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Preserving the Past

Roger J. Miner '56

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Association of the Bar
of the City of New York
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"Preserving the Past"

The Second Circuit Committee on Historical and Commemorative Events, which I am privileged to chair, is happy to join with the Association of the Bar of the City of New York in presenting the historical exhibit we open here this evening. I hope that this will be the first in a series of collaborative efforts that will serve to underline the importance of legal history to all segments of the legal profession. Our Exhibit is entitled: "Colleagues for Justice: One Hundred Years of the United States Court of Appeals for the Second Circuit." It was created to celebrate the centennial anniversary of our Court and has been on display at the United States Courthouse in Foley Square for the past year. The Exhibit tells the story of the Second Circuit Court of Appeals from its earliest beginnings to the present through an examination of the lives and labors of the judges who have done the Court's work.[1]

It is most fitting that the Exhibit begin its outside tour here in the House of the Association, because the Court that the Exhibit celebrates owes its existence to the man who served as the first President of the Association, William M. Evarts. A leading light of the New York Bar, Evarts served as President of the Association from 1870 to 1879. He achieved great renown for his successful defense of the impeachment proceedings brought against Andrew Johnson, and he served as Attorney General of the United States.[2] As United States Senator from New York, he was

the principal sponsor of the 1891 legislation that established the Courts of Appeals in the Federal Judicial System.[3] Our Court has maintained a close relationship with the Association ever since. Members of the Association have been leading advocates in our Court, have contributed to the work of various committees of the Court and long have participated in the activities of the Second Circuit Judicial Conference. Many of us presently serving on the Court are members of the Association and take a keen interest in various phases of its work. My distinguished colleague, Amalya Kearse, has for some years chaired the Association's Committee to Administer the C. Bainbridge Smith Fund, which is concerned with financial grants for disadvantaged law students. Former Chief Judge Bill Feinberg has been a member of the Association since 1954, and former Chief Judge Ed Lumbard joined in 1929! Both continue in service to our Court as active senior judges and both continue in service to the Association as active members.

The Act of the New York State Legislature incorporating the Association is printed annually in the Association's Yearbook. It is a matter of some historical interest that Samuel J. Tilden is named in the Act as one of William Evarts' vice presidents. Tilden never did make it to the presidency -- either of the Association or the United States! In any event, the Act of Incorporation, as amended, recites that the Association of the Bar was formed

> for the purposes of cultivating the science of jurisprudence, promoting reforms in the law, facilitating the administration of

> justice, elevating the standard of integrity, honor and courtesy in the legal profession, and cherishing the spirit of brotherhood among the members thereof.[4]

Noble goals, indeed!

In modern times, under distinguished leadership, the Association has pursued each of those goals with special vigor. It has facilitated the administration of justice through committees appointed to study the courts and to make recommendations for their improvement; to assist in providing legal services to those who cannot afford them; to address issues regarding women and minorities involved in the legal system; and to evaluate candidates for judicial office. It has worked on the elevation of standards of integrity, honor and courtesy in the legal profession by its attention to professional ethics and standards of professional responsibility. It has cherished the spirit of brotherhood and sisterhood among its members by providing guidance to young lawyers and lawyers facing mid-career crises, by encouraging the hiring and promotion of women and minorities in law firms and in undertaking programs of legal education.

Concerned with the future of the legal profession, the Association has addressed issues of bar admission and law school curricula. It has cultivated the science of jurisprudence and promoted reform in the law by establishing committees and councils to study, report on, recommend changes in and disseminate information about every area of the substantive and procedural law. Committees have been established to deal with

issues in criminal justice; business and tax law; laws affecting the media, arts and intellectual property; wills, trusts and estates; real property; procedural reform; and many, many more.[5] Truly an eclectic menu!

Tonight, I recommend that the Association add yet another item to the menu. The item is one that has been much neglected among the members of the practicing bar, yet the subject can hardly be considered a new frontier. The subject to which I refer is Legal History. It is because history is so significant to us as lawyers and judges that I earnestly solicit the Association to join us in the work of preserving the past.

