

A Tale of Two or Three Witnesses: Witness Testimony in Greco-Roman, Qumranic and Rabbinic Court Procedure

1. “Charles II, 1661: An Act for Safety and Preservation of His Majesties Person and Government against Treasonable and Seditious Practices and Attempts”

If any person ... imagine invent devise or intend death or destrucc[i]on or any bodily harm of ... our Sovereigne Lord the King ... or to move or stirr any Foreiner or Strangers with force to invade this Realme ... upon the Oaths of two lawfull and credible Witnesses ... he shall be deemed declared and adjudged to be Traitors and shall suffer paines of death.

2. Records of the Federal Convention of 1787

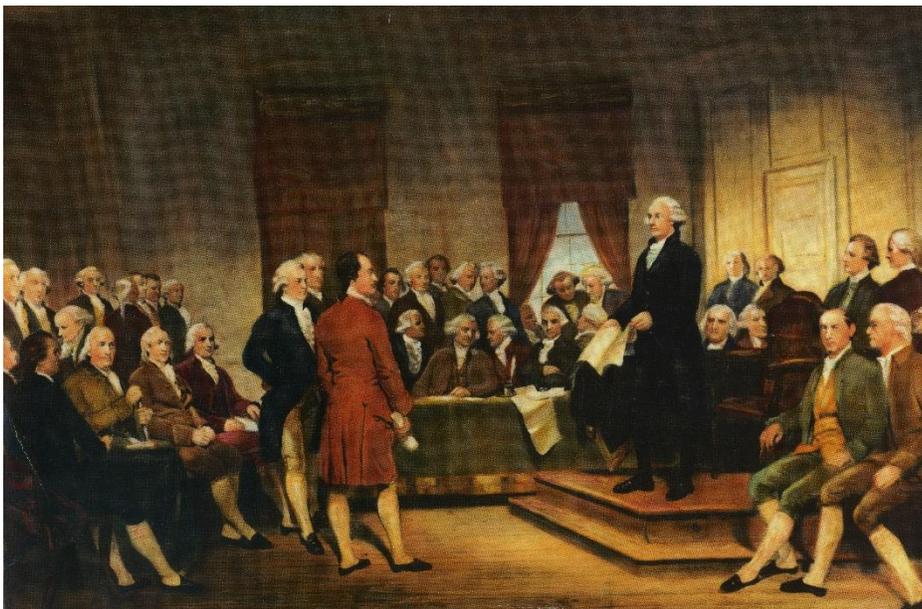
Mr. Dickenson ... wished to know what was meant by the "testimony of two witnesses", whether they were to be witnesses to the same overt act or to different overt acts.

It was then moved to insert after "two witnesses" the words "to the same overt act".

Doctr Franklin wished this amendment to take place - prosecutions for treason were generally virulent; and perjury too easily made use of against innocence.

James Wilson. Much may be said on both sides. Treason may sometimes be practiced in such a manner as to render proof extremely difficult – as in traitorous correspondence with an Enemy.

[Ayes – 8; noes -3.]



3. Article III, Section 3 of the U.S. Constitution

No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act.

4. Numbers 35:7

כָּל־מִכְּה־נֶפֶשׁ לְפִי עֵדִים יִרְצַח אֶת־הַרְצֹחַ וְעַד אֶחָד לֹא־יִעֲנֶה בְּנַפְשׁ לְמוֹת:

If anyone kills a person, the manslayer may be executed only on the evidence of witnesses; the testimony of a single witness against a person shall not suffice for a sentence of death.

5. Deuteronomy 17:6-7

עַל־פִּי שְׁנַיִם עֵדִים אֹו שְׁלֹשָׁה עֵדִים יוּמָת הַמֵּת לֹא יוּמָת עַל־פִּי עַד אֶחָד:

A person shall be put to death only on the testimony of two or three witnesses; he must not be put to death on the testimony of a single witness.

6. Deuteronomy 19:15

לֹא-יָקוּם יֶד אֶחָד בְּאִישׁ לְכַלְעוֹן וּלְכַלְחָטוֹת בְּכָל-חַטָּא אֲשֶׁר יַחַטָּא עַל-פִּי שְׁנַי עֵדִים אִו עַל-פִּי שְׁלֹשָׁה-עֵדִים יָקוּם דָּבָר:
 A single witness may not validate against a person any guilt or blame for any offense that may be committed; a case can be valid only on the testimony of two or three witnesses.

7. Plato, Gorgias 471-2

Socrates [In law courts] one party is supposed to refute the other when they bring forward a number of reputable witnesses to any statements they may make, whilst their opponent produces only one, or none. But this sort of refutation is quite worthless for getting at the truth; since occasionally a man may actually be crushed by the number and reputation of the false witnesses brought against him.

8. Justinian’s Code 4.20.9, edict of Constantine in 334 CE

We have ordained also that no judge readily allow the testimony of (only) one person to be admitted in any case whatsoever. Now we plainly ordain that the response of a single witness should not be heard, even if he is resplendent with the office of the illustrious city council.

