able to tell the difference between goat

⁹¹ Claus Westermann, *Genesis 12-36*, (Minneapolis: Augsburg Publishing House, 1985) 439

⁹² Two examples of eating in covenantal settings that Dr. Sperling pointed out to me are Gen. 31:54 when Laban and Jacob make a pact with each other, sacrifice to God and then eat and Ex. 24 when Moses and Elders offer sacrifices, eat and read out-loud the record of the Covenant.

⁹³ Robert Davidson, *Genesis 12-50* (Cambridge: Cambridge University Press, 1973) 138

⁹⁴ Leander E. Keck., ed., *The New Interpreter's Bible*, Vol. 1, *Genesis to Leviticus*, by Terence E. Fretheim (Nashville: Abingdon Press, 1994) 535

meat and game meat? Wouldn't he be able to distinguish his wife's cooking from his son's? This seems especially suspicious in a context where Isaac, having lost his sense of sight, would have been more attuned to his remaining senses. But then again, perhaps eating the food served to dull his senses, making him even more susceptible to deception. In the Bible there are other cases where food may have been used as a tool of deception. In the story of Yael, the Kenite and Sisera the general, (Judges 4:17-22), for example, Yael offers Sisera refuge in her tent while he is on retreat. When Sisera asks for some water to drink, she instead gives him milk, covers him, and lets him fall asleep. Soon after she drives a tent peg through his skull, killing him. While it is not entirely clear if it was the milk or his exhaustion that put him to sleep so quickly, it seems that the milk may have contributed to the situation by relaxing the general and helping him to fall asleep. Perhaps it is also possible that in a similar way the food that Jacob shared with his father (or its aroma) soothed Isaac and enabled him to let down his guard.

Exhibit B: Clothing

27:15 "Rebecca then took the best clothes of her son Esau, the elder, which were with her in the house, and dressed her son Jacob, the younger."

Of course the food was not the only trick Rebekah and Jacob had in store for Jacob. Rebekah had Jacob wear Esau's clothes when he confronted his father. Robert Alter notes that Rebekah did not have Jacob wear Esau's clothes to visually fool his father; Isaac was incapable of seeing these clothes. Instead

Jacob wore these clothes in case Isaac might try to use his sense of smell to identify his son, since Esau, an outdoorsman, had a very different scent than Jacob who dwelled in tents.⁹⁵ Later in the story, Rebekah's clever anticipation paid off: *"Then his father Isaac said to him, 'Please come close and kiss me, my son'; and he went up and kissed him. And he smelled his clothes and he blessed him saying, 'Ah the smell of my son is like the smell of the fields YHWH has blessed.'" (Gen. 27:26-27)* Davidson notes: "The kiss brings Jacob so close to Isaac that, bereft of sight, he can call upon his sense of smell to confirm that it is indeed Esau. Esau's clothes will have about them the tang of the hunter and the open country."⁹⁶ Isaac subsequently gives Jacob a kiss and seals the blessing.

This investigator wonders about the effect wearing Esau's clothes may have had on Jacob. Did Esau's robe help Jacob get more into the role of Esau? Did Esau's clothes, as Westermann comments, "give Jacob some of Esau's person?"⁹⁷ Does the costume help him to go forward with the deception? These questions will be dealt with in a later section.

Exhibit C: Goat pelts

27:16: *"And she put the goatskins on his arms and upon the hairless part of his neck."*

⁹⁵ Robert Alter, *Genesis Translation and Commentary*. (New York: W.W. Norton and Company, 1996) 140

⁹⁶ Robert Davidson, *Genesis 12-50* (Cambridge: Cambridge University Press, 1973) 139

⁹⁷ Claus Westermann, *Genesis 12-36*, (Minneapolis: Augsburg Publishing House, 1985) 439

27:21-23: *"And Isaac said to Jacob: Come close my son that I may touch you and see if you are really my son Esau or not. When Jacob came close to his father, Isaac, he touched him and said: The voice is the voice of Jacob, but the hands are the hands of Esau. But he did not recognize him because his arms were hairy, like the arms of his brother Esau. And so he blessed him."*

Here Jacob fools his father's sense of touch. His tools of deception are raw and simple. One can't help but again wonder how Isaac would have really been fooled into thinking that the fur of goat pelts was the hair of a human arm and neck. Nevertheless, Isaac seems to believe Jacob and offers his blessing. Von Rad asserts that this substitution has a comic affect; it is meant to be ridiculous and be "another coarse caricature of the unkempt brother."⁹⁸ What is interesting about this particular tool of deception, as Robert Alter points out, is that this same tool of deception (goat pelts) will be later turned on Jacob when his sons bring him Joseph's tunic soaked in blood. In addition, Tamar will ask for a goat kid as payment to Judah after she tricks him into thinking she is a roadside whore using deception to obtain what she considered rightfully hers. (Chapter 38)⁹⁹

Exhibit D: Words of deception

27:18: *So he comes to his father and says, 'my father'. And he said, 'here I am. Who are you, my son?' And Jacob responds to his father, I am Esau, your first*

⁹⁸ Gerhard Von Rad, *Genesis, A Commentary*, (Philadelphia: The Westminster Press, 1973) 272

⁹⁹ Robert Alter, *Genesis Translation and Commentary*. (New York: W.W. Norton and Company, 1996) 138

born; I have done as you have told me. Please sit up and eat of my game, that your soul may bless me.

27:20 And Isaac said to his son, 'How did you succeed so quickly, my son?' and he said, "Because YHWH your Divinity cause the right thing to occur.

Jacob had already deceived his father's sense of taste, smell and touch. He did not need to deceive his sense of sight because Isaac already could not see. What is left is Jacob's sense of hearing. In verse 27:22, Isaac said, "The voice is the voice of Jacob." Apparently he was able to distinguish between each of his son's voices. So why, assuming that Isaac was genuinely fooled, did he not trust his ears? In part the answer is that Jacob was able to fool Isaac's others senses. Another factor is at play as well. The words that Isaac hears were full of deception. Jacob lied, saying he was Esau, his firstborn, and he brought God into the deceit by using God's name, claiming that it was Isaac's God who granted him success. While many commentators assert that Esau would have been unlikely to claim that *Yahweh* granted him success, Jacob's deception may have been that he chose to use the very words that he knew his father would have wanted to hear. Sarna notes with shock that Jacob invoked God's name in an outright lie but suggests that even though Jacob didn't know it, the hand of Providence was indeed at work.¹⁰⁰ Robert Alter contends that when Jacob says, *I am Esau your firstborn*, "he reserves the crucial term "firstborn" for the end of his brief response." (He does this to deceive his father). Alter further writes, "As Nahum Sarna notes, the narrator carefully avoids identifying Esau as

¹⁰⁰ Nahum M. Sarna, *The JPS Commentary, Genesis* (Philadelphia: The Jewish Publication Society, 1989), 191

firstborn, using instead "elder son." The loaded term was introduced by Jacob to clinch his false claim, and will again be used by Esau (verse. 32) when he returns from the hunt."¹⁰¹

X. Circumstantial Evidence/Information: *Circumstantial Evidence is evidence that points the finger away from other suspects or an alibi. Information refers to statements by witnesses and victims.*

Immediately following the theft of the blessing, Isaac does not identify Jacob as the deceiver, saying: "who was it then who hunted the game and brought it to me? I have eaten it before you came; I have blessed him, and he shall remain blessed!" (Gen. 27:33) For a moment, at least, it seemed that Isaac might not pin Jacob to the crime. However, one verse later, Isaac positively identifies the culprit: "Your brother came deceitfully and took your blessing!" Upon hearing this, Esau agreed, associating Jacob's very name with deceit and announcing that Jacob had also deceived him over his birthright. Of course, Rebekah, as the co-conspirator, also could testify as to Jacob's guilt. Following the incident, she warns Jacob of Esau's anger and urges him to flee,¹⁰² further indicating that Jacob was responsible for the crime.

XI. FLIGHT: *Attempting to flee, evade or elude, in evidence law provides a presumption of guilt.*

¹⁰¹ Robert Alter, *Genesis Translation and Commentary*. (New York: W.W. Norton and Company, 1996) 139

¹⁰² It should be noted that Rebekah, is unlikely to testify against Jacob, unless a special deal is made where, she, and not Jacob, would be charged with the crime.

Following the alleged crime, Jacob, on his mother's advice and with his father's blessing(s), flees the scene of the crime and goes to Paddan-aram to Laban, the son of Bethuel the Aramean.

XII. Ruling/Judgement

Let's face it, it is clear that Jacob did indeed trick his father and steal his brother's blessing. However some commentators try to vindicate Jacob and absolve him from any guilt in the matter.¹⁰³ One way they do this is by disparaging Esau. For example, Rashi considers Esau an idol worshipper, a father deceiver, an idle worker, a pig and a murderer who is contemptuous of God's service. With such descriptions one may conclude that Esau, the evil, deserved his fate. This was simply a battle between good and evil with Jacob, the good, winning out. A second way interpreters defend Jacob is by building him up while comparing him to Esau. Jacob, according to Ibn Ezra, was the antithesis of his brother. Unlike Esau, he was, *ish tam*, a man of integrity, honest, sound and upright. While Esau was an idol worshipper, Jacob was a devout yeshiva *bachur*, piously studying in the Tents of Shem and Eber while Esau meanwhile wasted his time hunting and doing evil. Another way some commentators defend Jacob is by attempting to rationalize his actions. By claiming that Jacob was conceived first, Rashi is able to suggest that the deception that Jacob employed to buy the birthright and to steal the blessing wasn't stealing, it was simply a matter of Jacob taking back that which was

¹⁰³ As explained in footnote #60, in Jewish circles for the sake of Christian polemics, Jacob's character represented Jews and Judaism while Esau's character represents Christians and Christianity. Therefore it was important that Jacob's character be portrayed as the hero and Esau as the villain.

rightfully his. Rashi further asserts, with a close reading of the text, that Jacob never lied to his father.¹⁰⁴ Other commentators, such as Sforno, seek a to justify Jacob's action of buying the birthright by saying that his actions were legal according to Jewish law.¹⁰⁵

Still another way to defend Jacob's theft of the blessing is to deflect the blame from Jacob to Rebekah. Jacob's mother was even more of a trickster than Jacob. Not only had she cooperated with Isaac to fool King Abimelech, she was after all, the sister of one of the most notorious connivers in the Bible, Laban. Of course Rebekah would have learned a trick or two growing up in the same household as Laban. These tricks she learned she would later put to good use. It was Rebekah, say Jacob's defenders, who practically *forced* Jacob to pretend to be Esau. It was *Rebekah* who concocted the scheme. *Rebekah* made all the preparations and *Rebekah* pushed Jacob into taking such a risk. When Jacob asked her: "What if my father feels me and I seem a cheat to him and bring on myself a curse and not a blessing?" *Rebekah* told him that she would *she* would bear any curse his actions brought (v. 27:13). Whether or not Jacob's behavior was ethical was of less concern than the fact that Rebekah coerced him into taking the actions he did. This response serves to draw our attention away from Jacob's own accountability in the caper.

¹⁰⁴ Rashi claims that when Jacob said, "I am Esau your firstborn, I have done as you told me" He really means, It should be understood as "it is I, the one who brings you food and Esau is your firstborn."

¹⁰⁵ Sforno's explains that Jacob has Esau take an oath because the rights and responsibilities of the birthright have value but no real substance until one actually inherits. He then makes a sale of exchange, either with the lentils or the vessel holding the lentils to consummate the deal which was not made under duress.

Although Jacob was put into a difficult, stressful situation, where he had just a few moments to choose between honoring his father or mother, and weigh the possibilities of success along with the consequences of failure, the decision was ultimately Jacob's. Jacob knew exactly what he was getting himself into and was fully capable of making his own decisions over the matter. As mentioned earlier, his only question to his mother wasn't about the ethics of the theft, but its feasibility. Regardless of his mother's offer to take upon herself any curse that came out of Jacob's actions, Jacob knew that his actions were risky and that he ultimately would be judged and held accountable for whatever consequences that might come from his actions. Had he believed otherwise, he might have responded to his mother with words such as: "Why should I have to leave home because Esau is mad at me-He should be mad at *you* mom. You confess that you put me up to this and get me out of this mess! You protect me from him!" Jacob doesn't say this because he realizes that he made his choices by his own free will and must bear any consequences that come out of his actions. So what happens to Jacob? How do those whom he has hurt judge him and how is he judged by the Bible and God?

Esau was the person most affected by Jacob's behavior. How does he judge what Jacob does to him? What consequences does he impose? When Esau learned that Jacob had stolen his blessing, he was greatly distressed over the matter and vowed to kill Jacob. (v.27:34-36). Jacob was so frightened by this prospect that he fled to Haran (v. 28:10) However, when the two brothers meet again years later, Esau doesn't try to kill his brother, rather he goes to great effort

to reconcile with him. The two embrace each other and weep. Is Jacob completely forgiven by Esau or is the crime forgotten? The text is inconclusive about this matter. On the one hand, the gifts that Jacob offers and the fact that he prostrates himself before Esau might have been accepted as an apology by Esau and influenced his decision not to kill Jacob. On the other hand, Esau could have simply have forgotten about Jacob's crimes over the years on his own. Again, the text does not make this distinction clear nor does it inform us of Esau's motives in making up with Jacob. What is clear however is that the reconciliation between brothers is something of a surprise to Jacob who was expecting the worst. As readers, we don't suppose that Esau, the brute, will forgive Jacob. Perhaps this is because we ourselves don't think that Jacob has given his brother an adequate apology for what he has done. What is curious about the conclusion of the story of the reunion of brothers is that shortly after they make peace with each other Jacob says he will come to visit Esau in Seir, but instead travels in the opposite direction to Succoth. (v. 33:14-17) Why does he do this? Alter comments: "Clearly he is declining the offer of Esau's retainers because he still doesn't trust Esau and intends to put a large distance between himself and Esau."¹⁰⁶ Indeed Jacob may have felt that Esau did still harbor ill feeling toward him over his theft of the blessing and did not want to take any chances.

Isaac was the second victim of Jacob's trickery. Like Esau, Isaac also reacted strongly when he learned that he had been deceived, and he even

¹⁰⁶ Robert Alter, *Genesis Translation and Commentary*. (New York: W.W. Norton and Company, 1996) 187

named Jacob's actions as "deceit." However, in finding out the truth, Isaac never scolded Jacob. The next time the two spoke, Isaac proceeded as if everything was fine. Isaac bestowed upon Jacob the blessing of Abraham and sent him off with advice to Paddan-aram. Again, as in the case of Esau, Isaac seems to forgive Jacob and seems to carry no lasting grudges on account of Jacob's actions.

Some modern commentators suggest that Jacob's behavior is dealt with by the Bible itself in the context of Jacob's life as a whole. Gunther Plaut, for example, suggests that the Bible judges and punishes Jacob for the tricks he plays on Esau and Isaac. Jacob's life, according to Plaut, was "a long succession of trials and tragedies":

What he touches often turns to ashes; from the moment he grasps his brother's heel at birth, he desperately tries to fashion his fortune. Yet even as he succeeds he fails, the doubtful exchange of the birthright brings him a brother's enmity and still does not insure him his father's blessing. He deceives his father and will be deceived in turn by Laban; he will lose his beloved wife and his favorite son; and he will end his days in a strange land, a pensioner of his child. It is no wonder he will say in retrospect that his years were "few and evil." Gen 47:9, 18¹⁰⁷

Richard Elliot Friedman describes the Bible's judgments over Jacob's actions more specifically. He points out that when it comes to Jacob, "for every act of deception, an ironic recompense occurs later in the story" ¹⁰⁸ He makes the following connections between Jacob's actions and the events that later befall him: Jacob's recompense for stealing the birthright, suggests Friedman, was

¹⁰⁷ Gunther Plaut, ed., *The Torah, A Modern Commentary*, (New York: Union of American Hebrew Congregations, 1981) 176

¹⁰⁸ Richard Elliot Friedman, "Deception for Deception," *Bible Review*, (Spring 1986): 24

Laban's substitution of Leah for Rachel. What the two incidents have in common is that both make use of the phrase "the younger before the firstborn." Not the "younger before the elder", but "the younger before the firstborn." Friedman writes: "The man who took away the firstborn privilege of his brother has now suffered because of the firstborn privilege of his beloved's sister."¹⁰⁹ For stealing the blessing, Jacob is tricked into believing that his favorite son, Joseph, has been killed. Jacob tricked Isaac with the skin of a goat and now sees Joseph's coat dipped in the blood of a goat and believes it is his son's blood. Both cases share the word *recognize* and in both cases, the trick is that neither victim recognized the deception. One final observation that Friedman notes is that also the word used for "goat" in the Joseph story, *se'ir*, is the same name of the place where Esau settles-reminding the readers again of a connection between the two stories.

This investigator believes that the events in Jacob's life in the Bible could also be seen in a different light. Perhaps the model of punishment for Jacob's indiscretions cannot be held as a general rule. Although Jacob indeed experienced some hard times and losses, he also had his fair share of good times and successes. While it is true Jacob was born second to his brother without the status of firstborn and possession of the birthright, he eventually attains the birthright as well as his father's deathbed blessing. He even later gains great wealth. (Gen. 33:11) Although Esau at one point vows to kill Jacob, when they meet years later Esau embraces his brother, bows before him, kisses him and together they weep. Poor Jacob is tricked on his wedding night; he

¹⁰⁹ Ibid.,24.

thought he was getting Rachel, but instead got Leah. How does this *tragedy* get resolved? Jacob works a little longer and gets to have *both* sisters as wives. Again, *poor, poor* Jacob! Not only that, but from his two wives, he has 13 children. Although at one point he mourns the loss of Joseph, as it turns out, Joseph is alive and well and ends up saving the entire family. In Egypt, Jacob has an opportunity to meet the Pharaoh. In the land of Canaan, he sleeps in God's presence and receives messages from God in his dreams. Not only does Jacob live to the ripe old age of one hundred and forty seven, he has the opportunity to bless each of his male children before he dies, and was buried with Leah and his ancestors in the cave of Machpelah. From this perspective, Jacob's life is not so bleak.