To preserve the past is to give voice to history and thereby to advance the knowledge of mankind. For history can speak to the present and to the future, even as it speaks of the past. The voice of history teaches us, challenges us, entertains us and gives us perspective and perception. It questions the status quo and conventional wisdom, but it also tests the forces of change and departures from fixed values. Cicero said that "[h]istory is the witness that testifies to the passing of time; it illumines reality, vitalizes memory, provides guidance in daily life, and brings us tidings of antiquity."[6] Francis Bacon said: "Histories make men wise."[7]

My own interest in history was not very well developed until I met my wife, a long-time student and teacher of history. Until that time, I was content to regard the subject with the same disdain as Milton Berle, who once said that "[h]istory is an

account of something that never happened, written by someone who wasn't there."[8] In order to capture the attention of the object of my affection, it was necessary for me to develop a general interest in history and a particular interest in the ancient Mayan Civilization, the subject of her doctoral research.[9] Greater love hath no New York lawyer than to spend week after week in the jungles of the Yucatan, machete in hand, slashing at the vegetation. I well remember one expedition to the ruins of Kabah. Even as darkness fell, I continued to whack at some vines so Jackie could get a better look at the stones beneath them. Our guide sat in the jeep, watching us at work as he ate his dinner, muttering over and over in English, Spanish and Mayan the single word: "Crazy!"

Our excursions produced some positive results. I shall never forget the excitement that was ours upon discovering at Uxmal some evidence supporting Jackie's thesis that the earliest settlers of the land of the Maya came by sea from Egypt rather than by land over the North American Continent.[10] But I discovered a good deal more from my trips to Mexico, from the teachings of my wife and from my own studies of history. What I discovered was that history is the story of the indestructible human spirit and that in a real sense the study of history is the study of humanity. The branch of history that we call legal history is to me the story of the human spirit infused with a developing sense of justice. Legal history shows us where we have been and where we should go in pursuit of justice. It

points in the direction of the rule of law.

Fortunately, legal history no longer is the stranger to legal education that it was thirty or even twenty years ago.[11] Now, almost every law school offers a course in legal history. Distinguished scholars have entered the field, and an important and extensive body of literature has developed for the edification of those who are in the earliest stages of law study.[12] Legal history has an important place in the law school curriculum. I think that it has such an important place that each law student should be required to undertake at least one course in legal history. Any aspect of legal history would do, because my purpose is simply to expose the student to the interrelationship of law and history and to inculcate an appreciation of history that no member of our profession should lack.

The daily work of lawyers and judges has much reference to history. We commonly refer to "legislative history,"[13] to "historical facts,"[14] and, of course, to "precedent,"[15] which is nothing less than history. Constitutional jurisprudence is much concerned with the past.[16] History was very much on the minds of those who framed the Constitution. Listen to the words of Justice Frankfurter in that regard:

> The Founders of this Nation were not imbued with the modern cynicism that the only thing that history teaches is that it teaches nothing. They acted on the conviction that the experience of man sheds a good deal of light on his nature. It sheds a good deal of light not merely on the need for effective power, if a society is to be at once cohesive and civilized, but also on the need for

limitations on the power of governors over the governed.[17]

Judges and lawyers make some very practical uses of history.[18] Primary and secondary historical sources, as well as the testimony of historians, have been invoked in a wide variety of cases involving such diverse matters as Indian lands,[19] navigability,[20] the Nazi Regime,[21] the Socialist Workers Party,[22] the conversion of Native Americans,[23] the practices of the Amish sect[24] and discrimination against blacks,[25] to name just a few. In my own experience I have referred to history in cases involving: the fabled Yamashita Treasure, said to be hidden somewhere in the Philippines by the Japanese occupation forces during World War II;[26] the status of lands set aside for the Seneca Nation of Indians in 1794;[27] the applicability of New York or New Jersey law to Ellis Island under an 1833 compact between the two states;[28] and the status of the South Pacific island of Palau under the Foreign Sovereign Immunities Act.[29]

But legal history is not just for the workaday world of the bench and bar, however useful it may be for the resolution of specific disputes. It is not just for an understanding of the law and legal traditions and legal institutions.[30] It is not only to teach students that there is more to law than the implementation of current public policy.[31] It is not only for recreation and enjoyment.[32] It is also to comprehend the soul of the legal profession, which we must nurture and preserve in order to discharge the obligations we have undertaken.

