Some pericopae in Mishnah-Tosefta are attested in what seems to be their present formulation in the earliest stages of the Yavnean period, by Eliezer ben Hyrcanus, Gamaliel II, Joshua, and others of that time, even by Yohanan ben Zakkai. The attestations often consist of glosses on details of established, and already-formulated law, leaving the very strong impression that the law itself in its current wording was available for gloss. It is exceedingly difficult to gloss a tradition preserved only through memorization, for the introduction of a clearcut gloss, rather than a revision in the tradition itself 1), will break down the process of memorization and public acceptance of what is memorized. It would therefore seem plausible, according to present theories as to the formulation and transmission of 'oral' traditions, that the presence of glosses and their acceptance into the tradition may signify the glossed words existed in some written form, though, admittedly, this is by no means certain. In any event pericopae attested in early Yavneh should begin in the pre-70 period, though of course we have no way of assessing the source or point of origin of such

1) David Weiss-Halivni, Megorot uMesorot (Tel Aviv 1968) has demonstrated how the oral transmission of a tradition will produce changes in its original formulation. Halivni states, "Source criticism seeks to differentiate between the original statements as they were enunciated by their authors and the forms they took as a consequence of being orally transmitted; that is, between the sources and their later traditions ... what survives is the form assumed in the last phase of transmissional development." Halivni's results vindicate his theory. Now what is important is this: His analysis is of materials which evidently were formulated for oral transmission. He then shows that these materials were apt not to have been glossed or to have received interpolations (though both happened), but rather to have been reshaped or revised in the very formulation of the fundamental tradition itself. It would seem to me important, therefore, that when orally-formulated and orally transmitted materials require alteration, it will tend to be accomplished through revision of the primary statement, rather than through interpolation into, or gloss of, that statement. Then it will follow that where it is possible to gloss a lemma, that lemma would seem to have been in written form before the glossator. This argument is not decisive, but it seems worth proposing.

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early law. The sole moot assumption in this observation is that the attribution of a saying to a specific authority is apt to have been accurate—that is, that authority actually stands behind the gloss, whether or not it is phrased in the exact words he originally spoke 1).

We have no evidence deriving from the period before 70 as to how Pharisaic authorities formulated and transmitted their materials. The rabbinic traditions about the Pharisees, both named masters and the Houses of Shammai and Hillel, maintain remarkable silence on that subject. They tell us little to suggest that a well-developed system of oral formulation and oral transmission, relying, for example, upon the loyalty of disciples to the exact words of the masters, was in existence. We have no laws for the school-house, such as appear later on, or for the process of memorization, such as are attested by Judah b. Ilai possibly back to 'Aqiva and Eliezer. The evidence we do have is in written form. Evidence that what is now written down may have begun orally would consist, for one thing, in mnemonic patterns which facilitate the memorization of a law. Such patterns would not prove beyond doubt that the law originally was formulated so as to be preserved only through memory, and not by writing, for even a written law-code in some measure would be memorized. But it would give some indication that memorization was a predominant consideration in the formulation of the law. I have shown that mnemonic patterns of various sorts govern the formulation of hundreds of pericopae assigned to the Houses of Shammai and Hillel. Indeed, the use of very well-defined, sometimes elegant forms and the construction of those forms in balanced patterns, once demonstrated, allow us to undertake a considerable literary-critical task, to recover in pericopae which diverge from the established forms and patterns what ought to have been their original language. But these mnemonic

1) In my Eliezer ben Hyrcanus. The Tradition and the Man (Leiden 1973) I have assembled considerable evidence in favor of the accuracy of attributions of legal sayings to Eliezer. Nearly half of all his legal sayings are attested by his disciples and others who lived in his life-time. Many more traditions are consistent in legal principle with these first-attested materials, and still others lie within the same thematic framework, though not on the principle attested in early strata. And the themes of some of the remaining traditions are well-attested for other Yavneans, if not for Eliezer in particular. Finally, I find it assuring that materials which, according to my larger theory of Eliezer, ought not to be attributed to him are not in fact assigned in his name, and that rule applies not only to legal, but also to theological sayings. However, it will be a long time before we are able to demonstrate the likelihood that the people to whom legal sayings are attributed actually said them, either in their present formulation or in any other.