Plaut focuses on Jacob's statement to the Pharaoh that his years were "few and evil." Joseph Heckelman points out that of the three patriarchs, Jacob was not the only one who had a difficult life. Abraham is tested 10 times by God with the last test of the Akedah, being great enough to shatter anyone's life. Isaac, as the victim of the Akedah, must have not felt his life was so easy because at the young age of 100 when the Blessing drama unfolds he feels himself at the point of dying, when in fact Isaac goes on to live another 30 years!¹¹⁰

The New Interpreter's Bible asserts that the theological claims this story makes in regards to a particular family's relationship to God and God's purpose

¹¹⁰ Joseph Heckelman, "Was Father Isaac A Co-conspirator?" *Dor Le Dor* (1984?) 233

in the world through them are more important than the moral issues regarding the ethical behaviors the characters of this story.¹¹¹

Before Jacob is born, God favors him as the heir to the divine promise with little explanation as to why. Plaut explains; "While the natural order of birth was believed to have divine approval, God was not bound by it in an automatic relationship. He remains free to change His mind and to choose whom He needs in critical moments of history."¹¹² Even before he was born, Jacob was favored by God. Whether or not the reader sees the oracle as an expression of God's knowledge of the future or simply as God's expressed will, seems less important than the fact that even after Jacob steals his Esau's blessing, God maintains a relationship with Jacob and continues the program of Divine promises through him.

Whether or not the various misfortunes that happen to Jacob are Divine retribution for Jacob's misdeeds or simply bad luck is never made clear in the Bible. God's judgment over Jacob's actions cannot be fully determined except to say that in spite of all of Jacob's mistakes God sticks with Jacob, never as far as we know directly punishing him for his indiscretions.

After Jacob steals his brother's blessing he travels to Haran, meets his wives, has numerous children and gathers a great deal of wealth. Most important, he develops a relationship with God and continues the covenant God made with Abraham. Could all of this have happened had Jacob not stolen his

¹¹¹ Leander E. Keck., ed., *The New Interpreter's Bible*, Vol. 1, Genesis to Leviticus, by Terence E. Fretheim(Nashville: Abingdon Press, 1994) 517

¹¹² Gunther Plaut, ed., *The Torah, A Modern Commentary*, (New York: Union of American Hebrew Congregations, 1981) 176

brother's blessing in the manner that he did? Perhaps yes, perhaps no. On the one hand, one could argue, as does Heckelman¹¹³ that Isaac intended all along to give to Jacob Abraham's blessing. Isaac, Heckelman asserts, knew he was blessing Jacob and not Esau.¹¹⁴ However, the drama was absolutely necessary and served a number of functions at the same time.¹¹⁵ Had Isaac blessed Jacob in another fashion, which did not stir Esau's anger, for example, Jacob may have never had the motivation to leave home in the first place.

Even if we were to assume for a moment that: 1. Jacob had to leave home 2. The best way to get to that end was through the blessing drama, and 3. the people who Jacob hurt forgave him; can we say that Jacob's actions were justified? Like the conundrum of the man who steals medicine he can't afford to save his dying wife, Jacob's actions were still wrong, but less offensive in the context of the big picture. Jacob's action were not just, but necessary. Perhaps the message of the text is, sometimes you have to break the rules for the greater good--just be prepared for the possible consequences. Although this investigator

¹¹³ Joseph Heckelman, "Was Father Isaac A Co-conspirator?" *Dor Le Dor* (1984?) 228

¹¹⁴ Some of his evidence Heckelman provides includes the following facts (some of which are already listed in this paper). Isaac would have recognized Jacob's voice and decided not to bless him, the goat fur could never pass as human hair, Isaac never asks Jacob (who is posing as Esau) to bring his brother the tent dweller, Isaac had the gift of prophecy and should have known the true identity of the person standing before him, the first part of Isaac's blessing was obviously appropriate for a farmer and not a hunter, the blessing Isaac gives Esau (and you will live by the sword, 27:40) seems to be reserved for him alone-as if Isaac specifically *saved* this blessing for Esau, finally, Isaac gives Jacob Abraham's blessing even after his trick is revealed.

¹¹⁵ Isaac knew that Esau, for numerous reasons, was the wrong person for Abraham's blessing, but could not drive him out, as Abraham drove out Ishmael. A different solution had to be found. Jacob, according to Heckelman, had to *become* Esau. Indeed, as mentioned in other parts of this paper, the blessing deception was an appropriate answer to the particular complexities of the situation. Isaac and Rebekah both knew that Esau wasn't appropriate for Abraham's blessing although he was the firstborn¹¹⁵ and Isaac's favored son. The deception allowed Isaac to be the "good guy" by at least giving Esau a chance to get the blessing. It also gave Rebekah a chance to act upon the oracle and finally the scheme works to get Jacob out of tents and over to Haran where he can take Leah and Rachel as brides. In many ways, the Blessing deception was the perfect plan. Without it Jacob, even if he were blessed directly by his father may have never left home.

has tried to demonstrate that Jacob is never explicitly punished for his actions and he indeed leads a relatively good life, one cannot say that his actions had no effect on his life-. Had he not tricked his father and angered Esau, he would not have had to leave home, he would not have been exiled for 20 years and he would have been able to attend the funeral of his mother. These events could be seen as consequences, but as mentioned before, other outcomes of his behavior could be seen as rewards. This is not to say that Jacob did not feel regret over the things that he did. Heckelman writes:

Although the Blessing drama was absolutely necessary in order for him to fulfill Gods purpose-still he was deeply uncomfortable over his part. So much so that even the semblance of being engaged in deception continued to disturb him for the rest of his life. Thus, on his journey back from Padan-Aram, as he prepares both the meet his brother and to re-enter the land now promised to him-he must spend the night wrestling with what is essentially his brother's spirit. ...Torah drama is at least as demanding as Greek tragedy. The reward for doing the necessary is no way sugar-candy. It may be a mix, including ongoing bitterness and pain.¹¹⁶

XIII. Court Reporter's Notes

Avivah Zornberg observes that Rebekah initially did not advise Jacob to impersonate his brother. She simply tells him to get for her two goats so that she may cook them and make them into a dish that Jacob could bring to his father. (V. 27:9) In other words, Rebekah's original plan was for Jacob to go to his father as himself. The verse reads: And you shall bring it to your father and he shall eat, so that he may bless you. Presumably, Jacob's dish would be so good that Isaac would decide to give Jacob (as himself) the blessing instead of Esau.

¹¹⁶ Joseph Heckelman, "Was Father Isaac A Co-conspirator?" *Dor Le Dor* (1984?) 233

Rebekah's idea to disguise Jacob as Esau only came as a response to Jacob's concern that he does not have hairy arms like Esau.

Zornberg's insight here brings up a very good question. Why doesn't Jacob appear before his father as himself? Why might he feel that he must pretend to be someone else and does his masquerade enable him to get what he ultimately wants and to become who he ultimately wants to be?

The story of Jacob's life on one level is the story of a man searching for his own identity and sense of self-worth, while growing up in his brother's shadow. It is also the story of a boy who would do anything to win his father's love, attention and respect.

When Jacob and Esau are born, Jacob is born second. He is a follower. Esau comes out of the womb first with Jacob behind him grasping onto his ankles. Esau is born hairy like an already developed adult. Jacob, the late-bloomer is smooth, like a child. Immediately Esau is described as a man with skills and an occupation. Jacob in comparison is *tam*: innocent and simple. He stays in tents, presumably with his mommy. Esau finds a way to please his father and win his affection-by bringing him game to eat. Young Jacob was loved by his mom for who he was.¹¹⁷ But apparently who he was was not enough for Jacob since his father favored/loved Esau than him and he couldn't figure out why. Under the circumstances, Jacob naturally wished he were his brother-or at least he wished he had what his brother had-these things were entitled to him! If being himself wouldn't get for him his father's love, attention

¹¹⁷ Based on verse 25:28: And Isaac loved Esau for the game that he brought him, but Rebekah loved Jacob.

and respect, he would have to become his brother. Ironically, in the process of becoming his brother Jacob is crying out to his father to see him and love him for who he is. Jacob's campaign begins with the sale of the birthright. Not only does he feel like he is entitled to all the benefits of the birthright, he thinks having it might win his father's love. His plan however doesn't seem to work. When Rebekah informs Jacob that Isaac intended to give Esau his blessing, Jacob must have wondered why he, the proud owner of the birthright, wasn't being asked. Was it because Isaac didn't know that he possessed the birthright or really didn't care? It didn't really matter, what was most important was that Isaac still preferred Esau. Jacob assumed that it was because Isaac loved him for who he was. The blessing would give Jacob what he desired most: Isaac's innermost blessing.

Rebekah asked Jacob to go to Isaac as himself and present to him with a meal so that he might bless him before he dies. Jacob doesn't believe that this will work. His father won't bless him as him, so automatically assumes that he will have to be Esau to be noticed by his father.

The NPR radio series *This American Life* once featured a story about an ordinary guy who would spend his days dressed up as the comic book hero Batman. Before he began wearing the costume, no one seemed to ever notice him. He felt alone, rejected and shy. When he wore the costume one year for Halloween he noticed that he was suddenly getting attention from everyone he came in contact with. He loved it and wished his entire life could be the same way. So he began to wear the costume everyday. Suddenly, he could walk into

bars, and all eyes would be upon him. Crowds would form around Batman. Beautiful women would flirt with him and tough guys would joke with him. In costume he was able to be who he wanted to be and was able to obtain what he ultimately wanted. The costume gave him courage and confidence and he even felt that by wearing the costume, he had access to some of Batman's qualities. Jacob feels that he must wear an Esau costume for much of the same reasons. Isaac, in Jacob's mind, won't love him for who he is, so Jacob will manipulate the situation so that he was recognized as Esau. The fact that Isaac was noticing Jacob and presenting him with his innermost blessing must have felt so wonderful to Jacob, whether or not Isaac really intended for the blessing to go to him. At the moment it must have felt to Jacob that Isaac was blessing him in full sincerity.

Jacob may have also put on the costume to garner some courage. In disguise he could do things he wouldn't do as simply himself. In disguise he could take risks. Being Esau was invigorating and Jacob probably felt a bit of Esau's life force pulsating through him. Esau was to some degree who Jacob always wanted to be; Esau was the man whom his father loved best and now he was in Esau's skin absorbing his father's love. When Jacob told his father, "I am Esau your first-born," he wasn't lying. Jacob really meant it.¹¹⁸ In that moment in his mind he was Esau. And yet, he was a man screaming to be seen by his father for who he really was.

¹¹⁸ This reminds me of Marc Cohn's song "Walking in Memphis" where a visitor to the town is asked "Tell me are you a Christian child, and he replies: "Man I am tonight!"

Does his plan work? Does Jacob by deceiving his father and stealing from his brother end up with his father's love? Joseph Heckelman, as mentioned before, contends that Isaac knew all along that he was blessing Jacob and not Esau. Jacob's voice, asserts Heckelman, was the obvious give away. The voice projects Jacob's inner essence, his soul. Perhaps, Isaac in hearing Jacob's voice, suddenly noticed Jacob, not only for who he was (his inner soul) but to some degree for who he had become; Isaac's first born. In pretending to be Esau, hairy hands and all, Jacob had become, in effect, Esau. Isaac could no longer identify him as the original Jacob and could therefore bless him as his first born. So in effect, Jacob's scheme does get him noticed as himself and Jacob obtains Isaac's innermost blessing. Whether or not Isaac knew Jacob's identity in the moment than the fact that Isaac insisted that his innermost blessing remain with Jacob. In engaging in the deception Jacob proved to his father who he really was: a person who would go to such great extremes to win his father's love, attention and respect. Instead of being angry with Jacob, Isaac insists that the blessing stays with him and even further rewards Jacob with Abraham's blessing. With this final blessing and with his send off to Haran, Jacob must have felt that he was finally noticed his father for who he was and like Esau, he had found a way to continue to win his father's affection-by marrying Laban's daughters and continuing Abraham's covenant with God.

This investigator can't help but wonder what might have happened had Jacob gone to Isaac as himself. Would he have been turned away? In the movie: *As Good As It Gets*, there is a memorable scene where Simon, who has

entrusted his dog Verdell with Jack Nicholson's character, Melvin, comes to pick up the dog and take him home. Much to Simon's dismay, he notices that the dog seems to love Melvin more than him. How could it be that this dog has only stayed a few weeks with this other man and now appears to love him more? Melvin seeing Simon's hurt tries to amend the situation admitting that he has been feeding the dog bacon scraps. Perhaps if they were to arrange a contest to see who the dog would come to, Verdell would surely go to his master if Simon was holding bacon scraps.

Maybe what Rebekah was originally saying to Jacob is somewhat comparable. "Go as yourself and bring Isaac the meat that I will prepare for you to bring to him". "Why does Isaac love your brother? It is all about the meat! Not about who you are as a person! If you were to bring meat to him, you wouldn't have to steal the blessing, you would simply acquire it before your brother, now go feed him this meat!" Who knows, maybe this plan would have worked! Perhaps it was indeed all that Isaac cared about in his old age.

Later in the same scene of the movie *As Good As It Gets*, Simon holds up the bacon and calls Verdell while Melvin quietly calls the dog empty handed. Sadly the dog still goes to Melvin. Simon is heartbroken and Melvin simply replies something like: "Stupid dog!" In the case of the death-bed blessing, Isaac tastes the meat and ultimately gives the blessing to Jacob and insists that he keep it. While the meat may have played a role in the drama, what is most important here is that Isaac eventually is able to see Jacob for who he is without

any gimmicks. When Isaac blessed Jacob for a second time, the blessing was intended for Jacob alone, the man he really was

The rest of Jacob's life continued to be a journey of finding out who he was in relation to his family, and his God. When Jacob struggles with the angel near the Jabbok, the angel asked Jacob what his name was. In doing so the angel was in a way asking him: "Who are you?" Your answer will tell me a lot about who you think you are!" When Jacob responded to the angel uttering his name that means "follower" and "supplanter" the angel renamed him "Israel" because he had striven with beings divine and human and prevailed (32:29) In this moment Jacob finally had found for himself an identity. No longer would he be his brother's follower and no longer would he be a deceiver. No more hiding, no more tricks. With his new name came a new identity that paradoxically enabled him to become who he had always wanted to be. When Jacob eventually meets his brother, he does so, not as a trickster ready to pretend to be someone he is not, but as a man ready to present himself "as himself." Upon seeing Esau, Jacob bowed low to the ground seven times until he was near his brother. (No tricks-Jacob presents himself as completely vulnerable to his brother.) Next he exposes to his brother the greatest expression of who he had become-his family. Instead of trying to steal from his brother, he offers him gifts and tells him that seeing his face is like seeing the face of God. It seems that Jacob at this point is a changed man. Indeed he is.¹¹⁹

¹¹⁹ With the exception of one final little lie, where he tells his brother that would go to Seir to be with him, but instead heads to Succoth.

Case #3:

"THE COW THAT WANTED TO BE A LAMB"

Formal Charging

I. Defendants proper name: Leah daughter of Laban, (alias-"Cow")

II. Essential facts of the offence alleged:

Leah as prompted by her father Laban, pretended to be her younger sister Rachel, on what was supposed to be the night of Rachel's wedding to Jacob. Jacob consummated the marriage (had intercourse) with Leah thinking she was Rachel. The next morning when he awoke to find Leah sleeping next to him, he realized he had been duped!

Below is a copy of the original Officer's report on the matter:

29.16 Now Laban had two daughters; the name of the older one was Leah, and the name of the younger was Rachel. 17. Leah had weak eyes; Rachel was shapely and beautiful. 18. Jacob loved Rachel; so he answered, "I will serve you seven years for your younger daughter Rachel." 19. Laban said, "Better that I give her to you than that I should give her to an outsider. Stay with me." 20. So Jacob served seven years for Rachel and they seemed to him but a few days because of his love for her. 21. Then Jacob said to Laban, "Give me my wife, for my time is fulfilled, that I may cohabit with her." 22 And Laban gathered all the people of the place and made a feast. 23. "When evening came, he took his daughter Leah and brought her to him; and he cohabited with her. 24. Laban had given his maidservant Zilpah to his daughter Leah as her maid. 25. When morning came, there was Leah! So he said to Laban, "What is this you have done to me? I was in your service for Rachel! Why did you deceive me?" 26. Laban said, "It is not the practice in our place to marry off the younger before the older. 27. Wait until the bridal week of this one is over and we will give you that one too, provided you serve me another seven years." 28. Jacob did so; he waited out the bridal week of the one, and then he gave him his daughter Rachel

as wife. 29. Laban had given his maidservant Bilhah to his daughter Rachel as her maid. 30. And Jacob cohabited with Rachel also; indeed, he loved Rachel more than Leah. And he served him another seven years.

III. Name and degree of alleged offences:

- **Identity Fraud:** Leah pretends to be her sister Rachel.
- **Placing a Stumbling block before the blind:** Laban and Leah knew how much Jacob loved Rachel and how impatient he was to be with her intimately. Laban and Leah used these realities to their advantage while tricking Jacob. They knew that on Jacob's wedding night he would be in such a state of eager anticipation and utter joy that he would not ask too many questions.

III. Names of all witnesses to be called at trial: Laban, Rachel, Leah, Jacob.

IV. It might also be helpful to bring in some of Haran's townspeople to serve as expert witnesses to testify about the nature of their marriage customs in relation to older and younger siblings.

V. Time and place of offence charged stated as specifically as possible:

The alleged crime takes place in the evening following a day of feasting. The crime is not discovered until the following morning. Gen. 26:34 informs readers that Esau was married at the age of 40. Since the story of Jacob's wedding took place after Esau was married, we might assume that Jacob, Esau's twin, was at least 40 years old at the time of the alleged offence. S'forno suggests that part of the reason that Jacob was to work seven years for Laban was to give Rachel time to reach an appropriate age for marriage. It is not clear how old Leah was at the time of the alleged offence.

VI. Statutes alleged to have been violated and the section of the statutes which fix the penalty or punishment.

A. Lev. 19:14: "You shall not insult the deaf, or place a stumbling block before the blind" Dt. 27:18 "Cursed be he who misdirects a blind person on his way."