Contrary to what many would have us believe, the American

legal profession serves our society well. As it serves, it strives to improve itself. The legal profession reflects the character of the American people -- restless, evolving, searching, improving, changing and aspiring to do better. We have come a long way in defining and improving the standards of the profession. For example, things were so bad in 1699 that the British Governor of New York was constrained to write the following to the Treasury Lords: "There was not such a parcel of wild knaves and Jacobites as those that practised the law in the province of New York, not one of them a barrister, one was a dancing master, another a glover, a third . . . condemned to be hanged in Scotland for blasphemy and burning the bible."[33] Even so, lawyers played a leading role in the American Revolution. The rumblings of the Revolution and the leadership of the Bar in that enterprise are echoed in these words written in a letter from Lieutenant Governor Colden of the Province of New York to Lord Halifax in 1765: "All Associations are dangerous to good Government, more so in the distant dominions, & Associations of lawyers the most dangerous of any next to the Military. . . . I never received the least opposition in my administration except when I oppose the views of this Faction."[34]

Although the legal profession was banned in its entirety from some of the American colonies, the growing complexity of the economy, the diffusion of society and the weakening of religious constraints created a need for the services of the legal profession in post-revolutionary America.[35] Three prominent

scholars "view[] the history of American law . . . as the unfolding of social choices through the legal process."[36] If that is true, the need for a well-educated, skillful bar, aware of its ethical constraints and its special responsibility to the general public as well as the duty owed to private clients, was manifest from the very beginning. Unfortunately, the fulfillment of those needs has been slow in coming, and the story still is unfolding. Recent history provides much satisfaction, however.

Although the first years of the Republic produced some outstanding lawyers, their education and training varied greatly.[37] The quality of the profession was uneven and its standards were not well established. The three decades preceding 1870 were marked by a general decline in the education of lawyers, in legal ethics, and in professional organizations; the period was marked also by widespread corruption involving lawyers and judges.[38] It was in response to the lowly state to which the profession had fallen that the call went out for the formation of the Association of the Bar. It is a matter of great interest to me that those who issued the call said that one of their purposes was "to promote the interests of the public."[39]

When he addressed the first meeting of the Association in February 1870, Samuel Tilden said: "I do not desire to see the Bar combined, except for two objects. The one is to elevate itself -- to elevate its own standards; the other object is for the common and public good."[40] The common and public good! That is the soul of the legal profession. That is what commands our

attention as lawyers. That is what must be in the forefront of our thoughts and of our actions. For it is that which distinguishes us from other vocations. Dean Roscoe Pound said that what we do is "no less a public service because it may incidentally be a means of livelihood."[41] Incidentally a means of livelihood! Tilden warned at that first meeting about keeping the priorities straight. He said: "If the Bar is to become merely a method of making money, making it in the most convenient way possible, but making it at all hazards, then the Bar is degraded. If the Bar is to be merely an institution that seeks to win causes and to win them by back-door access to the judiciary, then it is not only degraded, but it is corrupt."[42]

And so the Association of the Bar was born in difficult times for the legal profession and at birth took on a burdensome mission and an historic one -- to raise the standards of the bar and to inculcate in its members a deep sense of public service. The Association and hundreds like it throughout the nation are engaged, day in and day out, in carrying out that same mission in modern times. A glance back at history tells us that the function of the bar in relation to the common and public good is being performed at a higher level than at any time in the past. Because of the dedicated work of its leaders and members, this Association and its sisters are involved in more pro bono services, more legal education, more enforcement of ethical standards, more promotion of substantive and procedural law reform, more critical appraisal of judges and judicial

candidates, more assistance to minorities and women in the profession, more efforts to provide competent services at the lowest cost, and more efforts to encourage collegiality at the bar than at any time in the past. And yet the legal profession suffers from its historic image problems. It is not difficult to understand why. The public largely remains uninformed about what we do, and we never have put forth enough effort to explain ourselves to our fellow citizens.

