Prosecuting Jesus

Finding Christ by Putting Him on Trial

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In memory of Benjamin and Marie Lewis

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4885 Harvard Road, Detroit

(photo courtesy of Mark Osler; used by permission)

Introduction

For some of us, it matters where you are from. I'm from Detroit, and now I'm a part of the diaspora of uprooted people, black and white, from that city. In Minneapolis, where I live now, I will meet someone new and find they are from Detroit, and we will start talking about our high schools and looking for connections. It has happened with the guy at the auto shop and with my congressman, Keith Ellison.

There is a wistful tone to those conversations. Often, we both feel compelled to explain that we left because of a job or to go off to school or because of a relationship. There is a warm fog around it all, an inability to see it clearly, because we don't want to. For many, the neighborhoods they came from are literally gone, the houses torn down and carted off and the fields full of tall, brown grass. Carrying around this vague, almost indefinable sense of loss makes it easier to do something like advocate against the rolling tragedy of a flawed death penalty—it gives us something to attach our grief to as we move forward. Once we do that, once we find a cause or a faith or an art we can hold and see, we can be remarkably whole and strong. Detroit is a visual city, not a literary one, and so are its people. "It's only true," one Detroiter told me, "when I see it."

When I was born, my family lived on Harvard Road on the east side. Our block was full of sturdy little homes full of families and kids, many of them Belgian. Our own house was a tidy two-story with big windows that looked out on the sidewalk. The neighborhood was bounded by East Warren Avenue, a busy street lined with small stores and offices. I loved to play in the tiny backyard with

my brother, Will, or ride my rickety blue tricycle down the block to where my friend Jeff Plansker lived; at dusk I noticed that the moon seemed to be following me home, encouraging me. When you are four, the whole world is right around you.

In 1967, though, the larger world took mine over. That is when the riots came, and much of the city burned—a rebellion swelling up from years of racism and disappointment in a city and nation divided by race. It began when the police broke up a party for two black veterans returning from the Vietnam War. Over 1,200 people were hurt or killed, and over 2,000 buildings were destroyed. President Lyndon Johnson sent in regular Army troops to restore control after the Michigan National Guard and local authorities had failed. Like hundreds of thousands of other people, my family moved to the suburbs in the wake of that destruction.

I grew up just outside that city as it then fell apart, year by year, block by block, as we watched from a safe distance like spectators at a demolition derby behind the metal screen. I kept going back, though, pulled to the chaos and uncertainty by an unseen force. I have always been drawn to stories imbued with deep meaning.

First, after college, I worked as a process server and errand boy in the city itself, out of a small law firm on the fringe of downtown. Later, after law school at Yale, I came back again and lived with my brother in an apartment perched on top of a parking garage overlooking old warehouses and factories. At night I could hear sirens from the streets and birds in the grassy fields that had reclaimed the land that industry had abandoned. There was a richness to those sounds, a music to it, that I can still hear.

During the day, I wore a suit in a Detroit courtroom high in the federal courthouse. On trial or being sentenced, typically, was a young black man, often still a teenager. Seated at counsel table one afternoon, the defendant was trying to look tough, but the fear showed through. I was working; it was my job as prosecutor to put him, like thousands of others like him, in prison for selling crack.

The prosecutor gets the table closest to the jury, and we were taught to leverage this advantage by stacking up evidence at the front of the table. In this case, that evidence was simple: a cheap gun disabled by a plastic loop through its barrel and a handful of plastic bags holding small, white rocks. Those were my tools; they were what I

had to define this young man as a "crack dealer." That's what prosecutors do, after all; they define a person, at trial and at sentencing, by the worst things that they have said and done. In the nineties, a crack dealer was possibly the worst thing a person could be, with the possible exception of a "crack whore."

On that afternoon, once the defense was done putting on what little evidence it had, it was time for me to make my closing argument. I buttoned the jacket on my blue suit, nodded to the court, and faced the jury. In this kind of case, I usually said about the same thing, regardless of which black man sat in judgment. "You know, five grams of crack may not seem like much," I would say, holding the plastic bags in the palm of my hand, "but one hit of crack can weigh as little as one-tenth of a gram. That means that what I have in my hand here could be fifty hits of crack—fifty rocks that will be smoked by someone's daughter, someone's son, someone's mother." At this point I would turn and look at the defendant. "That's what he was doing; selling crack. He's a crack dealer."