B. Exodus: 20:13: "You shall not steal."

C. Lev. 18:18: "Do not marry a woman as a rival to her sister and uncover her nakedness in the other's lifetime."

VII. Relevant Past criminal Record (Relevant Past history)

Leah, the defendant, has no past criminal record. She is first mentioned in Gen. 29:16: Now Laban had two daughters; the name of the older one was Leah, and the name of the younger one was Rachel. By the time Leah is introduced we have already become acquainted with Rachel, Leah's younger sister. Rachel, who was a shepherdess, (Gen. 28:9) met Jacob at a well after he had made a long, arduous journey. As soon as Jacob saw Rachel, he was smitten. He immediately tried to impress her by rolling a huge stone off the mouth of a well ¹²⁰(Gen. 29:11), and then watering her flock. (Gen. 29:11) A moment later, he kissed her (Gen. 29:12) and he broke into tears. (29:12). Jacob then told Rachel who he was and Rachel ran home to tell her father, Laban, who welcomed Jacob. (Gen. 29:12-14) After a month's time, Laban said to Jacob

¹²⁰ Westermann, describes Jacob's removal of the stone as "the only instance which Jacob is granted a superhuman power in his service of love." (Usually it takes multiple men to remove the stone from the mouth of the well.) Claus Westermann, *Genesis 12-36*, (Minneapolis: Augsburg Publishing House, 1985) 465

"just because you are a kinsman, should you serve me for nothing? Tell me, what shall your wages be?" (Gen. 29:15)

It is at this point in the story that Leah is first introduced, after Jacob has already fallen in love with Rachel and just after Laban has asked Jacob to name his wages. The narrative interrupts Jacob's moment of decision to inform us "Laban has two daughters, Leah, the firstborn, and Rachel, the younger; Leah had weak eyes; Rachel was shapely and beautiful." (Gen. 29:17) As readers we can imagine Jacob looking over (or at least picturing in his mind) each daughter and considering which one he would like as his reward for working for Laban. But we already know whom Jacob is going to choose. We have already been privy to the love story between Jacob and Rachel. It is therefore no wonder that Jacob chooses to work for a lengthy period of seven years for Rachel since as the text states, "he loved her." (Gen. 29:18)

Jacob makes his choice known to Laban and explicitly identifies Rachel. Not only does he mention her by name, he also specifies that she is the younger of his two daughters. (Gen. 29:18) In contrast to Jacob's clear, direct request for Rachel, Laban gave the following ambiguous reply: "Better that I give her to you than that I should give her to an outsider. Stay with me." (Gen. 29:20) Jacob apparently took these words as a promise, since he then went on to work for Laban for seven years¹²¹ which as the text states, "seemed to him but a few days because of his love for her. [Rachel]" (Gen. 29:20). At the end of his seven

¹²¹ Many scholars interpret this offer to be Jacob's means of being able to provide a dowry for Rachel. Plaut described Jacob's offer to serve Laban for seven years as "so extreme that Laban is bound to accept." He further notes that "Service or performance of some kind to obtain a wife is a recurring biblical motif (see Josh. 15:16; Judg. 1:12,)" (Gunther Plaut, ed., *The Torah, A Modern Commentary*, (New York: Union of American Hebrew Congregations, 1981, 200)

years, love-sick Jacob demanded that Laban finally give him his wife. (Gen. 29:21)

Laban in response gathered all the people of the place and made a wedding feast that continued with seven days of celebration. This wedding feast, Plaut asserts, "was not only a testimony to the family's approval of the match, it also provided the opportunity to introduce the veiled bride into the marriage chamber; the subsequent marital relations would consummate the marriage."¹²² In other words, Laban invited the entire town to witness and celebrate the union of Jacob and his bride. That night Jacob fell victim to the deceptive ruse of which Leah is now being tried.

The text relates the following events: "When evening came, he [Laban] took his daughter Leah and brought her to him; and he cohabited with her." (Gen. 29:23) When Jacob awoke the next morning he was completely shocked and horrified. The narrator describes the situation tersely, but powerfully: "When morning came, there was Leah!" (Gen. 29:25)

Immediately Jacob realizes that he has been a victim of foul play, but instead of confronting Leah over the deception, Jacob goes straight to her father, Laban and demands: "What is this you have done to me? I was in your service for Rachel! Why did you deceive me?" (Gen. 29:25) Nehama Leibowitz (pg. 322) describes Jacob's reply as: "the cry of the weak against the strong, the well-intentioned and upright against the trickster."¹²³ Laban answers him coldly with

¹²² Gunther Plaut, ed., *The Torah, A Modern Commentary*, (New York: Union of American Hebrew Congregations, 1981) 200

¹²³ Nehama Leibowitz, *New Studies in Bereshit, (Genesis) In the Context of Ancient and Modern Jewish Bible Commentary*, (Jerusalem: Haomanim Press, 1981, 322

the following self-justification: "It is not the practice in our place to marry off the younger before the older." Sarna thinks that Laban at this moment "feigns outrage as though Jacob were the guilty one!"¹²⁴ (As if Laban really cared about the importance of tradition!)

Why does Laban play such a dirty trick on Jacob? Westermann believes that Laban "doesn't want to lose a good worker."¹²⁵ The New Interpreter's Bible suggests that after Jacob had told Laban "everything," Laban might have determined that Jacob pays for his deception of Isaac.¹²⁶ Speiser, who describes Laban as "the schemer," sees Laban as "the unwitting tool of destiny, the means whereby Jacob is repaid for his part in the mistreatment of Esau, through an ironic turn of fortune."¹²⁷ Alter takes this notion further:

Laban is an instrument of dramatic irony: his perfectly natural reference to "our place" has the effect of touching a nerve of guilty consciousness in Jacob, who in his place acted to put the younger before the firstborn. This effect is reinforced by Laban's referring to Leah not as the elder but as the firstborn (*bekhirah*).¹²⁸

One final possibility as to why Laban tricks Jacob is because he wanted to do his duty of marrying off both of his daughters to the right man. When he promised Rachel to Jacob, he said: "Better that I give her to you than that I should give her to an outsider." (Gen. 29:19) Perhaps, Laban thought up his plan

¹²⁴ Nahum M. Sarna, *The JPS Commentary, Genesis* (Philadelphia: The Jewish Publication Society, 1989), 205

¹²⁵ Claus Westermann, *Genesis 12-36*, (Minneapolis: Augsburg Publishing House, 1985) 467

¹²⁶ Leander E. Keck., ed., *The New Interpreter's Bible*, Vol. 1, *Genesis to Leviticus*, by Terence E. Fretheim (Nashville: Abingdon Press, 1994) 553

¹²⁷ E.A. Speiser, *The Anchor Bible Genesis*, (Garden City: Doubleday and Company, Inc., 1964) 227

¹²⁸ Robert Alter, *Genesis Translation and Commentary*. (New York: W.W. Norton and Company, 1996) 155

because he needed both daughters to be married to a family member. Esau who already had two wives, was no longer a candidate, thereby making Jacob, Laban's only hope. Had Laban given Rachel to Jacob first, Jacob would have never taken Leah too. In addition, substituting Leah (whom he couldn't marry off during the seven years Jacob worked for Rachel) might have also been seen by Laban as an act of kindness and justice toward Leah. One can imagine that Leah might have felt thankful for her dad who was sticking up for her and protecting her rights as the first-born, regardless of the circumstances. "Don't worry," Laban might have said to Leah, "Daddy is going to fix things for you."

After Jacob has consummated the marriage with Leah, there was little he could do to get himself out of the situation. He was legally considered married and the entire town for the remainder of the bridal week would bear witness to that reality.¹²⁹ The local custom, as explained by Laban, would be binding. Indeed, as Westermann notes, "Jacob is still a foreigner and the local people stand behind Laban who has no need to excuse himself."¹³⁰ Unless Jacob repudiated Leah, shaming her and making himself grossly unpopular, while at the same time alienating himself from Rachel and the entire family, he would have to accept his situation.

Laban had Jacob right where he wanted him. When Laban offers Jacob a

¹²⁹ Judges 14:13 provides an example of a wedding feast/celebration that lasted for 7 days. Speiser interprets these seven days as the "bridal week." Concerning the bridal week, Sarna writes that it is "also mentioned in Judges 14:12,17 in connection with Samson's wedding. This practice retained its popularity into Second Temple times (Tob. 11:18) and beyond (Mish. Neg. yz) and has continued in practice among Jews down to the present. It is popularly known as *sheva' berakhot* because seven benedictions are recited each day over a cup of wine at the grace after the festive meal when a fresh guest is present among a minyan (quorum often)." (Nahum M. Sarna, *The JPS Commentary, Genesis* (Philadelphia: The Jewish Publication Society, 1989), 205)

¹³⁰ Claus Westermann, *Genesis 12-36*, (Minneapolis: Augsburg Publishing House, 1985) 468

new work contract so that he can acquire Rachel as a second wife, his offer is one of sadistic kindness. Jacob has no option but to accept it. He completes the seven day wedding feast with Leah, took Rachel as his second bride and serves Laban for an additional seven years. The unplanned marriage to Leah and Jacob's acceptance of Rachel as a second wife, would later lead to very difficult consequences in the future. Westermann makes the following observations about the impact of Laban's deception:

In his humiliating and constrained situation he now acquires Rachel as wife. V. 28b would have meant only joy and fulfillment at the end of v. 22. But everything has changed completely because of the intervening deceit. Laban has destroyed something. He has not only deceived Jacob, but his daughter Rachel as well, who can now only become Jacob's second wife. By his cunning deceit he has infringed cruelly on the blossoming love between the two. Jacob's first seven years of service "seemed but a few days" (v. 20); the same could not be said of the second seven (v. 30b).¹³¹

While it was remarkable that the love between Jacob and Rachel was later able to persist under such duress, Jacob's marriages to two sisters opened up a number of difficult conflicts; the greatest being that of sibling rivalry between the two sisters. In spite of the fact that Rachel was the second wife, Jacob loved her more than Leah, as noted in our text. Another difficulty was that the ruse which victimized Jacob, made Laban into his rival.

VIII. Additional Motives

The text of Gen. 29:22-26 leaves little doubt about who was the main actor in this story of deception; clearly it was Laban. The text also seems to hint that the bride-switching deception was a form of measure for measure punishment

¹³¹ Ibid.

doled out to Jacob as payback for the deception of his father, Isaac. These issues are widely addressed by numerous scholars. This investigator, however, wonders about Leah. Does she also play a role in this drama for which she too should be held accountable? Was she forced into the ruse or was she a willing participant? Unlike the other cases of deception that this investigator has examined, Leah's involvement in the alleged crime is obscure. We know that Leah went through with the plan conceived by her father. However, we do not know her thoughts or feelings on the matter. Since Gen. 29:22-26 gives no voice to Leah, this investigator will attempt to formulate a theory regarding Leah's involvement based on clues that are found in other sections of the Jacob, Leah, and Rachel narrative.

Some scholars have argued that Leah complied with Laban's scheme out of a sense of fear of and honor for her father. Certainly this notion has merit. In the case of Lot and his daughter's, this investigator cited Leila Leah Bronner who described the power a father had over his daughters:

The father's right to sell [into slavery] (Ex. 21:7-11) or give his daughter in marriage and to annul her vows (Num. 30:4-6) bespeaks his virtual control over her body, mind and destiny.¹³²

Dr. David S. Sperling additionally points out that "according to the Talmud a father can give his daughter in marriage to somebody whose body is covered

¹³² ¹³² Leila Leah Bronner, *From Eve to Esther: Rabbinic Reconstructions of Biblical Women*, (Louisville: Westminster John Knox Press, 1994), 115

with boils."¹³³ Keeping these facts in mind, it would make sense that Leah would think twice about disobeying her father.

On the other hand, Laban's daughters were strong women who were not afraid to challenge male authority. Rachel, for example, later dares to disobey her father when she steals his idols (Gen.31:19) and Leah "hires" Jacob for the night, (Gen.30:16) boldly telling him: "You are to sleep with me tonight!" (Gen. 30:16)

To better understand Leah's apparent complicity in Laban's scheme, this investigator would like to examine the "sister switch" story of Gen. 29 while comparing it to the "brother-switch" story of Gen. 27. In both stories a parent (both from the same family) conceives a deceptive scheme and urges his/her child to take part in it. In both cases one sibling impersonates the other in order to get what he/she felt like he/she deserved, but was originally intended for the sibling. Both use darkness as their tool of deception (in Jacob's cases, Isaac's blindness can be compared to a sense of darkness.). Both stories involve food (in Leah's case there was a great feast). Both of the victims of the deception place too much trust in their sense of touch, and both characters get what they immediately want through means of trickery. What's different however between the two stories, is how much the text informs the readers of the characters willingness to go along with the deception. In the case of Jacob's deception of his father, the reader is privy to details of the plot as it is first revealed to Jacob. Upon hearing his mother's plan Jacob responds with caution. He seems to

¹³³ Dr. David S. Sperling, my thesis advisor made this comment while editing a draft of this thesis, January 14, 2004

agree with the goal of the deception, but voices reservations about its feasibility. When Rebekah instructs him to fetch two kids from the flock and Jacob does so, he becomes a willing participant in the drama. He even troubleshoots the plan at times: "But my brother Esau is a hairy man, and I am smooth skinned. If my father touches me, I shall appear to him as a trickster..." (Gen. 27:11-12) By contrast, in the Laban/Leah narrative, Leah seems to have little advance notice of what will happen. There is no recorded conniving between father and daughter. Instead it seems as though Leah is grabbed and thrust upon Jacob: "When evening came, he took his daughter Leah and brought her to him; and he cohabited with her." (Gen. 29:23) While this investigator concedes that it is possible that Leah had no choice in the matter (or may not have even known that her father had promised Rachel to Jacob) it is also possible to suspect that Leah quickly made up her mind to along with the plan willingly. In the Jacob/Isaac deception narrative, Jacob voices his concerns over the matter. Leah says nothing. If she were totally against such a plan wouldn't she have at least complained a little bit to her father? Might she have known that her father (Laban, along with her grandmother) *had asked Rebekah* if she wanted to go with Abraham's servant in order to marry Isaac? (24:57-58) Would she not have expected similar kindness to be expressed to her? Or, if she really did not want to go through with the deception, wouldn't she have revealed herself to Jacob before he consummated the wedding? It seems that while Leah may have used "honor thy father" as a justification over her involvement, she too had an interest in marrying Jacob and motives for participating in the crime under investigation.

Leah felt as though she "deserved" to get married before her sister. After Jacob realized that he had been duped by Laban, he was told, "It is not the practice in our place to marry off the younger before the older." (Gen. 29:26) Perhaps, Leah herself grew up knowing well this custom and expecting that it would be followed. While it must have been obvious to her that Jacob loved Rachel, in Leah's eyes, this might have seemed unfortunate and somewhat awkward, but of little immediate consequence. For as long as she was unmarried, she still had "first dibs" on all eligible bachelors, including Jacob. The custom of the "eldest first," would take precedence over her younger sister's claim of finding Jacob. It would also outweigh the apparent fondness Jacob and Rachel had for each other and even discount any disparities in physical appearance between the two girls. If Leah could find a way to marry Jacob, she would. If Jacob wanted to marry Rachel, he would have to wait for Leah to get married first. (One can imagine that over the seven years that Jacob worked for Laban, Jacob spent a lot of time wishing that Leah would find a husband!)

The text doesn't hide the fact that Jacob loves Rachel more than Leah, even though Leah is Jacob's first wife. This investigator thinks just as Jacob loved Rachel, Leah loved Jacob. Jacob stayed with the family for seven years. He was the only eligible and available man that Leah knew. In the seven years since he arrived at their place, Leah remained single. Of course, she would have wanted to marry Jacob if given the chance. She knew, however, that Jacob loved Rachel and was intending to marry her. Leah therefore participated in the deception knowing that if Jacob knew that he was getting her, he would have

rejected her before consummating the marriage and becoming legally bound to her. Like Lot's daughters and Tamar, Leah had to pretend that she was someone else just long enough to have sex with a man who possessed what she wanted. What she initially wanted was the title of being Jacob's first wife. What she deeply desired however was his love. Leah thought that once she was married to Jacob, he would learn to love her. Unfortunately, her wishes for his love never seem to come true as evidenced by the names of her first three sons; each of which reflect her deep distress over being unloved by Jacob.

The main reason why she is unloved by Jacob is that he loves Rachel more. This leads to another possible motive for Leah's alleged crime: sibling rivalry. Although this battle between sisters is not recorded in the events that precede the bride switch, their jealousies of one another becomes noticeable in the subsequent passages. Leah desires the love Jacob expresses toward Rachel and she gives voice to her feeling concerning this reality through the choice of names she gives her children. As mentioned earlier, to win her own husband's attention, Leah even resorts to "hiring" Jacob for a night by giving to Rachel, the mandrakes her son Reuben found. (Gen. 30:14-18) While Leah cannot seem to compete against her sister for Jacob's love, she is able to dominate when it comes to having babies. Rachel, who was barren is reported to have been so envious of her sister (Gen. 30:1) that she pleaded with Jacob to help her to have a child, saying to him: "Give me children, or I shall die." (Gen. 30:1) Ilana Pardenes writes: (pg. 64) "Her [Rachel's] desperate craving for offspring is inflamed by

envy."¹³⁴ Surely Rachel wanted children for the sake of having children, but did she also want them because she was envious of her sister who had children? This investigator would like to put forth the notion that Leah and Rachel were always in competition with one another. Just as Jacob wanted what Esau had, Leah wanted what Rachel had. There was a value in having what the other sibling had and this value extended beyond the actual worth of that particular thing. Whether it be the birthright, the death-bed blessing or Jacob's affection, possessing that which belonged to your sibling, provided a means of achieving dominance. Therefore, when Laban took Leah and brought her to Jacob, she went willingly. All the while she knew that she was getting something that was intended for her sister.

Running through the section there is an underlying thematic pattern similar to that in chapter 27. Chapter 27 tells the story of two brothers locked in rivalry for a father's blessing. Gen. 29 presents a tale of two sisters competing for a husband's affection and the joys of motherhood. In each story the elder has prior legal status, and in each it is the younger who becomes the key link with the future.