The October 1992 issue of the State Bar News, published by the New York State Bar Association, includes a column written by the Director of Pro Bono Affairs of the State Association. He writes that when he told some new acquaintances about the work he does, they asked: "Do attorneys really volunteer their time to perform legal work for the poor?"[43] I think that it is clear that our fellow citizens really do not know enough about us and about what we do. I know from my days of practice that the lawyers in any community are the most compassionate and the most socially conscious people to be found. Where leadership is needed, when charitable work is to be done, where public institutions are to be supported and, yes, when people cannot pay fees because they are poor or just have fallen on hard times, there you will find a lawyer ready to help.

And that is why it pains me so much that those in high places see fit to place the blame for society's ills unfairly upon the bar. What we are seeing is scapegoating at its worst, and the bar must fight back, as it has throughout its history.

We must bring to the attention of the public the inaccurate and misleading information about the law and lawyers, information such as that put out by the Vice President of the United States. In remarks to the American Bar Association, the Vice President observed that "[o]ur system of civil justice is . . . a self-inflicted competitive disadvantage."[44] "[L]et's ask ourselves," he said, "[d]oes America really need 70 percent of the world's lawyers? Is it healthy for our economy to have 18 million new lawsuits coursing through the system annually?"[45] "The answer is no," he said, noting also that litigation costs in the nation add up to more than 300 billion dollars each year.[46]

To begin with, it seems almost certain that all his figures were wrong. The 300 billion dollar figure has been demonstrated to be a product of casual speculation and not derived in any sense from investigative or statistical analysis.[47] As to the 18 million civil suits which, according to the Vice President, make us "the most litigious society in the world," it appears that this figure is seriously skewed. The number includes millions of routine cases such as small claims, probate proceedings and divorce matters. It is estimated by various experts that the correct number of contract and tort cases filed in general jurisdiction trial courts is about 2-1/2 million, hardly enough to maintain the charge that we are the most litigious nation on earth.[48]

As for having 70% of the world's lawyers, it just is not true. Marc Galanter, a respected law professor and expert on the

so-called "litigation explosion" said that American lawyers probably make up somewhere between 25% and 35% of all the world's lawyers.[49] Galanter, who is Director of Legal Studies at the University of Wisconsin Law School, asks "Is that too many?" and gives this very thoughtful answer in the April 1992 issue of The American Lawyer:

> [The proportion of American lawyers to all the lawyers in the world] is roughly the U.S. proportion of the world's gross national product and less than our percentage of the world's expenditure on scientific research and development. The United States is a highly legalized society that relies on law and courts to do many things that other industrial democracies do differently. And it is worth noting that one realm in which this country has remained the leading exporter is what we may call the technology of doing law -- constitutionalism, judicial enforcement of rights, organization of law firms, alternative dispute resolution, public interest law. For all their admitted flaws, American legal institutions provide influential (and sometimes inspiring) models for the governance of business transactions, the processing of disputes, and the protection of citizens in much of the world.[50]

The Vice President's remarks were spawned by a subsidiary of the President's Council on Competitiveness known as the Federal Civil Justice Reform Working Group. The Group seems to have concluded that lawyers are responsible for the decline of American business competitiveness in world markets. In its report is found the unsubstantiated statement that, due to liability concerns, 47% of U.S. manufacturers have withdrawn products from the market; 25% of U.S. manufacturers have discontinued some forms of product research; and approximately

15% of U.S. companies have laid off workers as a direct result of product liability experiences.[51] According to the American Bar Association Journal, however, these statistics are seriously flawed, being based on five hundred responses from four thousand business executives who received a mailed questionnaire.[52] Statisticians call this a "self-selected" sample.