The jury would then look at the defendant like they were looking at a murderer. I knew that I would win, and I usually (though not always) did. I wasn't a very good prosecutor, but it didn't take a really good prosecutor to win that kind of case. When the jury would come back and the foreman would pronounce the defendant "guilty," I felt no leap of joy within. It was just a tragedy on top of a tragedy, and I knew that, at least in that spare moment.

Eventually, I had enough of tragedy. I went from trying cases to teaching students how to do it. It wasn't easy to get a job as a law professor after practicing law for ten years (in the legal academy, practical experience is often a liability when job seeking), but Baylor Law School in Texas was willing to take a chance on me. I started teaching there in 2000 and showed future prosecutors how to stack up the evidence at the front of their tables, properly authenticate a business record, and cross-examine a hostile witness.

Baylor is a Baptist school—the largest in the world—and working there forced me to define my own faith. I mean that quite literally: as part of the regular interview process, I met with the president and provost of the university for an extended discussion of my beliefs. I passed that test, but perhaps only by hiding my own uncertainties. I was not as sure of Jesus' requirements as they were; I didn't see the

directive rule giver that they did, but I didn't have a firm vision to replace it.

Apparently, it wasn't too hard to notice the wobbly nature of my faith. Midway through the events described in this book, a gifted writer named Abby Rapoport followed me through much of the substance of my life. She visited my classes; talked to my students, my priest, and my family; and came to a church (First Covenant in Minneapolis) where I was giving a sermon. In the profile she later wrote for *American Prospect* magazine, she observed,

> Covenant isn't his church, and he doesn't fully fit in here. He also doesn't quite fit in at St. Stephen's Episcopal church, where he currently worships, nor did he quite fit in at the Baptist church he attended when he taught law at Baylor University and lived in Waco, Texas. It's unlikely he was a perfect match for the Congregational church he was raised in or the Quaker meetings he sometimes joined when he was in his twenties.[1]

I first read that passage while lying on the worn green couch in my office, and it hit me hard. I sat up and read it again. She had dug out a secret and made it plain. How could she know my inner discomfort in church when I thought that fact was hidden? After all, I have always intentionally made church a part of my life. In elementary school, a teacher suggested to my parents that they should take me to church, since I talked about God a lot, and they did. Since then I have been a part of many congregations, have played many roles in those churches, and even took up the leadership of the Association of Religiously Affiliated Law Schools. Not fitting in with my church didn't jibe with the way people thought about me, or so I imagined.

Abby was on to me, though. In every church I had been a part of, there was some discomfort, a painful gap between what was taught or assumed and the hard truths I read in the Gospels. My heart and my eyes told me that the Jesus of the Gospels was deeply troubling, a disrupter more than a comforter to people like me. Rarely did my churches talk about that troublesome Jesus who calls on us to cut

1. Abby Rapoport, "The Quality of Mercy," *The American Prospect*, March/April 2014, http://prospect.org/article/quality-mercy-0.

against the patterns and habits of our world—the man who told the wealthy ruler to give away everything he owned to the poor. When I felt most dislocated was walking out of church feeling vaguely contented and ready for lunch. It didn't fit. When Jesus left those he had taught, they often were afraid or confused or troubled or ecstatic with joy. His was not a way of quiet comfort.

The truth was that I had never found a Jesus that seemed real in any of those churches; they had not been able to describe an idea of God on earth that didn't seem contrived or backward or twisted in knots. I understood the lessons they taught, and I believed that Jesus lived, but I couldn't *see* it. I needed that kind of definition: a Jesus so real that I could see him.

This book is the story of how I got there. In the end, to find a Jesus I could see, I had to prosecute him—that is the way I knew to define people. That's what I did, in eleven states over the course of three years, before audiences that were large and small, conservative and liberal. It began in a well-appointed courtroom in downtown Minneapolis and ended in Manchaca, Texas.

In the beginning, though, I imagined that it was simply a project about the death penalty. I am a long-time opponent of capital punishment and wanted to push for the abolition of that sentence in the United States. It's not a reflexive or sympathetic position for me—I am a former federal prosecutor who believes in the incapacitation of dangerous criminals—but a belief rooted in my faith.