Avivah Zornberg, while taking into consideration a midrash¹³⁵ designed to explain why Leah had "weak eyes," suggests another possible motivation for Leah. According to the midrash, Leah learns that she is destined to be married to Esau and cries until her eyelashes fall off. Zornberg contends that Leah participates in the wedding switch to ensure that she does not end up married to

¹³⁴ Ilana Pardes, *Countertraditions in the Bible, A Feminist Approach*, (London: Harvard University Press, 1992), 64

¹³⁵ Ber. Rab 70, 16; Bava Batra 123a

Esau. Zornberg writes:

In effect, Leah defies her fate. She refuses to accept the "fit" marriage. Sitting at the "crossroads," where destinies fork, she interrogates her fate, demands to know the implications and consequences of what "must be." Her tears generate her many children. For a formidable energy builds up in her, in her deprivation; she takes Rachel's place under the marriage canopy; and in the darkness, in which forms and structures become fluid, in which transformations, fantastic combinations, and splittings become possible, Leah becomes Rachel.¹³⁶

IX. Expertise: recognition of tools of deception and discussion about each: *Police are trained to be able to recognize certain pieces of equipment that are associated with particular crimes. This is called "Expertise." If a police officer witnesses a suspect using a certain piece of equipment for a crime or if a tool of crime is found later on the scene and identified with the suspect, this can be used as evidence against the suspect.*

Many commentators wonder how it was possible that Jacob was tricked into thinking that Leah was Rachel. The following are some of the tools of deception that helped Laban and Leah accomplish their devious ends:

Exhibit A: Deceptive words:

"Better that I give her to you than I should give her to an outsider." (Gen. 29)

Davidson observes: "Laban is as smooth a double-dealer as Jacob."¹³⁷

Just as Jacob tricked his father with misleading words, such as "I am Esau, your first-born: I have done as you told me," (Gen. 27:18) Laban, the master of deception, now tricks Jacob, using ambiguous words to deceive Jacob. While Laban seems to imply with his words that one day it might be the right thing to do

¹³⁶ Avivah Gottlieb Zornberg, *Genesis, The Beginning of Desire*, (Philadelphia: The Jewish Publication Society, 1995) 79

¹³⁷ Robert Davidson, *Genesis 12-50* (Cambridge: Cambridge University Press, 1973) 154

to give Rachel to Jacob, Jacob infers that he is being promised Rachel after seven years of work.

Exhibit B: *Food/Wine and Festivities*

"And Laban gathered all the people of the place and made a feast." (Gen. 29:22)

Although there is no specific mention of Jacob eating food, drinking wine or losing himself in the revelry of the wedding festivities, the very context of the deception in the midst of the seven day wedding party, may suggest that these activities contributed to the success of the plan. It is not hard to imagine that after spending the day eating delicious food and drinking heavily that Jacob would have been a happy, appreciative mood.¹³⁸ Finally after seven years of hard work, Laban was rewarding him for his efforts. As well wishers toasted to his success, Jacob's heart was full of joy, good intentions and anticipation. Finally he would have Rachel. In this moment of celebration, Jacob allowed himself to be vulnerable. He could never have expected that Laban, his own bone and flesh, his benefactor, would pull such a dastardly deed. Nor would he have ever guessed that Leah, would go along with her father's plan.

Exhibit C: *The darkness of Evening:*

"When evening came, he took his daughter Leah and brought her to him; and he cohabited with her" (Gen. 29:23)

¹³⁸ Other citations in the Bible testify to the use of alcohol as an aid to seduction. As mentioned in Case #1, in Genesis 19, Lot's daughters ply their father with alcohol in order to seduce him and in Ruth 3, Ruth makes her move on Boaz after he ate and drank.

Laban and Leah make use of the darkness of the evening so that Jacob cannot identify her by sight. Many commentators note the irony of the situation:

Davidson, for example, remarks:

There is a strong undercurrent of poetic justice in this story. Jacob the deceiver is himself deceived. The man who had shamelessly taken advantage of the blindness of his father, sees too late that he has been given the wrong bride.¹³⁹

Another irony is that Leah, who is described as having "weak eyes" is able to see what even the great patriarch and prophet, Jacob, cannot.

When Jacob first arrived in Haran he told Laban everything: "*et kol ha-debarim ha-eleh*" (Gen 29:13). Laban likely knew about Jacob's dream of the angels descending and ascending a ladder. He would have also have known that Jacob, the dreamer, might be more willing to accept without questioning that which would seem out of the ordinary were it to occur in the darkness of evening. Laban for example, knew that it wasn't until after Jacob woke up from his dream with the angels on a ladder, that he made the following realization: "Surely the Lord is present in this place, and I did not know it!" (Gen. 28:16). Laban may have also anticipated that Jacob would not discover why Rachel seemed to be someone else until the morning arrived. Laban's hunch was correct. After Jacob woke up to find Leah next to him, he was shocked beyond words. Instead of hearing directly from Jacob, the narrator describes the situation: "When morning came, there was Leah!" This moment anticipates a similar description of Pharaoh's experience after having a bad dream about cows and grain. The narrator describes the scene in like terms: "Then Pharaoh awoke: it was a

¹³⁹ Robert Davidson, *Genesis 12-50* (Cambridge: Cambridge University Press, 1973) 154

dream!" In contrast to the pharaoh's experience, Jacob learned that what he may have thought was a strange evening dream, turned out to be a horrific reality in the morning.

Another possibility expressed in the Midrash and referred to by Rashi is that Jacob was fooled by something he did see rather than something he didn't see. According to the Midrash, Rachel and Jacob, anticipated Laban's plan to switch sisters at Jacob's wedding. In response the two lovers created a signal that only they would know. However when Rachel saw that Leah was being brought to Jacob she thought "My sister may now be humiliated" and transmitted those signs to her.¹⁴⁰

Exhibit D: Wedding Veil

The text does not explicitly state that Leah wore a veil when she was brought to Jacob, however most modern commentators contend that the veil was absolutely necessary for the ruse. Of course, had Leah entered the chamber with her face exposed, she would have been easily identified. (Presumably Rachel and Leah had relatively similar body types, however.) Sarna and others refer to Gen. 24:65 as possible evidence to support the notion that the bride was indeed veiled when presented to her husband.¹⁴¹

¹⁴⁰ Megillah 13a, Bava Batra 123a, Rashi

¹⁴¹ Nahum M. Sarna, *The JPS Commentary, Genesis* (Philadelphia: The Jewish Publication Society, 1989), 205

Exhibit E: *Trust in the sense of touch over sound:*

Jacob, like his father before him, is deceived because he overly relies on his misleading sense of touch when he is deprived of his sense of sight.

Regarding this event, Ilana Pardes (pg. 62) remarks:

Laban's move as many have noted, serves as symmetrical punishment for Jacob's cunning usurpation of his elder brother's birthright. Just as the blind Isaac "misfeels," Jacob, so the young trickster, blinded by love, becomes a victim of an inverted "bed trick" as he lies with the elder sister instead of the younger one.¹⁴²

S.B. Noegel suggests that Jacob's "misfeel" of Leah provides another reminder of the Jacob's deception of his father. Just as Jacob's deception of Isaac came about when Isaac felt the skin of an animal from the flock, (27:16) Jacob was also tricked when what he thought he was feeling as one animal: (Rachel-which means "ewe-lamb") was really another (Leah-which means "cow").¹⁴³

According to Midrash Bereishit Rabba, Jacob, (again like Isaac) trusted his sense of touch over his sense of sound. The Midrash provides both an explanation of how Jacob was duped as well as a connection to Jacob's deception of his father:

All that night Jacob kept calling his bride Rachel and Leah answered to the name. In the morning, "Behold it was Leah" (Gen. 29:25). Said Jacob to Leah, "What is this O trickstress and daughter of a trickster? Did I not call you Rachel all night long and you answered to the name?" She replied. "Is there a teacher who has no pupils? Did not your father once call you Esau, and you answered to that name?"¹⁴⁴

¹⁴² Ilana Pardes, *Countertraditions in the Bible, A Feminist Approach*, (London: Harvard University Press, 1992), 62

¹⁴³ Scott B. Noegel, *Puns and Pundits: Wordplay in the Hebrew Bible and Ancient Near Eastern Literature* (Bethesda: CDL Press, 2000) 163-17

¹⁴⁴ Midrash Bereishit Rabba, 70:17 and 70:19

Finally it should be noted that some commentators do not think that Jacob was deceived in such a manner. Chezkuni, for example contends that had Leah spoken, Jacob would have identified her, since he had already lived in Laban's household for seven years and would have recognized her voice. Instead he maintains (as does Radak) that Jacob and Leah did not speak to each other during their time of sexual relations for the sake of modesty.

X. Circumstantial Evidence/Information: *Circumstantial Evidence is evidence that points the finger away from other suspects or an alibi. Information refers to statements by witnesses and victims.*

The text clearly identifies her as an accomplice in the alleged crime. Although the readers are informed that Leah is brought to Jacob instead of Rachel, Jacob is caught completely off guard. When morning comes Leah's involvement in the caper becomes a literal "fact on the ground," as the text states: "When morning came, there was Leah!" (Gen. 29:25). Other witnesses would have been able to attest to the fact that Leah had spent the night with Jacob. Jacob himself complains about this reality to Laban, who sets Leah up. Rachel also would have known that it was her sister (and not her!) in the wedding chamber and of course, come morning, the entire wedding party would have known what happened, especially in light of Laban's justification of his actions by means of local customs.

XI. FLIGHT: In evidence law, *attempting to flee, evade or elude, provides a presumption of guilt.*

Following the discovery of her involvement in the act of deceit, Leah makes no attempt to flee, evade or elude. Instead she waits to see how Jacob will respond. Instead of immediately repudiating her, Jacob takes the matter to Laban, who provides him with an incentive to maintain Leah as his first wife: after Leah's 7 days of wedding festivities, Jacob would be given Rachel as his second wife, provided that he work an additional seven years for him.

XII. Ruling/Judgment

Remarkably most commentators do not implicate Leah in the bride-switch caper and seem disinterested in her role in the affair. Instead, they focus on Laban's involvement. Rashi, for example while borrowing from the Midrash, presents Laban, as a lying, cheating, crook who is not to be trusted. Although Jacob was aware of Laban's nature and was weary of him, he was tricked after Rachel participated in the deception in order to prevent her sister from being shamed. In his commentary to Gen. 29:30 Rashi explains that Jacob served his latter seven years of service to Laban faithfully, even though [Laban] had dealt deceptively with him. Rashi does not further comment about Leah's role in the deception beyond the previously mentioned Midrashim. S'forno also blames Laban, who, according to S'forno, in turn, blames the townspeople who wouldn't let him keep his word to Jacob out of respect to local customs. In addition, many modern commentators also blame Laban for the ruse.

Von Rad for example, writes:

That Laban secretly gave the unloved Leah to the man in love was, to be sure, a monstrous blow, a masterpiece of shameless treachery, by which he for the time being far outmaneuvered Jacob, who was not exactly dubious either.¹⁴⁵

Carl D. Evan, suggests further:

Jacob, again has been drawn into a plot against his will. For seven years Laban led him on, and Jacob innocently participated in the scheme. He did not know Laban's mind, and he fell victim to his sinister plot."¹⁴⁶

Somehow it seems that the question of Leah's guilt gets lost in other discussions. However this makes sense in light of the Bible's description of the events leading up to the bride switch. The text says that "Laban took her [Leah] and brought her to him." (Gen. 29:23) What was Leah supposed to do under those circumstances? Jacob himself, says nothing to Leah and instead chooses to directly confronts her father, who, in response, doesn't blame Leah, but takes responsibility for what happened, even providing an excuse for his actions.

Blame is also shifted away from Leah when the various commentators view the event as retributive justice to Jacob for deceiving his father. From this perspective the story not about Laban or Leah; they are just actors in Jacob's drama. Ilana Pardes remarks: "the female subplot, at this point, is wholly at the service of Jacob's education. Accordingly the perspectives of Leah and Rachel on this exchange are withheld."¹⁴⁷

¹⁴⁵ Gerhard Von Rad, *Genesis, A Commentary*, (Philadelphia: The Westminster Press, 1973) 287

¹⁴⁶ Carl D. Evans, "The Patriarch Jacob -- An 'Innocent Man': Moral Ambiguity in the Biblical Portrayal," *Bible Review* 2/1 (1986), pp. 32-37.

¹⁴⁷ Ilana Pardes, *Countertraditions in the Bible, A Feminist Approach*, (London: Harvard University Press, 1992), 63

Aviva Zornberg is one of the few commentators this investigator came across that considers Leah's involvement in the caper. Zornberg describes Leah's relationship with Jacob as "an act of will: for in some enigmatic sense, it was never meant to be."¹⁴⁸ In spite of all the factors stacked up against the possibility of Leah's marrying Jacob, she still manages to make it happen. On that infamous evening, Zornberg contends, "Leah becomes Rachel."¹⁴⁹ Leah, in other words, is a character whose actions matter and like those of Jacob and Laban. Therefore her actions should be subject to scrutiny. Surely, had Leah completely resisted Laban's scheme, Jacob would have identified her and consequently refused to marry her and our story would have a very different conclusion.

This investigator wonders how Leah's actions were judged by those who were most affected by the ruse. Two of those people were Jacob and Rachel. When Jacob wakes up the morning after the deception he says nothing to Leah, but goes directly to Laban. In the process Jacob seems to in effect, place all of the blame on Laban. But before he can return to Leah and curse her for taking part in the deception, he is told that he will be given Rachel as well. Jacob therefore fulfills the seven days of Leah's bridal week without incident. Although the Bible does not tell the readers if Jacob punished Leah for tricking Jacob, she does experience the consequences of her actions, (whether or not these consequences are meant to be the expression of punishment or not.) The main consequence is that Leah soon discovers that in spite of being the first wife, she

¹⁴⁸ Avivah Gottlieb Zornberg, *Genesis, The Beginning of Desire*, (Philadelphia: The Jewish Publication Society, 1995) 211

¹⁴⁹ Ibid.

is so unloved by Jacob that when she has her first child (Reuben) she chooses a name for him that means (in part): "The Lord has seen my affliction." (Gen. 29:32) The other meaning of Reuben's name is also a telling sign of her situation: "Now my husband will love me." (Gen. 29:32) Leah's participation in the deception eventually puts her between two lovers. Suddenly she finds that everything she does is done with the hope of winning her husband's affection which is simply not there. When Rachel later asks Leah for some of the mandrakes Reuben finds, Leah bitterly says to Rachel: "Was it not enough for you to take away my husband, that you would take my son's mandrakes?" (Gen. 30:15) The sad fact was that Rachel did not steal Jacob from her; Jacob was never really hers in the first place regardless of local customs. Rachel made the most of this reality. She was hurt by Leah's participation in the deception and Rachel indeed punishes Leah by monopolizing Jacob's time. After Leah accuses Rachel of stealing her husband, Leah has to in effect "buy her own husband for a night." This incident seems to hint that Jacob denied Leah her conjugal rights and may be evidence of Rachel's punishment to Leah for her role in the bride switch.

God is the one player who has sympathy for Leah. Instead of punishing Leah, God rewards her. When, for example, Leah is noticeably unloved, following the wedding, God opens her womb and enables her to get pregnant while her sister Rachel remains barren. The New Interpreters Bible suggest that: "The fact that God responds in so many ways to Leah's suffering reveals the divine perspective on her mistreatment and an implicit judgment on her

oppressors."¹⁵⁰ A final apparent divine judgment on Leah's behalf is that later in the story when Leah "hires" the holy patriarch Jacob for the night, she is not punished by God, rather she is rewarded with yet another son.

In all, God blesses Leah with 6 sons, while Rachel only has two. It is therefore important to note that Leah's participation in the ruse enabled the fulfillment of God's promise to Jacob that "his descendants be as the dust of the earth; and spread out to the west and to the east, to the north and to the south." (28:14) Sarna describes Jacob's unintended marriage to Leah "as the working of Providence" and explains that "from this unplanned union issued Levi and Judah, whose offspring shared spiritual and temporal hegemony in Israel through the two great institutions of the biblical period, the priesthood and the Davidic monarchy."

Finally, Leah is also blessed with the honor of being buried with Jacob, (Gen. 49:31) while Rachel was buried on the road to Ephrath. Avivah Zornberg makes the following observation concerning this tragedy:

Jacob and Leah are buried together. The irony is manifest. The struggling, complex couple, with their many children, remain forever together in the Cave of Makhpelah, the Cave of Couples; while Rachel, the only true wife of intention and desire, is buried separately, on the road to Bethlehem.¹⁵¹

¹⁵⁰ Leander E. Keck., ed., *The New Interpreter's Bible*, Vol. 1, *Genesis to Leviticus*, by Terence E. Fretheim (Nashville: Abingdon Press, 1994) 553

¹⁵¹ Avivah Gottlieb Zornberg, *Genesis, The Beginning of Desire*, (Philadelphia: The Jewish Publication Society, 1995) 212

XIV. Court Reporter's Notes

This section will discuss possible reasons why Leah resorted to the particular crime of identity fraud. It will also speculate as to whether or not Leah was able to get what she wanted by partaking in the alleged crime.

Simply put; Leah desired Jacob's love but Jacob instead loved Rachel, her sister. Jacob's love for Rachel was like Isaac's love for Esau. Rachel did not earn it, nor particularly value it. Jacob's love for her was simply bestowed upon her. Just as Isaac promised to Esau that he would impart his death-bed blessing to him, Jacob promised Rachel that he would marry her. That which Rachel took for granted and accepted without fanfare, Leah desired with a fiery passion. (Again similar to Esau and Jacob in relation to their father's love). Jacob could not receive Esau's blessing unless Isaac thought he was Esau. Leah could not receive the love intended for Rachel, until Jacob thinks that he is giving it to Rachel. (The cow must become the ewe-lamb!) When Isaac realizes that he has been duped, he insists that the blessing that he gave to Jacob will remain with Jacob, in spite of the deception. When Jacob awakens in the morning and discovers that he has been tricked, the marriage remains, in spite of the deception. Jacob's blessing ultimately sticks with him: Instead of receiving from God the dew of heaven and the fat of the earth, as well as abundance of new grain and wine, (Gen. 27:28) Jacob and his family experience great famine in the land of Canaan. The famine becomes so severe that Jacob and his family eventually have to leave the land. Jacob's mother's sons do not bow to him, instead, when Jacob finally meets up with Esau, it is Jacob that bows before

Esau. (Gen. 33:3) Likewise, the love that Leah received through deception did not last. The text clearly states that Jacob loved Rachel more than Leah. Although Leah goes on to have more children than Rachel, there seems to be evidence that she is denied her conjugal rights from Jacob. In Leah's case, the act of deception helps her get her immediate goals of marriage, sex and children with Jacob, but it never wins for her what she really wants, which was Jacob's love. Her life which she thought finally began that first evening she spent with Jacob, turns into countless "mornings" when that sense of disappointment that Jacob felt when "behold it was Leah" is sensed by her time and time again, afflicting her and leading her to great suffering.