9. Damascus Document, column 9 (Schiffman’s translation)

כל דבר אשר ימעל	
איש בתורה וראה רעהו והוא אחד אם דבר מות הוא וידיעהו	17
לעיניו בהוכיח למבקר והמבקר יכתבהו בידו עד עשותו	18
עוד לפני אחד ושב והודיע למבקר אם ישוב וניתפש לפני	19
אחד שלם משפטו	20
ואם שנים הם והם מעידים על	
דבר אחד (אחר) והובדל האיש מן הטהרה לבד אם נאמנים	21
הם וביום ראות האיש יודיעה למבקר	22
ועל ההון יקבלו שני	
עידים נאמנים ועל אחד להבדיל הטהרה	23

Regarding any case in which a man transgresses against the Torah, and his neighbor witnesses it, and he is the only witness: If it is a capital case, he (the witness) shall report it in his (the offender’s) presence to the examiner (*mevaqquer*) with reproving. The examiner shall record it (the offense) with his (own) hand until (such time as) he (the offender) should repeat it (the offense) with his (own) hand until (such time as) he (the offender) should repeat it (the offense) in the presence of one (witness). Again he (the witness) shall report (it) to the examiner. If he (the offender) should again be apprehended in the presence of one (witness) (i.e., a third time), his verdict is complete.

If, however, two witnesses testify to one case, he (the offender) shall only be removed from the pure food, provided they are reliable (witnesses). On the very day the person (the witness) shall see it, he shall report it to the examiner.

Concerning property (cases), they may accept two reliable witnesses, and (rely) on a single (witness) only to remove (the offender) from the pure food.

10. Sifra Hoba, *parasha* 12:11

R. Akiva says: Behold Scripture states, “On the testimony of two or three witnesses” (Deut 17:6) – if testimony is valid with two, then why does Scripture mention three? This is to include the third witness and treat him strictly such that (if they are found false) his verdict will be the same as the other two (even though his testimony was not required to convict the suspect).

11. Mishnah Sanhedrin 3:6

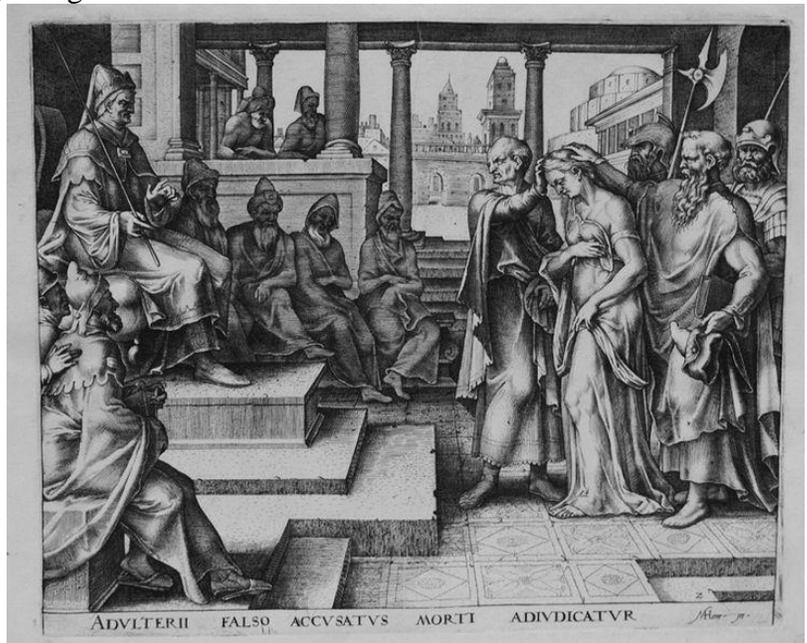
How do they [the judges] examine the witnesses? They bring them in and admonish them and remove them outside [the courtroom] and leave the older of them [the witnesses]. They say to him, “Tell, how do you know that this one is liable to that one?” If he says, “He [the defendant] said to me, ‘I owe him,’” or “So-and-so told me that he [the defendant] owes him [the litigant],” then he has said nothing. Rather, he must say, “He [the defendant] admitted to him [the litigant] in front of us that he owes him 200 zuz.”

Then they bring in the second [witness] and they examine him. If their words are found to line up, they [the judges] deliberate on the matter.

12. Mishnah Sanhedrin 5:2

Whoever multiplies the number of inquiries (*bediqot*), behold he is praiseworthy. It once happened that Ben Zakkai inquired regarding the stems of dates.

What is the difference between *haqiro*t and *bediqot*? Regarding *haqiro*t, if one says, “I don’t know,” their testimony is void. Regarding *bediqot*, if one says, “I don’t know,” or if even both say, “We don’t know,” their testimony is valid. Regarding both *haqiro*t and *bediqot*, if the witnesses contradict each other, their testimony is void.



Letter from Benjamin Franklin

It is better 100 guilty Persons should escape than that one innocent Person should suffer.