

Commencement Address given by
United States Circuit Judge Frank M. Coffin
to the
University of Maine School of Law
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A Scroll from the Ashes

I must begin with an apology. First, however, I congratulate this class of 1990, the families who did so much to make this day possible, and the faculty, who provided the finishing touches. I also pay a special tribute to Dean Wroth who, in his own wise, gentle, droll way, will leave a good school even better for his deanship. This, however, has taken only two sentences. And I have no commencement speech to give. A commencement speech is like the oversized, gas guzzling automobile; nothing good to be said of it, yet it continues to flourish. But I have yet to meet any lawyer who has the faintest memory of what was said at graduation.

So I hope you will excuse me from that labor. Instead, I want to share with you a recent intriguing archaeological discovery. I accompany this with the usual disclaimer appropriate to any such excursion into antiquity: fact is fact and fancy is fancy -- and ever the twain shall meet. But I do want you to know that, as a writer of judicial opinions, I am meticulous in having my quotes cite checked.

The discovery of which I speak took place near one of the great treasure houses of all time, the modest city of Pompeii, Italy, where, because of the eruption of Mt. Vesuvius on August 24, 79 A.D., over 3,700 dwellings and their contents were partially preserved for posterity. What now claims our attention is a ceramic urn containing a parchment scroll. It was actually unearthed not at Pompeii, but at Stabiae, four miles south of Pompeii on the shore of the Bay of Naples.

On the urn being opened, a note was revealed attached to the parchment document. It was from Caius Plinius Caecilius Secundus to Caius Plinius Secundus. In short other words it was from Pliny the Younger to his uncle, Pliny the Elder. Pliny the Elder was in all respects a formidable leading citizen of Rome. He was a lawyer, soldier, administrator under Emperor Vespasian, scholar, author of some 37 books, and, to quote his nephew, the fortunate man "to whom the gods have granted [both] the power . . . to do something which is worth recording [and] to write what is worth reading" His nephew attributed his many accomplishments to rising at 2 a.m. to begin his day of reading and writing and, while bathing, insisting on being read to.

It is well known that Pliny the Elder died at Stabiae, during the eruption of Vesuvius. He was then in charge of the western Roman fleet on the northern side of the Bay of Naples and sailed to Stabiae in the south in what proved to be a vain rescue attempt of friends who lived there. He was overcome by smoke and fumes and died at the foot of Vesuvius on the shore near his friend's villa. The urn was discovered under some ten feet of lava.

It seems that Pliny the Younger, a very considerable lawyer in his own right, had been involved in a consortium of young men among the growing class of lawyers. The oldest component was the *juris prudenti*, those wise in the law, the scholars. Then there were the *advocati*, those literally summoned to one's side, people who wrote speeches for their clients. Finally, the new class, the *causa dici*, the speakers of cases, who were actually allowed to speak for their clients. The consortium group was deeply worried about their common profession. The

parchment was their report, which they hoped their esteemed Pliny the Elder would not only read but forward to Emperor Vespasian for action.

I now shall read a translation of their report on the Future of the Legal Profession in Rome, entitled: *Lex Romanorum: Whither Goest Thou?*

This Consortium of the Future of Roman Law hereby reports its findings and, through the good offices of Caius Plinius Secundus, commonly called "The Elder," submits them to His Imperial Excellency, Vespasian.

1. History teaches us that a learned and noble profession must be ever alert to evidences of its decline. How acutely aware are we of the swift descent of the rhetores of Greece, from the Olympian heights of Demosthenes to the fetid swamps of Aristophanes' typical lawyer as sketched in "The Clouds": a "lawbook of legs, who can snoop like a beagle, a double-faced, lethal-tongued legal eagle." "[I]f you pay them well, they can teach you how to win your case -- whether you're in the right or not."

2. We accordingly took great pride in the restoration of the profession of noble advocacy under Rome, particularly in these shining days of Your Excellency's reign. Our especial jewel is your own appointed state professor of rhetoric, occupying the first endowed law chair in history, Quintilian. He it was, in his "Education of the Advocate," who advised, "When the advocate has exercised sufficient patience in listening to the client, he must then assume another character, and act the part of the adversary The client must be questioned sharply and pressed hard [Then] let him put himself in the place of the judge . . . and whatever arguments would move him most if he really had to give judgment . . . , let him suppose that those arguments will have most effect upon any judge Thus the result will seldom disappoint him; or, if it does, it will be the fault of the judge." After stressing the foundations of an irresistible sincerity of speech, namely, integrity of conduct and nobility of spirit, and the hard training of writing with care, he concluded, "I trust that no one among my readers would think of calculating its monetary value."

3. Alas, it has been easier to master Quintilian's skills than the spirit he would inculcate. The very peak of justifiable pride was expressed by the Gaul Marcus Afer, a distinguished leader of the bar. Tacitus, in his work, "The Status of Advocates," quotes him as saying:

[The days on which I donned the robe of a senator or was elected tribune] have been in no greater degree red-letter days for me than those of which I enjoy the opportunity ... of securing an acquittal in a criminal trial, or of pleading some case successfully before the centumviral court, or of undertaking the defense of some redoubtable freedman or imperial agent in the emperor's presence-chamber- Then it is that I feel I am rising above the level of a tribune, a praetor, or even a consul, and that I possess an asset which . . . cannot either be conferred by letters-patent or follow in the train of popular favor.