Pathetically she thinks that by having children she will win Jacob's love, but this too will not work. Finally after she bears his sixth son, she give up hoping that Jacob will love her and goes for the more modest goal of earning his respect. After this son is born she exclaims: "God as given me a choice gift; this time my husband will exalt me, for I have borne his six sons." (Gen. 30:20)

It doesn't really matter what Leah's motivations were to participate in the deception, whether she was forced to, whether she thought that Jacob was rightfully hers, whether she did it to out of competition with her sister or whether she did it to honor the customs of the land. What matters in the end is that Leah never seems to get what she wanted; Jacob's love. In this regard her story is one of tragedy. The only bright spot Leah's life, it seems, was her children.

TAMAR, YOU DON'T HAVE TO TURN ON THE RED LIGHT

Formal Charging

I. Defendant's proper name: Tamar (alias- "Palm Tree")

II. Essential facts of the offence alleged:

Tamar deceived her father-in-law, Judah, by impersonating a prostitute so that he would impregnate her, enabling her to have a child and fulfill the requirements of levirate Law.

Below is a copy of the original Officer's report on the matter:

Chapter 38: About that time Judah left his brother and camped near a certain Adullamite whose name was Hirah. 2. There Judah saw the daughter of a certain Canaanite whose name was Shua, and he married her and cohabited with her. 4. She conceived and bore a son, and he named him Er. 4. She conceived again and bore a son, and named him Onan. 5. Once again she bore a son, and named him Shelah; he was at Chezib when she bore him. 6. Judah got a wife for Er his first-born; her name was Tamar. ⁷But Er, Judah's first-born, was displeasing to the LORD, and the Lord took his life. 8. Then Judah said to Onan, "Join with your brother's wife and do your duty by her as a brother-in-law, and provide offspring for your brother." 9. But Onan, knowing that the seed would not count as his, let it go to waste whenever he joined with his brother's wife, so as not to provide offspring for his brother. 10. What he did was displeasing to the Lord and He took his life also. ¹¹ Then Judah said to his daughter-in-law Tamar, "Stay as a widow in your father's house until my son Shelah grows up"—for he thought, "He too might die like his brothers." So Tamar went to live in her father's house.

12. "A long time afterward, Shua's daughter, the wife of Judah, died. When his period of mourning was over, Judah went up to Timnah to his sheepshearers, together with his friend Hirah the Adullamite. 13. "And Tamar was told, "Your father-in-law is coming up to Timnah for the sheepshearing." 14. So she took off her widow's garb, covered her face with a veil, and, wrapping herself up, sat down at the entrance to Enaim, which is on the road to Timnah; for she saw that Shelah was grown up, yet she had not been given to him as wife. ¹⁵ When Judah saw her, he took her for a harlot; for she had covered her face. 16. So he turned aside to her by the road and said, "Here, let me sleep with you"—for he did not know that she was his daughter-in-law. "What," she asked, "will you pay for sleeping with me?" 17. He replied, "I will send a kid from my flock." But she said, "You must leave a pledge until you have sent it." 18. And he

said, "What pledge shall I give you?" She replied, "Your seal and cord, and the staff which you carry." So he gave them to her and slept with her, and she conceived by him. ¹⁹ Then she went on her way. She took off her veil and again put on her widow's garb.

²⁰ Judah sent the kid by his friend the Adullamite, to redeem the pledge from the woman; but he could not find her. ²¹ He inquired of the people of that town, "Where is the cult prostitute, the one at Enaim, by the road?" But they said, "There has been no prostitute here." ²² So he returned to Judah and said, "I could not find her; moreover, the townspeople said: There has been no prostitute here." ²³ Judah said, "Let her keep them, lest we become a laughingstock. I did send her this kid, but you did not find her."

²⁴ About three months later, Judah was told, "Your daughter-in-law Tamar has played the harlot; in fact, she is with child by harlotry." "Bring her out," said Judah, "and let her be burned." ²⁵ As she was being brought out, she sent this message to her father-in-law, "I am with child by the man to whom these belong." And she added, "Examine these: whose seal and cord and staff are these?" ²⁶ Judah recognized them, and said, "She is more in the right than I, inasmuch as I did not give her to my son Shelah." And he was not intimate with her again.

²⁷ When the time came for her to give birth, there were twins in her womb! ²⁸ While she was in labor, one of them put out his hand, and the midwife tied a crimson thread on that hand, to signify: This one came out first. ²⁹ But just then he drew back his hand, and out came his brother; and she said, "What a breach you have made for yourself!" So he was named Perez. ³⁰ Afterward his brother came out, on whose hand was the crimson thread; he was named Zerah. ⁶

IX. Name and degree of alleged offences:

Identity Fraud: Tamar pretends to be someone else (a prostitute) so that Judah wouldn't recognize her and would have sex with her.

Adultery: Tamar was betrothed to Shelah, Judah's youngest son, therefore, sleeping with someone else would constitute adultery.

Placing a Stumbling Block Before the Blind: Tamar uses to her advantage Judah's desire to be with a woman after completing the mourning period of his wife. She also uses to her advantage the location of the sheep shearing festivities; Shlomith Yaron describes these occasions as: "a lively time of joy and revelry and drinking."¹⁵² In this context celebration and abandon, Tamar lures and seduces Jacob.

Harlotry: Tamar arranges with Judah a sex-for-payment arrangement.

¹⁵² Shlomith Yaron, "Sperm Stealing, A Moral Crime by Three of David's Ancestresses," *Bible Review* 17 (1, 2001) 36

Theft: Sperm Stealing: S'forno explains that most prostitutes used absorbents to protect them from pregnancy.¹⁵³ Judah may have expected that Tamar, as the harlot on the side of the road would have done the same. Instead, Tamar kept within her Judah's seed.

Disrespect of royalty: In the public discovery that Tamar had played the harlot and was now pregnant, she shamed Judah and his family who were considered royalty.

Revenge: Does Tamar seek settle a score with Judah after neglects her?

X. Names of all witnesses to be called at trial: Judah

XI. Time and place of offence charged stated as specifically as possible:

The Bible does not specify what time of day the Tamar committed the alleged offence. However it does seem that took place some time during the day, either in the morning or early afternoon. It had to be light enough outside that Judah would be able to see her from the road and there would have to be sufficient time in the day left that it would make sense that Judah would have time to fulfill his obligations of the promised kid. Furthermore, had the alleged offence happened after dark, it would not have made sense for Judah's friend, the Adullamite to ask the people of the town if they had seen her.

Robert Davidson points out that Timnah, the scene of the crime, is listed in Josh. 15:57 as one of the Judean cities in the hill-country. He also mentions that "Modern Khirbet Tibneh, some 16 miles south-west of

¹⁵³ S'forno Commentary 38:24

Jerusalem, has been identified as the site of Timnah, but there may have been more than one settlement of this name in Old Testament times."¹⁵⁴

X. Statutes alleged to have been violated and the section of the statutes that fix the penalty or punishment:

- **Lev. 21:9:** "When the daughter of a priest defiles herself through harlotry, it is her father whom she defiles; she shall be put to the fire."
- **Lev. 20:12:** "If a man lies with his daughter-in-law, both of them shall be put to death; they have committed incest-their bloodguilt is upon them."
- **Deuteronomy 22:22:** "If a man is found lying with another man's wife, both of them—the man and the woman with whom he lay—shall die. Thus you will sweep away evil from Israel."
- **Lev. 19:14:** "You shall not insult the deaf, or place a stumbling block before the blind" **Dt. 27:18** "Cursed be he who misdirects a blind person on his way..." (The girls take advantage of their father's weakness to alcohol.)
- **Exodus: 20:13:** "You shall not steal."
- **Lev. 19:18:** "You shall not take revenge."

XI. Relevant Past criminal Record (Relevant Past history):

In this particular case, the relevant past history is necessary to establish motives for Tamar's subsequent behavior. The story of Judah and Tamar interrupts the Joseph narrative at a moment of high suspense, just after Joseph's brothers trick their father Jacob into thinking that his favored son, Joseph, is dead, when in actuality, he has been sold into slavery. Instead of letting readers know what becomes of Joseph, Chapter 38 launches into events pertaining to

¹⁵⁴ Robert Davidson, *Genesis 12-50* (Cambridge: Cambridge University Press, 1973) 228

the life of Judah, Jacob's fourth son. The narrator recounts the events that transpire follow the sale of Joseph into slavery: About that time, Judah left his brothers and camped in Addullam (Northern Canaan), married a Canaanite¹⁵⁵ woman who was the daughter of Shua, and had three sons with her; Er, Onan and Shelah. (Gen. 38:1-5)

Tamar is first introduced as the wife selected by Judah for his first-born son, Er. (Gen. 38:6) Although no information is given about Tamar's background, it seems likely that Tamar, like Shua, was a Canaanite woman.¹⁵⁶ Her marriage to Er was short lived, however; Er, for reasons unspecified, was displeasing to God and God took his life. (Gen. 38:7) In response, Judah said to Onan, his second son: "Join with your brother's wife and do your duty by her as a brother-in-law, and provide offspring for your brother." (Gen. 38:8)

What Judah was asking his son to do was to fulfill the duty of *yibbum*. In English this practice is called *levirate marriage*. (The root of the word *levirate* is from the Latin word *levir*, which refers to a husband's brother.¹⁵⁷) In cases where an older brother died without children, the practice of *yibbum* (as stipulated in

¹⁵⁵ Ramban (as well as other commentators) who were uncomfortable with the idea that Judah married a Canaanite woman (as well as the fact that Tamar, also a possible Canaanite and the progenitor of the Messiah) asserts that in this context the Hebrew word *kena'ani* should be interpreted as "Merchant." On this subject Tikva Frymer-Kensky comments: "...commentators both ancient and modern have assumed that his [Judah's] troubles stemmed from his marriage to a Canaanite. But the story itself contradicts such an assumption: it does not comment negatively about the marriage, nor tell us that it displeased God. On the contrary, the union was blessed with three sons." Tikva Frymer-Kensky, *Reading the Woman of the Bible*, (New York: Schocken Books, 2002) 265

¹⁵⁶ As was the case with Shua, Judah's wife, Ramban is uncomfortable with the idea that Tamar could be Canaanite. To refute this notion Ramban argues that Tamar must have been either the daughter of one of the strangers living in the land or the daughter of Shem. Tikva Frymer-Kensky suggests that Tamar could have been Canaanite, Aramean, from Mesopotamia, or even one the daughter of one of Judah's brothers (although she finds it hard to believe that were this the case that the text doesn't mention it.) Ibid., 266

¹⁵⁷ David L. Lieber, ed., *Etz Hayim Torah and Commentary, Genesis Commentary*, by Nahum M. Sarna (New York: The Rabbinical Assembly The United Synagogue of Conservative Judaism 2001) 234

Deuteronomy 25:6) was instituted.¹⁵⁸ This law obligated the younger unmarried brother (or another relative in special circumstances) to mate with his brother's widow and produce a son who would legally be considered the child of the deceased and would succeed in the dead brother's name.¹⁵⁹ Scholars disagree over whether or not levirate marriage also obligated the brother to actually marry the widow. While Speiser and the Sarna suggest that levirate law required marriage with the wife of the deceased brother, others such as Westermann assert that marriage was not part of the living brother's obligation:

Gen. 38 indicates that originally the widow had only the right to a descendant, not to marriage with the brother in law. The designation "brother-in-law marriage is to this extent inaccurate. Tamar does not become Onan's wife; neither is her purpose to force Judah to marriage, but only to have a son."¹⁶⁰

The purpose of the levirate law was clear. According to Nehama Aschkenasy levirate law:

Guaranteed that a man who died childless would still acquire an offspring perceived by the community to be the dead man's heir and his perpetuity in time. It also took care of widows left with no form of security. If the woman had no male sons, his late husband's property went to his brother. By marrying her brother-in-law and staying in her dead husband's family, the childless widow was saved from destitution.¹⁶¹

Von Rad saw the law more in the interest of the family than the widow. He explains that the law enabled the family to preserve the family's property, which

¹⁵⁸ Levirate marriage is only mentioned three times in Hebrew Bible: Gen. 38, Ruth and Deut. 25:5-10. Deut. 25:5-10 provides a means out of his and Lev. 20:21 seems to forbid it.

¹⁵⁹ With regard to levirate marriage, Davidson notes that "this custom was found in one form or another in ancient Israel and in many other cultures in the ancient Near East." (pg. 225)

¹⁶⁰¹⁶⁰ Claus Westermann, *Genesis 12-36*, (Minneapolis: Augsburg Publishing House, 1985) 52

¹⁶¹ Nehama Aschkenasy, *Woman at the Window, Biblical Tales of Oppression and Escape*, (Detroit: Wayne State University Press, 1998) 81

included the widow herself, who would be considered capital property. Without such a law the widow would return to her father's family.¹⁶²

Instead of fulfilling his obligation of *yibbum*, Onan, knowing that the seed wouldn't count as his,¹⁶³ only went through the motions of carrying out his father's request. He has sex with Tamar but instead of impregnating her, he lets his seed spill on the ground and go to waste, either by practicing *coitus interruptus* as suggested by Genesis Rabbah 55:5-6 or by partaking in unnatural intercourse, as Yev. 34b interprets. This act, of having intercourse but purposely violating levirate law, (which suspends incest taboos), suggests Nahum Sarna, "has placed his sexual relationship with his sister-in-law in the category of incest-a capital offence."^{164, 165} Onan, however, was not punished for this crime by men; instead, God kills him.

These two events place both Judah and Tamar in very difficult positions. Sarna commentary asserts that the responsibility of the enforcement of the levirate marriage (as is the case in Hittite and Assyrian law) rests with Judah, the father-in-law.¹⁶⁶ Tamar, the commentary assumes, "has no claim against Shelah, only against Judah."¹⁶⁷ Judah's crisis is that while he knows that by the

¹⁶² Gerhard Von Rad, *Genesis, A Commentary*, (Philadelphia: The Westminster Press, 1973) 353

¹⁶³ Rashi suggests that Onan does not want to impregnate her in order to preserve her beauty (which would be diminished, were she to have a child.) A more likely explanation, as suggested by Tikva Frymer-Kensky, is that Onan does not want to act to his own economic detriment (pg. 267). Were Onan to produce an heir for his dead brother, this son would inherit Onan's dead brother's portion of his father's estate (which would have been half) while Onan would be left with only a quarter.

¹⁶⁴ Nahum M. Sarna, *The JPS Commentary, Genesis* (Philadelphia: The Jewish Publication Society, 1989), 267

¹⁶⁵ Ramban contends that it was considered a matter of great cruelty when a brother did not want to marry his dead brother's wife

¹⁶⁶ David L. Lieber, ed., *Eitz Hayim Torah and Commentary, Genesis Commentary*, by Nahum M. Sarna (New York: The Rabbinical Assembly The United Synagogue of Conservative Judaism 2001) 235

¹⁶⁷ Ibid. The commentary notes that while the later laws of Deut. 25:5-10 place the responsibility of levirate marriage solely in the hands of the brother, these modifications were not yet in practice.

standards of levirate law, he is required to give Tamar to his third son Shelah, he fears that Shelah, in being married to Tamar, (whom he held responsible for his son's deaths), will die as did his brothers.¹⁶⁸ Judah is unaware that his sons' deaths were on account of God's punishment for their actions and not on account of anything Tamar did. This false belief, suggests Tikva Frymer-Kensky, prevents Judah from treating Tamar as she deserves.¹⁶⁹ Consequently, instead of delivering his son to Tamar, Judah, rebuffs her, commanding her to "remain a widow in your father's house until my son, Shelah grows up." (Gen. 38:11) Ramban explains that what Judah expects Tamar to do was to lead her life as a person in mourning, meaning that she should wear mourning garments and abstain from anointing herself with oil until Shelah grew up.

Many commentators saw Judah's action of sending Tamar back to her father's house as a gross injustice to Tamar. Aschkenasy, for example, viewed the act as "a gesture of disapproval and alienation, a punishment."¹⁷⁰ Robert Alter states further that "Tamar is not only neglected, but must submit to a form of social disgrace in having to return to her father's house after having been twice

¹⁶⁸ Ramban argues with the rabbis who have presumed that Tamar was a *katlanith* — a woman whose husbands dies and was therefore forbidden to Shelah (Ketubot 43:2). He asserts that it would be unreasonable to say that Judah didn't know about the circumstances regarding his son's death and Tamar's lack of guilt in the matter. Judah, Ramban asserts, originally wanted Tamar to be a part of his family and always intended to have her marry Shelah, but was waiting until Shelah further matured. Tamar, however, in craving to give birth from the sacred race, hastened the matter, tricking him at Enaim. Dr. David S. Sperling shared with me the following comment on January 10, 2004: "The *qatlanit* (black-widow) belief is found in the Talmud, but not the term itself. (I believe the term was first used by Rashi). In Babli Yebamot 64b there is a story about Abaye who married a woman who had buried 3 previous husbands. She buried him as well"

¹⁶⁹ Frymer-Kensky further notes: "The readers, who know what happened, also know that Judah is mistaken, and thus Judah seems more foolish than evil in his mistreatment of Tamar. At the same time, it shows that a man with both power and lack of understanding becomes the oppressor." Tikva Frymer-Kensky, *Reading the Woman of the Bible*, (New York: Schocken Books, 2002) 267

¹⁷⁰ Nehama Aschkenasy, *Woman at the Window, Biblical Tales of Oppression and Escape*, (Detroit: Wayne State University Press, 1998) 85

married."¹⁷¹ According to Aschkenasy, Tamar is no longer her father's responsibility and would have no claim to an affiliation with her father's clan. In other words, Judah's actions have not only served to banish Tamar from her legitimate house, shame her, and force her to be depended on those who owe her nothing, they have also denied her a meaningful future.

No doubt, the worst aspect of Tamar's situation is that Judah's actions prevent her from remarrying and having a child. As a betrothed woman, Tamar can no longer remarry anyone who does not meet the levirate requirements. Judah, suggests Phyllis Bird, "intends her widowhood to be permanent."¹⁷² By withholding Shelah, Judah thereby, in effect, seals Tamar's fate as a childless woman. Von Rad suggests that Judah is also guilty of misleading Tamar and hiding his real intentions: "Judah's wrong lay in considering this solution as final for himself, but in presenting it to Tamar as an interim solution."¹⁷³

As mentioned in the *Women's Torah Commentary*, "A woman's status would have been determined by her ability to provide an heir. A childless widow would be only an object of pity."¹⁷⁴ Alice Ogden Bellis adds that Tamar, like many other biblical women, "must become a mother to have her place in society."¹⁷⁵ Without a proper redeemer she would never be able to have a child. Ashkenasy contends that Judah's intentions to avoid at all costs a marriage between Tamar

¹⁷¹ Robert Alter, *Genesis Translation and Commentary*. (New York: W.W. Norton and Company, 1996) 219.