I was frustrated, though, with the few encounters I had with the anti-death-penalty establishment. Primarily, they seemed to talk to one another at conferences and rallies, and that wasn't very good advocacy. After all, you can change someone's mind only if he or she doesn't agree with you in the first place. I wanted to take a message about capital punishment to the places where people actually believed in executions—and in the United States those places include Christian schools and churches in states like Texas and Virginia.

There is something deeply ironic about the enthusiasm many Christians have for the death penalty. The central narrative of Christianity, after all, is about an unjust execution, and Christians proudly wear the execution device—the cross—as a symbol of their faith. At the very least, one would expect those who worship a man who was executed to take the problem of executing others

very seriously. The connection between the crucifixion and capital punishment became clear to me one Sunday morning not long after I started teaching at Baylor.

That morning, I woke up and opened the *Waco Tribune-Herald* to find the report of an execution in Huntsville, not too far away. The prisoner was a murderer, someone who had killed a child or a police officer or an innocent store clerk. Before describing the crime, though, the article first detailed the last meal the condemned man had requested before his execution. It was probably something typical: a cheeseburger, a Dr. Pepper, a cupcake. The whole thing, the terrible crime, the little meal on a tray, the tragedy of all the deaths, struck me as unbearably sad. There was no victory in any of it.

Then I went to church. I was a member of Seventh and James Baptist Church, a moderate and engaged congregation on the fringe of the Baylor campus. It was, as usual, a place of reprieve, the kind of place where so many people knew the words and music that only about half needed a hymnal when we sang. It was Communion Sunday, something we celebrated only once a month. The Communion plate was passed down to me, and I took the bit of bread and held it in my palm. It felt heavy in my hand. I looked down, and in that spare, short moment I saw it: this thing in my hand represented the last meal of a man who knew he was about to be executed. It was the liturgical equivalent of that cheeseburger, Dr. Pepper, and cupcake.

That juxtaposition was yet another awkward thing to carry with me out of church, like a stone in my shoe while I walked. I knew that this odd combination or social belief and religious narrative meant something, but I did not like the clear meaning: that Christ had something in common with the murderer. That just didn't seem right. One was impossibly bad; the other, impossibly good. How could there be an intersection between the two? There is a simple answer to that paradox and a more complex, challenging one. The simple answer is that what the perfect and the utterly flawed share is food and the table around which we gather, all of us. We all must eat. The complex answer is what this book is about and largely what the last decade of my life has been dedicated to. Like most hard questions, the best answer lies within a story rather than an argument. And that story took me to a truer self, one that sees the strength and truth and light in Jesus the disrupter.

The project that epiphany eventually led to was this: In under two hours, we would conduct the sentencing phase of the trial of Jesus under the procedure and rules of the state we were in (subject to a few necessary adjustments). It wasn't really a play, because there was no script. It is probably fairer to call it a trial, because that is what we know, and that is how we treated it. We presented witnesses drawn from the Gospels and performed all the other aspects of the trial, from opening statements through closing argument. At the end, we divided the audiences, large and small, into groups of twelve to deliberate as juries and return a verdict. This was the trial we would take from Pasadena to Boston, and Minneapolis to Austin.

I didn't do it alone, of course. Former and current students pitched in, and I faced the same opponent every time: Jeanne Bishop, a veteran Chicago public defender and global advocate against the death penalty. In retrospect, what we shared was a thrill ride through many of the diverse varieties of American Christianity. It probably was not an accident that my primary collaborators—Joy Tull, Sara Sommervold, David Best, and Jeanne Bishop—were all natives of the frontier West rather than the coasts, with a certain fierceness to each of them.

The experience was intense, complex, and often very dark. And, in the end, there was this: we would watch the people of that church or school as they left the building, greeting them and thanking them for coming. Some would comment on the proceeding or shake my hand, but all of them looked troubled. Really, there is no other word for it than "troubled." Only rarely did someone say we changed his or her mind or assert that we didn't. Instead, they all seemed lost in thought. There is a good in that. In the realm of my passion, troubling the waters is the best I can hope for, a first step toward change and a sharing of my own soul's hue.

It all came from someplace, of course. The last time I went by that little house on Harvard Road, I had to stop my car and catch my breath. My son John was with me, and he looked over at me anxiously, knowing something was wrong. Following my eyes, he saw what I did: the rough plywood boards covering the windows. It might be, I thought, that the owners were just doing a renovation, or maybe there was an accident that blew out those windows. But that was not what my heart suspected. We sat for a moment in quiet and then went on, away from that place and toward the rest of the world.