But even this pride, based on talent, hard work, and service for rich and poor alike in the interest of justice, takes such an advocate as Marcus to the edge of arrogance. Here, from his pinnacle of persuasive power, he boasts:

Can vast wealth or great power bring with it any satisfaction comparable to the sight of grave and reverend seniors, men with the whole world at their feet, freely owning that, though in circumstances of the utmost affluence, they lack the greatest gift of all? Just look, again, at the imposing retinue of clients that follow you when you leave your house! What a brave show you make out-of-doors! . . .

Are there any whose names are dinned at an earlier age by parents into their children's ears? . . . What class of men enjoys greater prestige here in Rome?

4. After the Marcus Afers of the Bar, arrogance and the pursuit of money have taken center stage, pushing aside the original goal -- the pursuit of Justice. No longer could those of modest means or no means at all hope to have access to competent lawyers, courts, and Justice itself. Your Consortium presents the following Catalogue of Degradation compiled from contemporary observers:

Item -- Martial notes the frequent connection between high fees and buying verdicts in this couplet:

With a judge to pay off and a lawyer to pay, Settle the debt's my advice; much cheaper that way.

Item -- Tacitus is even stronger: "The most salable item in the public market is lawyers' crookedness." And another: "Pretend you purposely murdered your mother; they'll promise their extensive special delvings in the law will get you off -- if they think you have money."

Item -- Here is Juvenal's assessment: "It's the stylish clothes that sells the lawyer. No one would give even Cicero a case if he didn't wear a ring gleaming with an oversize diamond. The first thing a client looks for is whether you have behind you eight flunkies, ten hangers-on and a sedan-chair and, in front of you, a crowd of the well-dressed."

Item -- In a recent trial observed by one of us, Pliny the Younger, the tribune Nigrinus read a well-phrased statement complaining "that counsel sold their services, faked lawsuits for money, settled them by collusion, and made a boast of the large regular income to be made by robbery of their fellow citizens."

Item -- To curb such robbery, the praetor Nepos issued his well known edict banning the buying and selling of counsels' services but, after a case is settled, allowing a client to give counsel a sum not exceeding 10,000 sesterces. Yet we have heard how easily this is evaded; all know of the lawyer in this very reign who amassed a fortune of 300,000,000 sesterces.

Item -- Our colleague Pliny the Younger describes the state of the profession today:

Audiences follow who are no better than the speakers, being hired and bought for the occasion. They parley with the contractor, take the gifts offered on the floor of the court as openly as they would at a dinnerparty, and move on from case to case for the same sort of pay. The Greek name for them means "bravo-callers" and the Latin "dinner-clappers"; witty enough, but both names expose a scandal which increases daily That is all it costs you to have your eloquence acclaimed.

5. Both the top and the bottom of Roman society suffer from this sorry state of the profession. Those citizens presently served by lawyers -- the wealthy, the well born, and the powerful -- can no longer count on having their causes justly decided. They must settle for

buying victory if they can afford the price. And, the practice of law now being just another commercial enterprise, those emerging from its top ranks to take positions as quaestors, praetors, tribunes, and magistrates cannot be expected to exemplify the qualities of integrity of conduct and nobility of spirit which Quintilian strove so hard to preserve.

6. But beyond the wealthy, the well born, and the powerful, there is a wider impact of far more ominous portent for Rome. Everything that we have documented shows that the day has long passed when the freedman, the artisan, the shopkeeper, the laborer in the field and vineyard would expect to have the services of an able advocate. All that the vast and growing poor -- and even the once mighty middle class itself -- can hope for is access to the few able attorneys who are willing to be derided for their embarrassing lack of financial success, as described by Juvenal:

Their honors take their seats and you, you undernourished champion, rise to speak your piece What fee does that voice of yours command? A measly chunk of pork, a pot of fish fry, the overage onions they issue as slave's rations and five jugs of rotgut wine.

What irony that under Roman rule the most exquisite body of jurisprudence has developed that the world has ever seen. The Forum proudly displays our principal laws in tablets of enduring bronze. The Capitoline Hill library houses three thousand more bronze plates. Our juris prudens, our scholars, are preeminent in their learning and sage counsel. But gone are the days when the leading jurisconsults could be seen walking in the Forum ready to give needful advice to the meanest of their fellow citizens. We have the most elegant courts of justice, our spacious Basilicas, no fewer than twenty in Rome alone. But their doors are closed to the miserable peasant or freedman, except when he is hauled there, in chains, often on some trumped up charge, and promptly sent off to be fed to the lions in the weekly blood baths at the Coliseum.

You, our respected Vespasian, have given us a gentle and benign reign. Neither you nor we will live to taste the bitter fruit now growing on the shriveled, tainted tree of the lawyer's profession. But the day may well come when the Roman citizen will have lost all civic sense, all sense of sharing or participation in the polity of Rome, all access to its heralded system of justice, all sense of community, of pride, of fealty. Should that fell day arrive, Oh Emperor, it will have come in no small part because the future of that once noble profession was left too long untended.

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At the end of this document, in shakily written script, were these words:

This comes too late. I fear we cannot escape. The wind blows against us. We cannot sail away. The fumes come closer. I can hardly breathe. I bury this in the hope that some day, somewhere, someone will read this . . . and act on it.

Signed, P --

Stabiae, August 24,
the tenth year of Vespasian.