¹⁷² Phyllis Bird, "The Harlot as Heroine: Narrative Art and Social Presupposition in Three Old Testament Texts," *Semeta* 46 (1989): 119-139.

¹⁷³ Gerhard Von Rad, *Genesis, A Commentary*, (Philadelphia: The Westminster Press, 1973) 353

¹⁷⁴ Goldstein, Elyse, ed. *The Women's Torah Commentary*, (Woodstock: Jewish Lights Publishing, 2000) 93

¹⁷⁵ Alice Ogden Bellis, *Helpmates, Harlots, Heroes, Stories in the Hebrew Bible*, (Westminster John Knox Press 1994), 92

and his younger son must be obvious to the young widow."¹⁷⁶ We can imagine by looking at previous stories of barren women what this childless fate might have meant to Tamar. When Rachel confronts the possibility of a childless future, she says to her husband: "Give me children—otherwise I am a dead woman!" (Gen. 30:1) In other words, for the possibility of having a child, it makes sense that Tamar would risk everything.

While it seems clear that Tamar is interested in having a child, she may also be motivated by her duty as a widow to fulfill the duty of levirate marriage, either for her own sake, the sake of her dead husband and his clan or for the sake of the law itself. Of course other possibilities are that Tamar deceived Judah out of a sense of revenge for his mistreatment or to satisfy her need for justice.

XII. Additional considerations of probable cause

No one can be sure what Judah's long term plan was in regard to sending Tamar back to her father's house, whether he intended Tamar's widowhood to be permanent as Phyllis Bird contends¹⁷⁷ or whether he was still planning to give Tamar to Shelah once the boy further matures, as Ramban contends. However, one can imagine the sense of desperation and injustice Tamar must have felt at the time over the situation.

Tamar does not engage in her act of deception until she is sure that Judah has in fact deceived her and has no intentions of fulfilling his commitment

¹⁷⁶ Nehama Aschkenasy, *Woman at the Window, Biblical Tales of Oppression and Escape*, (Detroit: Wayne State University Press, 1998) 83

¹⁷⁷ Phyllis Bird, "The Harlot as Heroine: Narrative Art and Social Presupposition in Three Old Testament Texts," *Semeta* 46 (1989)

of giving her to Shelah. Gen. 38:12 relates the events that finally drive her to trick Judah into performing the levirate himself. This passage begins: "A long time afterward, Shua's daughter, the wife of Judah, died." Nahum Sarna explains that it would make chronological sense for this time period to be a year but notes that 1 Samuel 7:20 uses the same Hebrew phrase to mean 20 years.¹⁷⁸ Were this time period to actually be one year and not twenty, it would be easier to accept Ramban's position that Judah was waiting until Shelah matured and Tamar impatiently rushed the matter by tricking Judah. On the other hand, if Tamar indeed waited twenty years she could be sure she was being led-on by Judah. What is most important to this discussion is that regardless of the actuality of the circumstances, Tamar acts upon her feelings that Judah is not going to give her what she deserved. Westermann suggests that after this time period of "a long time afterward" Tamar realizes that she has been deprived of her right because "Shelah had grown up in the meantime."¹⁷⁹ Others assert that Tamar's realization of Judah's abandonment of her cause comes with the death of Judah's wife. Von Rad for example suggests that after Judah's wife dies, Tamar hears news regarding Judah's behavior that informs her about his intentions.¹⁸⁰ S'forno asserts that Tamar gives up hope of ever remaining part of Judah's family after the death of Judah's wife: she isn't invited to run Judah's

¹⁷⁸ Nahum M. Sarna, *The JPS Commentary, Genesis* (Philadelphia: The Jewish Publication Society, 1989), 140

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¹⁷⁹ Claus Westermann, *Genesis 12-36*, (Minneapolis: Augsburg Publishing House, 1985) 53

¹⁸⁰ Gerhard Von Rad, *Genesis, A Commentary*, (Philadelphia: The Westminster Press, 1973) 223
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household in place of his wife, as Abraham does with Rebecca after the death of his wife Sarah.¹⁸¹ (Gen. 24:67).

Before Tamar is the greatest choice of her life. Should she remain silent in the face of injustice, as a victim of the established authority, or should she try to redress the wrong done her? Will she beg to a man or to God to end her state of childlessness or will she take her destiny into her own hands?

Tamar's decision is to take a daring chance and to risk both her honor and her life for a more hopeful future. To accomplish her ends she creates a clever, inventive and dangerous plan which will "fool male authority and outwit the existing system"¹⁸² and demand that she would "assert herself in the face of social disapproval."¹⁸³

About her plan of action, Norma Rosen writes:

Childless woman of the Bible generally count on God as womb-opener. But Tamar does not pray for a child as Hannah does. Or weep or rail and despair as Rachel does. Or resign herself as Sarah does. Tamar imagines and invents. She studies the characters of those around her, assumes a character for herself, chooses a setting, devises a plot, and brings it to completion in a dramatic confrontation. In short she's the performance artist and dramatist of a novel she has written¹⁸⁴

Tamar's plan is meticulously thought out. Aschkenasy contends that not only does Tamar "make it her business to be informed about his every move."¹⁸⁵ she also works to develop a deeper understanding of Judah "which comes from

¹⁸¹ S'forno Commentary, Gen. 38:12

¹⁸² Nehama Aschkenasy, *Woman at the Window, Biblical Tales of Oppression and Escape*, (Detroit: Wayne State University Press, 1998) 80

¹⁸³ David L. Lieber, ed., *Etz Hayim Torah and Commentary, Genesis Commentary*, by Nahum M. Sarna (New York: The Rabbinical Assembly The United Synagogue of Conservative Judaism 2001)

¹⁸⁴ Norma Rosen, *Biblical Women Unbound, Counter tales*, (Philadelphia: The Jewish Publication Society, 1996) 113-114

¹⁸⁵ Nehama Aschkenasy, *Woman at the Window, Biblical Tales of Oppression and Escape*, (Detroit: Wayne State University Press, 1998) 84

close observation and a strong emotional tie. Perhaps even unbeknownst to Judah, Tamar, during the time she spent in his home, learns to read his moods and needs, so that she can interpret them accurately even when she is removed from his orbit."¹⁸⁶

After Tamar devises her plan, she waits for the proper moment to carry it out. Her opportunity comes as the events of Gen. 38:12-13 unfold: *"A long time afterwards, Shua's daughter, the wife of Judah, died. When his period of mourning was over, Judah went up to Timnah to his sheepshearers, together with his friend Hirah the Addullamite. And Tamar was told, 'Your father-in-law is coming to Timnah for the sheep-shearing.'*" The death of Judah's wife means that Judah himself is now available to partake in the levirate marriage, which is ultimately his duty to fulfill. The end of Judah's mourning over his wife means that he would again be in a position to be intimate with another woman. Finally, the fact that that Judah is on his way to Timnah for the season of sheep-shearing gives her the chance to catch him off-guard as he partakes in the joy and revelry¹⁸⁷ associated with such festivities. Regarding these events, Frymer-Kensky writes: "The celebrating should put Judah in a party mood and awaken his libido. Since his wife is dead, he will not be hurrying home. He might be ready for some sexual action, and if Tamar plays out the scenario properly, she may satisfy both their desires."¹⁸⁸

¹⁸⁶ Ibid., 85

¹⁸⁷ As Dr. David S. Sperling pointed out to me, 2 Sam 13:23-30 testifies to culture of drinking at the sheep shearing activities. In these passages, Absalom orders his attendants to strike down Amnon, when he is merry with wine.

¹⁸⁸ Tikva Frymer-Kensky, *Reading the Woman of the Bible*, (New York: Schocken Books, 2002) 269

IX. Expertise: recognition of tools of deception and discussion about each: *Police are trained to be able to recognize certain pieces of equipment that are associated with particular crimes. This is called "Expertise." If a police officer witnesses a suspect using a certain piece of equipment for a crime or if a tool of crime is found later on the scene and identified with the suspect, this can be used as evidence against the suspect.*

We read that Tamar "removed her widow's garb from upon her, covered herself with a veil, and, wrapping herself up; she sat at *Petach Enayim* which is on the road to Timnah, for she saw that Shelah had grown up, yet she had not been given to him as a wife. When Judah saw her, he took her for a harlot; for she had covered her face." (Gen. 38:14-15) Tamar's well-conceived plan not only makes use of good timing, but also various tools of deception to insure that her program will succeed. This section will examine some of these tools of deception as they relate to the crimes of which Tamar is accused.

Exhibit A: Widow's Garb: "So she took off her widow's garb." (Gen. 38:14)

Widow's garb refers to the clothes that widows wore while in mourning. About these clothes, Sarna writes: "It is not known of what it [the widow's garb] consisted of the length of time it was worn."¹⁸⁹ In the case of Tamar, it would make sense that Tamar might be still wearing these clothes until she took them off just before she met Judah at Timnah, because Judah had ordered her to: "stay a widow in your family's house until my son Shelah grows up..." (Gen. 38:11). Sarna surmises that Tamar "may have continued to wear such clothing beyond the usual period as a symbol of the unfulfilled levirate obligations."¹⁹⁰ It is also possible that Tamar may have been told by Judah to wear the widow's

¹⁸⁹ Nahum M. Sarna, *The JPS Commentary, Genesis* (Philadelphia: The Jewish Publication Society, 1989), 267

¹⁹⁰ Ibid.

clothes until Shelah grew up so that Tamar will have an appropriate time for mourning. Of course, whether that was the time it took for Shelah to grow up is a subjective consideration. S'forno suggests that Tamar casts off her widows garb because *she sees that Shelah has grown up*. He argues that Tamar reasons that if Judah sees her without her widow's garments and asks her why she has removed them, she will tell him that the time has come to do so, since (Judah) told her to wear them until Shelah grew up (vs.11) and now he has grown up.¹⁹¹ In other words, Tamar has come to a point where she says, "enough is enough, Shelah has grown up and I refuse to be a trapped widow any longer!" This investigator thinks that Tamar's change of clothes symbolizes Tamar's choice to stop viewing herself as a trapped widow, who is subject to Judah's unjust rule and stuck in the events of unfortunate past, never moving forward. When she casts away her widow's garb, she sets in motion a plan to free herself from her hopeless prison. Later (after intercourse with Judah) Tamar puts the widow's garb back on, realizing that she must go into hiding (as her former self) until she knows that she is pregnant and can enact the second part of her plan.

Exhibit B. Veil: *"....[she] covered her face with a veil and wrapped herself up."*(Gen. 38:14)

Gen. 38:15 explains that when Judah sees her, he takes her for a harlot, *"for she had covered her face."* Verse 38:15 therefore connects Judah's assumption that Tamar is a harlot with the action of covering her face with a veil. Why does did Tamar choose to wear a veil and what function(s) does did the veil serve?

¹⁹¹ S'forno Commentary Gen. 30:14

Some scholars believe the veil was an important part of the harlot costume. *The New Interpreter's Bible*, for example, explains "Tamar dresses in such a way to attract Judah's attention and situates herself on the way she knows he will take."¹⁹² The veil, asserts the NIB, "could imply prostitution because it both invites and conceals....Judah so interprets the veil and propositions her."¹⁹³ Ramban asserts that it would make perfect sense that Tamar would choose to wear a veil so that Judah would think that she was a harlot:

The reason for the covering of the face is that it was the way of the harlot to sit at the cross-roads wrapped up in a veil, with part of the face and hair uncovered, gesticulating with the eyes and lips, and baring the front of the throat and neck. Now since she would speak to the by-passer in an impudent manner, catching him and kissing him,¹⁹⁴ she therefore veiled part of the face. Furthermore, harlots sitting by the roadside veil their faces because they commit harlotry even with relatives. Sodomites (In Medieval Hebrew *gedeshim* are prostitutes in general. Chavel missed that) still do it to this day in our countries, and when they return to the city they remain anonymous.¹⁹⁵

Other scholars such as Sarna and Frymer-Kensky contend that the harlots of the day were unlikely to have been veiled. Sarna writes: "Interestingly, the Middle Assyrian laws require an unmarried cult prostitute and a harlot never to be veiled. The harlot who contravened this law was to be flogged fifty times, and pitch was to be poured on her head."¹⁹⁶ Frymer-Kensky asserts that it makes

¹⁹² Leander E. Keck, ed., *The New Interpreter's Bible*, Vol. 1, *Genesis to Leviticus*, by Terence E. Fretheim (Nashville: Abingdon Press, 1994) 605

¹⁹³ Ibid.

¹⁹⁴ This interpretation is an allusion to Proverbs 7. Although the text says that the woman is *dressed like a harlot*, there is no direct mention of a veil.

¹⁹⁵ Ramban Commentary, Gen. 38:15

¹⁹⁶ Nahum M. Sarna, *The JPS Commentary, Genesis* (Philadelphia: The Jewish Publication Society, 1989), 140

sense that harlots should not be allowed to be veiled because were they permitted to do so, a woman would become a prostitute without fear of being recognized. To strengthen her argument, Frymer-Kensky directs her readers to Proverb 7, which refers to the bold appearance of the prostitute.¹⁹⁷

There are a number of explanations from the various commentators to explain the function of the veil. Ibn Ezra and Rashi both cite Sotah 10b, and argue that Tamar veils herself in Judah's house as a sign of modesty and chastity. Ramban however questions this notion, suggesting that if Judah had never seen her face in the past, he would not be able to recognize her even if she were unveiled at Timnah. Von Rad, maintains that while widows were apparently unveiled, unmarried and married woman were veiled in public.

This investigator holds that that the most important function that the veil serves here is in fact to conceal her identity. Frymer-Kensky suggests that Tamar uses her veil as "an anti-recognition strategy."¹⁹⁸ Sarna similarly concludes "From verse 15 and 19 it is clear that Tamar was not normally veiled and that she simply wanted to conceal her identity."¹⁹⁹ Rashi and Rashbam also reach this conclusion, each writing that Tamar covers her face so that Judah would not recognize her.²⁰⁰ Clearly, regardless of what the everyday use of the veil was,

Dr. David S. Sperling, however, shared with me the following criticism of Sarna's theory: "We can't assume that the law in Northern Iraq was the same in Canaan."

¹⁹⁷ Tikva Frymer-Kensky, *Reading the Woman of the Bible*, (New York: Schocken Books, 2002) 271 As mentioned in the previous footnote, Proverbs 7, describes a woman who is dressed like a harlot, however there is no mention of a veil. Interestingly I did not find the reference to the harlot's bold appearance that Frymer-Kensky found.

¹⁹⁸ Ibid., 271

¹⁹⁹ Nahum M. Sarna, *The JPS Commentary, Genesis* (Philadelphia: The Jewish Publication Society, 1989), 268

²⁰⁰ Rashbam actually asserts that Tamar covered her head with a shawl so that Judah wouldn't recognize her.

whether or not it was part of the harlot's garb, in this context, it serves the function of preventing Judah from recognizing Tamar, for if he did, he surely would not have slept with her.

Exhibit C: *Petach Enaim* (Tamar sits in the "red-light district"): "[She sat down at the entrance to Enaim, which is on the road to Timnah (Gen. 38:14)]

Rashi, Davidson and others contend that Judah mistakes Tamar for a harlot, not because she covers her face, but because she makes herself publicly available at the roadside. Why else would a woman sit alone on the street for if not to practice prostitution? "Such a woman," Frymer Kensky writes, "would be considered approachable, and Judah approaches." Von Rad also agrees that a woman waiting alone on the road brings the connotation of prostitution and cites Jer. 3:2 and Ezek. 16:25 as other examples where a woman associated with whoring waits on the road.²⁰¹ Finally, Sperling, notes that "In Talmudic Aramaic *nafqat bra*, "woman who goes out," means "prostitute". Yiddish *nafqa* "prostitute" is derived from the Aramaic. As such the roadside location might be significant. Nonetheless, the verse implies that prostitutes were commonly veiled."²⁰²

There is no way to know Tamar's real intentions; whether or not she really wants Judah to think she is a harlot. However, it is interesting that when she is propositioned by Judah for sex, she doesn't react with shock and dismay at such an insinuation but instead nonchalantly sets the terms for payment.

²⁰¹ 355

²⁰² Dr. David S. Sperling shared this comment with me while reviewing a draft of this work.

Each of the following items that come to be associated with Tamar's caper will later serve to exonerate her.

Exhibit D: *The kid:*

After Judah sees Tamar by the road, he asks to sleep with her. In response, Tamar asks: "What will you give to me for sex?" (Gen. 38:16) To which, Judah replied "I will send a kid from my flock." (Gen. 38:17) A number of commentators note with interest Judah's interesting choice of payment to Tamar. Sarna suggests that since Judah carries nothing with him at the moment with which to pay Tamar, he acts on impulse when he confronts Tamar.²⁰³ Rashi, notes that the kid recalls the fact that Judah deceives his father with a goat-kid when he dips Joseph's coat in blood.²⁰⁴ Here the kid brings to mind the Bible's measure for measure punishment. A kid is also used by Jacob to trick his father into thinking that he is Esau when Rebecca cooks a meal of goat for Isaac's death-blessing meal. In addition, Jacob wears goat pelts on his hands and neck so that he will feel hairy to his father. It is also interesting that Tamar never collects the kid as payment. (Is she therefore technically a prostitute?) S'forno rightly deduces that Tamar never wants the kid as payment. Indeed, she does not want any gift, her only desire is to have a child from the house of Jacob.²⁰⁵

²⁰³ Nahum M. Sarna, *The JPS Commentary, Genesis* (Philadelphia: The Jewish Publication Society, 1989), 140

²³⁶

²⁰⁴ Rashi Commentary Gen.38:23

²⁰⁵ S'forno Commentary to Gen. 38:23

Exhibit E and F: Judah's Seal²⁰⁶ and Cord

After Judah offers to send Tamar a kid from his flock as payment for her sexual services, Tamar demands that Judah leave with her a pledge until he has fulfilled his end of the bargain. She asks Judah to leave with her his seal and cord (*p'teel*) and the staff he carries. Davidson compares the seal to a signature stamp.²⁰⁷ Sarna in the Etz Hayim Commentary describes the seal as "a small object made of hard material and engraved with distinctive ornamentation. Its center was hallowed out and a cord passed through it so that it could be worn around the neck."²⁰⁸ Westermann (pg 53) observes that prominent men in Babylonia as well as in Canaan and Israel used insignias like the one Judah carried (seals are well-attested archaeologically in Israel and Mesopotamia). Seals such as these were used to sign contracts. "Judah's staff," Westermann further explains, "would have had markings covered on it which were peculiar to the owner."²⁰⁹ Rashi suggests that the *p'teel* doesn't refer to a cord, but to Judah's cloak.²¹⁰ Ramban describes the *p'teel* as Judah's scarf.²¹¹ Whatever these items are exactly is less important to the commonly agreed upon function that they serve. Each item serves the purpose of a modern day signature or identity papers which enable Judah to prove to others who he is. S'forno, like most commentators, asserts that Tamar asks for these items not to ensure that she will receive payment from Judah, but to later use them to later vindicate

²⁰⁶ The seal is also sometimes referred in some translations as a "signet ring."

²⁰⁷ Robert Davidson, *Genesis 12-50* (Cambridge: Cambridge University Press, 1973) 229

²⁰⁸ David L. Lieber, ed., *Etz Hayim Torah and Commentary, Genesis Commentary*, by Nahum M. Sarna (New York: The Rabbinical Assembly The United Synagogue of Conservative Judaism 2001) 236

²⁰⁹ Claus Westermann, *Genesis 12-36*, (Minneapolis: Augsburg Publishing House, 1985) 54

²¹⁰ Rashi's Commentary to Gen. 38:18

²¹¹ Ramban's Commentary to Gen. 38:18

herself.²¹² Of course, as it turns out, when these items are later presented to Judah as Tamar stands trial, he changes his mind and exonerates her after recognizing them as his own.

X. Circumstantial Evidence/Information: *Circumstantial evidence is evidence that points the finger away from other suspects or an alibi.*

Gen. 38:18 informs us that Tamar conceives during her encounter with Judah. As Sperling points out: "The audience needs to know more than the characters at this point. It's especially important to know that Judah is the father."²¹³ When Judah sends his friend, the Adullamite, to pay Tamar and to reclaim his pledge, she is nowhere to be found. There are no witnesses to the encounter between Judah and Tamar as evidenced by the fact that when Judah's friend asks the townspeople where the cult prostitute by the road at Enaim is, they declare that there is no prostitute there. From Judah's point of view, the harlot on the side of the road could have been any one, but so far Judah has no reason to think that a crime has been committed. Three months later however, Gen. 38:24 relates that "Judah was told, your daughter in-law Tamar has played the harlot; in fact, she is with child by harlotry." Judah's response is, "bring her out, and let her be burned." Interestingly, although most people accused of a crime would not want to be identified as the perpetrator, Tamar needs this designation to save her life. She is indeed pregnant, she has even possibly played a harlot, but if she is able to get Judah to see that she had sex with him, then the entire encounter will be cast in a new light. By presenting

²¹² S'forno Commentary to Gen. 38:18

²¹³ Dr. David S. Sperling shared this comment with me while reviewing a draft of this work

to Judah his seal, cord and staff she is able to show that she did not violate the levirate marriage but fulfilled it. At the same time we see that she is not guilty of committing incest, since levirate marriage suspends such rules. She also is able to show that she isn't guilty of harlotry because she never collected payment for her encounter with Judah. Sperling notes:

Biblical Hebrew *znh* means both "fornication, "harlotry," which are not sins and certainly not crimes, and "adultery," which is a capital crime. What Judah has been told is that Tamar has committed adultery. The phrase *gam harah* is the proof. Inasmuch as she is technically betrothed to Shelah, and she has not been given to Shelah, Tamar must have been impregnated through *zenunim*, i.e. adultery.)²¹⁴

XI. FLIGHT: *Attempting to flee, evade or elude, is in evidence law provides a presumption of guilt.*

As mentioned in the previous section, Tamar's initial response is to flee from the scene of the crime. For weeks and weeks, she hides the fact that she has had this risqué encounter with Judah, but after three months she can hide her pregnancy no longer. When she is accused of harlotry and put on trial, she finally comes clean with the judge and owns up to her actions.

XV. Ruling/Judgment

Unlike any of the cases examined thus far, Tamar is actually put on trial for her alleged offence by the very person whom she deceived: Judah. After three months, when Tamar's pregnancy begins to show, Judah is informed that Tamar, his daughter-in-law "played the harlot" and "is with child by harlotry."

²¹⁴ Ibid.

(Gen. 38:24) Judah, as the head of the family of which Tamar still belonged,²¹⁵ acts as judge and responds swiftly to these allegations, ordering that Tamar be brought out and burned. (Gen. 38:24). Von Rad, while examining the legal aspects of this case, asks: "On the basis of what fact was the complaint made at all? Because of a widow's prostitution or that of an engaged girl?"²¹⁶ Von Rad's answer is that Tamar's crime is that she had sex with someone outside of the family as a "betrothed"-girl. Certainly the fact that Tamar is pregnant would serve to confirm the fact that she had sex with someone outside of the family. (Had Shelah been the one to impregnate Tamar, Judah surely would have known.) With confirmation of her pregnancy (assuming she wasn't raped) Judah can automatically pronounce Tamar guilty of adultery, a crime that carries with it the penalty of death.²¹⁷

A number of commentators wonder why Judah orders the severe punishment of burning for Tamar. Sarna notes "in rabbinical tradition, all cases of unspecified capital punishment involved strangulation (Sanh.52b)." He further observes "in other instances in the Bible the mode of execution for sexual crimes is stoning by the public."²¹⁸ Death by burning, Sarna points out, is only prescribed in the Bible two times. Lev. 20:14 refers to a man who marries a woman and her mother. Lev. 21:9 refers to a daughter of a priest who defiles

²¹⁵ Westerman, explains that the jurisdiction over this case lay with the head of the family, which was Judah, since Tamar technically still belonged to his family. Claus Westermann, *Genesis 12-36*, (Minneapolis: Augsburg Publishing House, 1985) 54

²¹⁶ Gerhard Von Rad, *Genesis, A Commentary*, (Philadelphia: The Westminster Press, 1973) 255

²¹⁷ Lev. 20:20: "If a man commits adultery with a married woman, committing adultery with another man's wife, the adulterer and the adulteress shall be put to death."

²¹⁸ Sarna cites the following examples Deut. 22:21,24, Ezek. 16:40) Nahum M. Sarna, *The JPS Commentary, Genesis* (Philadelphia: The Jewish Publication Society, 1989), 269

herself through harlotry who in her actions defiles her father. Rashi's uses this latter verse to explain why Judah demands that Tamar be burned. Tamar, according to Rashi, is the daughter of a priest (Shem) and is therefore subject to this punishment.²¹⁹ Ramban disagrees with this conclusion and argues that Tamar is not subject to burning on account of being a priest's daughter. Furthermore, since Tamar is not a married woman but a woman waiting to be married to a brother-in-law she would not have to face the death penalty. Ramban instead insists that the reason Tamar is subject to burning is because Tamar's actions degrade royalty [Judah] and in doing so she is not subject to the same law as other people.²²⁰ Somewhat similarly, Frymer-Kensky also concludes that the harsh punishment Judah prescribes for Tamar is due to the fact that her actions degrades Judah, diminishing his sense of honor and status:

When her pregnancy begins to show, Judah is told, **"Tamar your daughter-in-law has been faithless and what's more, look! She is pregnant from faithless-acts."** To the people carrying the tale, her pregnancy is both proof and reminder that Tamar has acted in defiance of her obligation to Judah's status. His very honor is endangered. Her faithlessness is no less shame to him than adultery brings to a husband and a virgin daughter brings to her father. Pregnancy takes the shame further, giving it an undeniable reality and the prospect of a perpetual reminder. The man who worried that people would mock him for trying to pay someone who disappeared is now faced with the ridicule he would endure if a daughter-in-law could get away with thinking so little of his authority that she conceived a child with a man of another 'hold! And so, Judah acts to restore his honor and status: **"Take her and let her be burned!"** Her execution will be a public confirmation of the forbidden and treasonable nature of her offense, and of his own "honorable" action in enforcing her obedience. And it will clearly show who is in charge.²²¹

²¹⁹ Rashi Commentary Gen. 38:24

²²⁰ Ramban Commentary Gen. 38:24

²²¹ Tikva Frymer-Kensky, *Reading the Woman of the Bible*, (New York: Schocken Books, 2002) 16

The story reaches its dramatic climax when Tamar is brought out. Although she seems utterly powerless, Tamar has cleverly anticipated this moment. She has a messenger present to Judah the items he gave to her as a pledge after her encounter with him in Timnah. She then instructs the messenger to utter the following carefully chosen words: "I am with child by the man to whom these belong." "Recognize, pray: whose are this seal-and-cord and this staff?"²²² These actions serve to accomplish a number of objectives at the same time. Most obviously by presenting Judah's identity items, she is able to demonstrate that she did not violate the levirate law, but instead fulfilled it. Therefore, her actions did not constitute adultery or incest. In seeing these items Judah is not only be compelled to reconsider Tamar's guilt, he is also forced to confront his own guilt in the matter. To add to Judah's feelings of guilt at the time, and to perhaps ensure that Judah admits to his mistreatment of her, she subtly reminds Judah of his greatest misdeed. By instructing her messenger to utter the carefully chosen words, "Recognize, pray," (*haker-na*) Tamar makes use of the very same words that Judah and his brothers uttered when they presented to Jacob Joseph's blood-dipped tunic, letting Jacob believe that his beloved son was killed by a beast. (Gen. 37:32-33) Friedman imagines that upon hearing the words "recognize, please," "Judah might well feel a chill down his back for he knows that he was a guilty party on both occasions."²²³ These words Friedman suggests inform Judah of the double sense of his own errors

²²² Translation by Robert Alter, *Genesis Translation and Commentary*. (New York: W.W. Norton and Company, 1996) 222

²²³ Richard Elliot Friedman, *Commentary on the Torah*. (San Francisco: Harper, 2003) 129

and are " what moves him to declare: "She's more righteous than I am."²²⁴ With these words, Judah publicly confirms her innocence as well as his own wrongdoing in the matter.

This general conclusion of Tamar's innocence is agreed upon by both the Medieval greats as well as most prominent modern scholars. Rashi interprets Judah's words *tzadkah memeni* as a two-fold statement: 1. She is right in what she has said. 2. It is from me [Judah] that that she has become pregnant. Rashi further understands Judah's words "Inasmuch as I did not give her." (Gen. 38:26) to mean: "she was justified in what she did, inasmuch as I did not give her to my son Shelah." In addition to suggesting that Judah exonerates Tamar, Rashi finds other reasons to defend and even praise Tamar's actions. For example Rashi, using an interpretation from the Talmud (Brachot 43b), commends Tamar for not publicly shaming Judah even at the risk of her own life. Rashi explains that instead of telling the town that she is pregnant by Judah, she says: "I am with child by the man to whom these items belong. (Gen.38:25) Rashi additionally demonstrates his approval of Tamar by determining that the twins that Tamar gives birth to are both righteous. Perhaps most important, Rashi even presents a Midrash, which hints that it was God who has enabled the events of chapter 38 to happen and will decree that King David will descend from her because Tamar acted modestly in her father-in-law's house.²²⁵

²²⁴ Ibid.

²²⁵ Rashi additionally praises Tamar for refraining from publicly disgracing Judah by announcing to the court that Judah was the owner of the staff etc. Instead she said: "I am with child by the man to whom these belong." (If these were obvious pieces of identification, would it really matter how she phrased her statement? Wouldn't it be obvious that the items were Judah's??)

Rashbam interprets Judah's words, *tzadkah memeni* as Judah saying that "Tamar is more righteous than I, since she fulfilled her part of the bargain but I did not fulfill mine in that I did not give to her my son Shelah." Like Rashi, Rashbam also cites Berachot 43b, which praises Tamar's choice not to publicly humiliate Judah.

Ramban understands *tzadkah memeni* similarly to Rashbam: "She is more righteous than I for she acted righteously and I am the one who sinned against her by not giving her my son Shelah." Ramban further speculates that Judah recognizes that although Shelah was the first person designated to marry Tamar, he too was qualified as a levirate redeemer.

Ibn Ezra interprets the word *ki al ken*²²⁶ (forasmuch) to mean the same as the Rabbinic term *ho'il* (since) and understands the clause to mean: "she did this because I gave her not to Shelah my son." With this interpretation Ibn Ezra does not go to the extremes other commentators do to exonerate Tamar, but he does emphasize that Tamar has grounds for her actions.²²⁷

S'forno's comments are full of praise for Tamar. Like Rashi, and Rambam, S'forno mentions the passage in Berachot 43b which applauds Tamar's concern not to shame Judah publicly. S'forno's interpretation of *tzadkah memeni* (she is more righteous than I) is very helpful in understanding his judgment regarding Tamar's actions. S'forno imagines that Judah meant the following when he remarked: "*she is more righteous than I*": "Even though she

²²⁶ Gen. 38:26

²²⁷ Dr. Sperling notes: "Hebrew *'al ken* has two senses, causal "therefore" and asseverate/emphatic "of a truth, certainly." In our verse *ki* is the causal particle, so the phrase *ki 'al ken lo...* means "[she is more righteous than I] because surely I did not give her to Shelah my son."

deceived me and I never recognized her, because I sent (her) the kid, she nevertheless was right to do what she did for it was for a (positive and) good purpose, acceptable by God." S'forno understands the purpose of Tamar's actions as the desire to have children with Judah, and not as the desire for personal gain or satisfaction, since Tamar returns immediately to her status. "Tamar's purpose," S'forno additionally suggests, "was to maintain Judah's personal honor. Although her actions were unconventional, they accord with a teaching from Nazir 23a: *A transgression performed with good intentions is better than a precept performed with evil intention (Nazir 23a).*"²²⁸

Like the medieval commentators, most modern critical scholars also tend to pardon Tamar in light of her desperate situation and find favor with her cause. About Tamar, Von Rad writes:

It is very difficult for us if at all possible, to measure her act by the moral ideas of her time in order thereby to determine the measure of her guilt. It is certain that she did something quite unusual and even repulsive for the ideas of her time. It is best, however, not to think of our notion of incest. Tamar could, of course, always hope that one would find her act pardonable with more precise knowledge of the facts and conditions. Without this assumption it would have been quite senseless. But for the sake of her goal, she drags herself and Judah into serious guilt. Nevertheless, this path of hers through profound shame and guilt has something splendid about it. The narrator follows her in it and lets the death penalty fail because of her. (Lev 18:15). Judah publicly acknowledges her "righteousness" and Delitzsch calls her in fact "a saint by Old Testament standards." One can recognize the theological substance of this story only if one knows about the material character of the saving goods toward which Israel's ancestors directed their life.²²⁹

In the end, Von Rad, suggests that the Bible praises Tamar's actions and that Tamar achieves her desired goals:

²²⁸ S'forno Commentary Gen. 38

²²⁹ Gerhard Von Rad, *Genesis, A Commentary*, (Philadelphia: The Westminster Press, 1973) 357

The narrative is so constructed that there can be no doubt: Tamar, in spite of her actions which border on a crime, is the one justified in the end. Judah states it at the climax of the story, and only Tamar is unmistakably praised by the narrator... In any event, she accomplishes what was in the mind of her husband and the line.²³⁰

Westermann observes that the Bible presents the events in a sober and morally non-judgmental manner. In the story Tamar is presented as a wife who wants to procure her right to a child and in the conclusion of the story, she indeed gives birth to twins. "From this point of view," Westermann comments, "Tamar has done what justice and the death of her husband demand of her, through means of a ruse."²³¹ He interprets Judah's words "*tzadkah memeni*" to mean that Judah "sees her conduct as justified by his own injustice."²³² In regard to Tamar, Westermann remarks:

Tamar is one of those woman in the patriarchal stories, who, unjustly disadvantaged, seizes the initiative herself, even in opposition to established custom and order; she revolts against their constriction like Hagar, Rebekah, Leah and Rachel and Lot's daughters. Tamar can procure her right only by revolting against her father-in-law's authority and by behaving in a way that is a grave offence to custom. It is a characteristic of the patriarchal stories that revolt against the established social order, where it is a question of injustice, is initiated by women only. And in each case the justice of such self-defense is recognized.²³³

In the final analysis, Westermann sees Tamar's actions as fully justified by the biblical author:

The narrator approves of Tamar quite openly: he sets in relief her cleverness and firmness of purpose. When Judah finally says "She is within her rights rather than I," he thereby acknowledges that the questionable means Tamar uses to procure her right are justified and that

²³⁰ Ibid.

²³¹ Claus Westermann, *Genesis 12-36*, (Minneapolis: Augsburg Publishing House, 1985) 53

²³² Ibid., 55

²³³ Ibid., 56

justice is restored by them. The right is the greater good and Judah, too, submits to it.²³⁴

The *New Interpreter's Bible* contends that this story demonstrates that sometimes relationships are more important than rules. What is incredible about Judah's declaration of Tamar's innocence and his own guilt in the matter is that Judah means "Tamar has done justice to *this* relationship in a way that he has not in failing to give her his third son."²³⁵ Tamar, as a wronged person, rightly finds a way to a hopeful future and Judah "as one who misuses his authority and fails in both his familiar and communal responsibilities.....does change and acknowledges that the person he had abused is indeed the one who is righteous."²³⁶

Speiser suggests that the story makes Tamar into a hero, thereby justifying her place in Judah's line:

His [Judah's] line is in danger of extinction; but a daughter-in-law by the name of Tamar, apparently another Canaanite, takes heroic measures and triumphs in the end. In resolutely following the intent of the law, by unorthodox and hazardous means, Tamar takes her place alongside Rachel. She had the stuff, it was felt, to be the mother of a virile clan, which is clearly the main theme of the story.²³⁷

Gunther Plaut joins the chorus of scholars who maintain that Tamar's behavior should not be punished but rewarded:

Tamar is treated with respect; her desperate deed draws no condemnation from the Torah. What she did fulfilled the requirements of

²³⁴ Ibid.,

²³⁵ Leander E. Keck., ed., *The New Interpreter's Bible*, Vol. 1, *Genesis to Leviticus*, by Terence E. Fretheim (Nashville: Abingdon Press, 1994) 606

²³⁶ Ibid.

²³⁷ E.A. Speiser, *The Anchor Bible Genesis*, (Garden City: Doubleday and Company, Inc., 1964) 300

Hebrew law and, in addition, appeared to serve the higher purpose of God.²³⁸ (Plaut: p253)

Plaut believes that although the text does not mention God within the context of the story, it brings with it great theological implications:

The Judah-Tamar interlude is, therefore not merely an old tribal tale but an important link in the main theme: to show the steady, though not always readily visible, guiding hand of God who never forgets His people and their destiny.

Interestingly, Westermann argues similarly concerning this notion of God's involvement in the narrative. He argues that although the text is secular and says nothing about God's action or speech, Judah takes for granted God's guiding hand when Judah says: *tzadkah memeni*. Westermann writes:

For Judah the right is the greater good and he must submit to it; even though it is a hard blow to his authority, he sees the right as protecting the community. He takes for granted that it is God who protects the rights of the community; there is no need to state this. It is just this that makes the story of Tamar a biblical story. One can speak of God potentially protecting the life of the community without specifically mentioning it.²³⁹

Finally, Frymer-Kensky makes the case for God's approval of Tamar's actions in no uncertain terms:

Judah applauds Tamar's actions and God rewards it. Her boldness, initiative, and willingness to defy society's expectations have enabled God to provide Judah with new sons after the death of his first two sons. By continuing to consider herself a member of Judah's family and insisting on securing her own future within its parameters, she has made it possible for that family to thrive and develop into a major tribe and eventually the Judean state.^{240 241}

²³⁸ Gunther Plaut, ed., *The Torah, A Modern Commentary*, (New York: Union of American Hebrew Congregations, 1981) 253

²³⁹ Claus Westermann, *Genesis 12-36*, (Minneapolis: Augsburg Publishing House, 1985) 57

²⁴⁰ Tikva Frymer-Kensky, *Reading the Woman of the Bible*, (New York: Schocken Books, 2002)

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²⁴¹ Dr. David S. Sperling adds the following note to Frymer-Kensky's words: The direct involvement of God in the deaths of Er and Onan permits us to invoke Him in Tamar's actions.

XVI. Court Reporter's Notes

In this section this investigator will speculate as to what Tamar wants, why she chooses her particular mode of deception and whether or not Tamar's plan enables her to get what she ultimately desires.

Chapter 38 is about vision and about recognizing the impact of one's behaviors in relation to personal, familial and communal responsibilities. Throughout the story there are numerous references to seeing. Chapter 38, for example, begins with an explanation of how Judah came to be married: "...Judah saw the daughter of a certain Canaanite whose name was Shua and he took her and came to bed with her." (Gen. 38:2)²⁴² The narrative also notes that God killed both of Judah's sons Er and Onan because they were "*displeasing in God's eyes*." Perhaps the two most important verses that refer to seeing are 38:14 and 38:15:

So she took off her widow's garb, covered her face with a veil, and, wrapping herself up, sat down at the entrance of Enaim which is on the road to Timnah; *for she saw that Shelah was grown up yet she had not been given to him as wife.* (Gen. 38:14-15)

When Judah saw her, he took her for a harlot; for she had covered her face.

As Aschkenasy points out: "The ancient rabbis identified the heart of the dynamics between Tamar and Judah correctly; they attributed sight to Tamar, and lack of it to Judah."²⁴³ Judah is blind to Tamar and her needs. Tamar on the other hand has a clear vision of what is owed to her and what her life should be

²⁴² Translation by Robert Alter, *Genesis Translation and Commentary*. (New York: W.W. Norton and Company, 1996)

²⁴³ Nehama Aschkenasy, *Woman at the Window, Biblical Tales of Oppression and Escape*, (Detroit: Wayne State University Press, 1998) 85

like. When Judah finds Tamar with a veil on he sees her as a prostitute, an object. Since he does not see (or discern her) as a real person, she will *help* him to see.

Tamar enacted her clever plan at a place called *Petach Enayim*. Rashi defines this place name as "the opening of the eyes." This investigator wonders if it is more than coincidence that Tamar would choose such a place to encounter Judah. Frymer-Kensky notes:

So, sitting at "the eye-opening," Tamar is playing a dangerous game. She must close Judah's eyes in the present, or else he won't sleep with her, but she must provide a way to open them in the future, or she will be in serious trouble. So when he propositions her, she acts like a prostitute.²⁴⁴ (p.271)

How interesting is it that Tamar, in order to eventually be seen by Judah, must appear to him in disguise! Rashi relates a midrash that Judah does not recognize Tamar at *petach enaim* because she had always covered her face while living at her father-in-law's place. Concerning this midrash, Avivah Zornberg comments:

The fact that he did not recognize her, therefore, was rooted in their past relationship. He had never really seen her... She, however, "saw that Shelah was grown up, yet she had not been given to him as wife. (38:14). Her sense of purpose had informed a strong, empirical vision of her reality and had led her to unconventional but necessary action."²⁴⁵

It was Tamar's intention initially to use Judah's blindness to her to her advantage. Tamar manipulates the situation to ensure that Judah continues not

²⁴⁴ Tikva Frymer-Kensky, *Reading the Woman of the Bible*, (New York: Schocken Books, 2002) 271

²⁴⁵ Avivah Gottlieb Zornberg, *Genesis, The Beginning of Desire*, (Philadelphia: The Jewish Publication Society, 1995) 327

to notice her while he unwittingly gives her what he owes her. Presumably, were he to know who was under the veil, playing the harlot, he would have never slept with her. Only later would she fully open his eyes:

And it came to pass about three months after, that it was told to Judah, saying, "Tamar your daughter in law has played the harlot; and also behold, she is with child by harlotry." And Judah said: "Bring her out and let her be burnt." As she was being brought out, she sent to her father in law, saying: By the man, whose these are, am I with child." And she said, "Discern, I pray thee, whose are these, the signet and the cord, and the staff." And Judah acknowledged them and said: "She is more righteous than I, because I gave her not Shelah my son." (Gen. 38: 24-26)

When does Judah finally see Tamar and his own responsibility to her? After he sees his own personal items (which in effect represent him) placed as evidence in the criminal case that he was trying. Judah sees that he (as symbolically represented by the his personal items) has had a role in the events that transpired. At that moment Judah confesses: "She is more in the right than I, inasmuch as I did not give her my son Shelah."

The wonder of this story is that Tamar's plan actually succeeds and Judah's eyes do in fact get opened. This narrative is no less amazing than other "eye opening" stories in the Bible such as when Hagar's eyes are opened and she perceives a well of water (Gen. 21:19) or when Abraham raises his eyes and sees (behold) a ram! (Gen. 22:13) or even when God uncovers Balaam's eyes and he sees the Angel of God standing on the road (Numbers 22:31). In each case the biblical character is able to suddenly view something that was always there but remained unnoticed. In our story, Judah also is able to use his eyes to truly see and discern something that was always there. With Tamar's help, Judah

recognizes and comprehends mentally the distinctness of a woman's side of the story and acts accordingly.

Were it not for Tamar's clever plot, Judah would have never even had a clue that what he was doing was wrong. But Tamar's plan was not foolproof. In the final analysis, one must conclude that everything depends on Judah, a man who has already lied to Tamar and deceived her. What if Judah, even after seeing his personal objects displayed before him, continued to be blind to Tamar's position? What if Judah chose to ignore or discard the evidence she provides him? Judah as man of great power simply could have let her burn and wash himself clean of the entire incident. But he does not. Tamar's actions are an appeal to his consciousness, his ability to see and discern what is right and wrong. Judah comes to an important crossroads in his life when he allows his eyes to be opened and then acts accordingly. In this regard, Tamar succeeds in accomplishing what she sets out to do. As mentioned earlier in the paper, it is not entirely clear what Tamar ultimately wants, whether she wants a child, marriage or simply to fulfill the duty of the levirate marriage. Depending on how we read the text, we can see that Tamar may have achieved all of these ends. Not only does Tamar have a son, she has two sons. She also fulfills her obligation to the levirate marriage. But what becomes of her afterward is hard to determine. Gen. 38:26 states: *v'lo yasof ode ldatah* which, according to Rashi, could mean either, "he was not intimate with her anymore" or "he did not cease being intimate with her." This ambiguous statement leaves the readers with three possible happy endings. If we think that Tamar indeed wants to be married

to Judah, we can accept the latter interpretation of 38:26. If we think that she only wants a child from him,²⁴⁶ we can take the former definition. Another possibility pointed out by Jon D. Levenson in the *Jewish Study Bible* is that Judah eventually releases Shelah to Tamar since in 1 Chron. 4.21, Shelah names his first son Er.²⁴⁷ Finally, another goal that it seems that Tamar might have accomplished is to be accepted back into Judah's family. It would seem that something as exciting as giving birth to twins would help her achieve to goal.

A final question this investigator would like to address is what, if any, role does God have in this narrative? The rabbis of the Jerusalem Talmud, (Sotah 1:4) who may have been uncomfortable with the lack of God's direct involvement in the story, suggest that the meaning of *Petach Enayim* is that Tamar "turned her eyes (enayim) to the portal (petach) towards where all eyes look, and said before God, Lord of the Universe; let me not leave this household, childless." In other words, at *Petach Enaim*, Tamar lifts up eyes to heaven and pleads that her mission will succeed. Is God's hand guiding the events along as Piaut suggests? It would seem likely for a number of reasons: Tamar succeeds in getting pregnant with only one intimate encounter with Judah, Judah's eyes are opened at the most suspenseful moment of the narrative (a great trick of God's) and finally we read that her union with Judah begins a line leading to the great King David (Ruth 4:18-22) and according to rabbinic tradition will be the same line of the messiah.

²⁴⁶ S'forno might take this stand. He thinks that Tamar put on her garments of widowhood back on after her encounter with Judah because she had no further desire to marry, now that she was with child (from Judah).

²⁴⁷ Adele Berlin, Marc Zvi Brettler, ed. *The Jewish Study Bible* (Oxford:Oxford University Press, 2004) 78

CLOSING STATEMENTS

Lot's daughters, Jacob, Leah and Tamar; what do they all have in common? Each felt that as though he/she *deserved* something from another person who wasn't willing to share it. Lot's daughters and Tamar wanted children but Lot and Judah did not fulfill their duty to provide each with a proper husband. Jacob wanted his father's blessing but Isaac intended to give it to Esau. Leah wanted to marry Jacob, but he had wedding plans with Rachel. Each of the five characters was relatively powerless to change his/her situation using legitimate means of resolution and felt as though he/she had to resort to deception. The suspects couldn't possibly get what they wanted as long as the "other" recognized them for who they really were. So each devised or participated in a brilliant plan: he/she would manipulate a situation so that he/she would not be properly recognized and the victim would unwittingly give him/her that which was desired. In two cases one sibling pretended to be the other; Jacob became Esau and Leah become Rachel. In the other two cases, Tamar impersonated a prostitute to lure Judah into sleeping with her while Lot's daughters manipulated their father plying him with wine to the point where he did not even recognize the girls as his own daughters. Each plan constituted a form of identity fraud, for had any of the five characters been identified as their true selves, they would not have received what they desired from the other. Each scheme involved considerable risk with unknown consequences. Tamar risked her life. Leah and Lot's daughters risked humiliation, and Jacob risked being cursed by his father and killed by his brother. Each of the five characters also

violated conventional social norms. Lot's daughters committed incest by sleeping with their father. Jacob tricked his elderly father on his death-bed and stole something intended for his brother. Tamar played the harlot and slept with her father-in-law and Leah crashed her sister's wedding party, slept with and married the man her sister desired.

Beyond committing varying forms of identity fraud, each of the five characters also knowingly "placed a stumbling block before the blind." In other words, each of the 5 characters exploited a particular weakness of their victim from whom they wanted something. One tendency that all the victims had in common was their propensity to make impulsive decisions. Isaac gives away his innermost blessing without properly determining which son was before him.²⁴⁸ Lot, Jacob and Judah all had sex without properly finding out the identity of the woman they were encountering. In the case of the men who were tricked by women, each let lust blind their ability to discern. In Jacob's case, actual physical blindness prevented him from seeing his son.

In each ruse success was accomplished with the help of various tools of deception. Wine may have been an agent common to each of the offences, although it was only directly specified in the story of Lot's daughters who pull the wool over their father's eyes with the help of wine. Others cases seem to hint that wine played a role in the deception. Tamar caught Judah off guard after he spent the day partaking in festivities which would have included food and wine.

²⁴⁸ Some commentators have suggested that there was much more Isaac could have done to make sure he blessed the right son first. One simple thing would have been to call both sons into the room.

It also seems likely that wine (as well as a delicious dish of goat-meat) may have had a role in tempering Isaac's suspicions of Jacob. Finally, Jacob himself was later fooled by Leah and Laban after a day of feasting and drinking. Deceptive clothing helped Jacob, Leah and Tamar accomplish their goals and physical darkness likely contributed to the schemings of Lot's daughters and Leah. In addition, Jacob and Tamar use deceptive words and Leah and Lot's daughters used deceptive touch.

Interestingly, each of the victims of the crime are tricked because for one reason or another, their sense of sight fails them. The real problem in each case however, is metaphorical. Each victim does not "see" or "recognize" the perpetrator as the perpetrator would like, and therefore refuses to give the offender what that person feels that he or she deserves. Each perpetrator hopes that by temporarily blinding the victim, he/she will be able to get what he/she wants from the perpetrator and eventually open the eyes of the victim so that they may see the situation the perpetrator was facing. The offenders know that their ruses will eventually be discovered and stick around until they are in fact discovered. The discovery is part of the plan since in most of the cases the ultimate hope is for the victim to see the offender's situation and take responsibility. Each of the suspects have in common that they lacked the power to negotiate the needed change legitimately had to therefore resort to deception. Lot's daughters wanted their father to take responsibility and provide husbands (ultimately seed) for them, Jacob wanted his father to take

responsibility and bless him, Leah wants Jacob to take care of and marry her and Tamar, wants Judah to fulfill his duty to the levirate marriage.

Each of the five characters are forgiven by the medieval commentators, who value their intentions and justify methods. Many of the modern biblical scholars refrain from placing moral judgment on the perpetrators. As far as the Bible tells us, none of the victims (Lot, Jacob, Judah, Isaac, Esau) take direct retributive action for the crimes our 5 suspects commit.²⁴⁹ It has also been argued that each of the characters²⁵⁰ are tricked in retribution for an act of deception that they pulled on someone else, therefore Leah, Tamar, and Lot's daughters in one sense were acting as instruments of measure for measure, retributive punishment.

As I have said, each of the five characters obtained that which they immediately pursued. What is subject to interpretation and speculation, however, is the long-term impact the various acts had on the lives of each of the offenders. After the Tamar and Lot's daughters successfully carry out their plans, each bears children and are not heard of again. (With the exception of a few later obscure references.) We know that they each got what they immediately wanted, (children) but we don't know how their acts of deception influenced their lives on the whole. Although, the stories of Jacob and Leah continue to be narrated after each of their subsequent deceptions, the quality of each of their lives seems somewhat of a mixed bag. Although Jacob tells Pharaoh that the

²⁴⁹ I have argued however, that Leah is punished (although not directly) by Jacob as a consequence for her role in the wedding night deception. She married him against his will, but he did not feel that he had to love her.

²⁵⁰ Could it be that the deception Isaac endures, is payback for his deception of Abimelech when he lied saying Rebekah was his sister?

days of his life have been few and difficult (Gen. 47:9), one might look at all the blessings in his life and come to a different conclusion. The same can be said about Leah, who, on the one hand feels afflicted by her husband's indifference to her but also feels a sense of joy from her children.

One aspect of the judgment that has been consistent throughout each of the stories is that each of the deceptions strangely seems to have divine and biblical approval. It appears that each of these cases, the Bible/God says "the ends justify the means, as long as the ends are in God's interests and the means were employed with God's interests in mind." Part of this divine/biblical approval is evidenced through the apparent success of the trickster's efforts. Another part has to do with the importance lineage plays in the acts. What I find very interesting is that every one of the deceivers that I have studied provides an important link to the holy line of King David.

Throughout the process of completing the thesis I have wondered what messages or lessons these stories of deception might be teaching. Here are some thoughts:

1. God works in mysterious ways. God chooses God's agent by a different set of standards than we might expect. In the end, it is God who pulls the strings. God even has the power to change a bad situation into something good.
2. Getting what you want by means of deception, works and is a legitimate method of action for those who must resort to it, however

one must be prepared to deal with the repercussions and retributive punishment that will likely follow such devious acts.

3. What is most important in some cases is not the tactics but the intention, even if that intention seems to go against conventional social norms. (That is, as long as the actions fits into God's greater plan.)
4. Those who misuse their power should beware, justice is lurking just behind the bend. Those who may seem weak are capable of great feats.
5. Those who are prone to impulsive decisions or who are blinded by lust; should also beware.

In the midrash that began this thesis, Jacob quotes the following verse to Rachel 'With the pure thou dost show thyself pure, and with the crooked thou dost show thyself wily' " (2 Sam. 22:27). In the final analysis, while I agree that there are indeed desperate times when trickery and deception must be employed as a last option, I believe that for a righteous person, these types of strategies should be used *only* as a desperate last option. In truth, I am extremely uncomfortable with the methods employed by the biblical characters examined in this work. What each did was wrong and unfair regardless of the circumstances. Two wrongs do not make a right. Although some of these characters may have in fact deserved what they took through deception, their methods risked the integrity of their claim. No one would wants to be tricked or be taken advantage

of. The world would be a very dangerous place if everyone suddenly decided to obtain what he/she wanted through deception.

While, it may be true that in some rare cases tactics like the ones explored in this thesis might help someone get what they want today, I would venture to say that ultimately such means would do more harm than good. Were these characters to appear to me today and ask me to comment on their behaviors, I would most likely frown on their tactics. Those who sow in lies reap in tears. Chulin 94 states "It is forbidden to deceive anyone, Jew or heathen." I agree with this statement and don't think that action of the biblical characters should be extolled as examples of good morals.

Yet, at the same time I confess; I am utterly fascinated with these characters! I am attracted to their clear sense of purpose, their dogged determination, their creativity, and their willingness to take great risks for their cause. I find their cases compelling and their motivations convincing. So what's my final verdict? Publicly I am shocked and disappointed by the tactics employed by the suspect and contend that each of the four characters deserves to be locked up. However, privately, I might give each a little pat on the back and a wink, just before the warden announces "lights out."²⁵¹

CASE CLOSED!

²⁵¹ I have a hunch that no prison can hold these crooks for long!

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