Actually, it appears that products liability suits are on the decline. Even if they were not, what do they have to do with competitiveness? Foreign products manufacturers also are subject to suit in the United States. And what is wrong with this system anyway? Elimination of unsafe products, warnings to consumers of risks undertaken, and protection of the environment certainly are socially desirable goals that are advanced by current law. The citizenry relies upon courts and lawyers to advance these goals. Other branches of government just don't seem to do as well. It seems clear that much of the statistical information relied upon by the Council on Competitiveness has origins that are suspect, to say the least.

The President of the United States himself has said that he is ready to "climb[] into the ring" with lawyers.[53] I suggest that the pugilistic analogy is an unfortunate one. What we should all be talking about is cooperation. The bar well recognizes its obligation to cooperate in the public interest. It also realizes its obligation to protect individual rights and to resist government intrusion, where resistance is warranted. Knowledgeable lay persons appreciate the dual function of the

bar. Over a decade ago, a non-lawyer addressed these remarks to a gathering of the bar:

> To judge from some of what we've all read in the press, you wouldn't think law was the honorable profession that it is. To judge from what's been said about the practice of law, you'd think the opposite. You'd think of the lawyer who gets the brutal murderer acquitted by a deft use of the exclusionary rule, or of the lawyer who assists the man committed to exposing American intelligence officers abroad, endangering the security of the country.
>
> Lawyers are blamed for a whole Pandora's box of social ills: for the endless proliferation of governmental rules and regulations, for national litigiousness, for a lot of things -- for crime itself.
>
> * * * *
>
> But we ultimately are thankful for you, and look to you, because you, along with the government, are the standard-bearers of the Constitution. It is a sacred trust, and I know you view it as nothing less.
>
> And if voices are raised demanding the tearing down of these institutions, we must all of us resist, even as we strain to understand how we can reform ourselves, how we can further justify the hopes placed in us by those who drew up the Constitution. Because as Cicero . . . told us long ago, "We are in bondage to the law, in order that we may be free."[54]

Those are the words of George Bush, who, during his service as Vice President, addressed them to the opening session of the annual meeting of the American Bar Association on August 10, 1981.

There is much to be learned from the collective memory we call history!

1. Roger J. Miner, "Planning for the Second Century of the Second Circuit Court of Appeals: The Report of the Federal Courts Study Committee," 65 St. John's L. Rev. 673, 673-76 (1991); see also Roger J. Miner, "One Hundred Years of Influence on National Jurisprudence: Second Circuit Court of Appeals Decisions Reviewed by the United States Supreme Court," reprinted in United States Courts in the Second Circuit 138 (1992).

2. George Martin, Causes and Conflicts: The Centennial History of the Association of the Bar of the City of New York: 1870-1970 23-27 (1970).

3. Act of March 3, 1891, ch. 517, 26 Stat. 826. See James L. Oakes, "The Centennial Celebration of the Evarts Act and the United States Court of Appeals for the Second Circuit: Remarks," 46 The Record of the Ass'n of the Bar of the City of N.Y. 480, 481-82 (1991).

4. 1924 N.Y. Laws 217.

5. See The Association of the Bar of the City of New York Yearbook (1991-1992).

6. Marcus Tullius Cicero, 2 De Oratore 62.

7. Francis Bacon, Essays: Of Studies (1625).

8. Milton Berle, Milton Berle's Private Joke File 317 (1989).

9. For a recent comprehensive history of the Mayan civilization, see Linda Schele & David Freidel, A Forest of Kings: The Untold Story of the Ancient Maya (1990).

10. Id. at 37-38; Roger J. Miner, "United States District Court for the Northern District of New York: Its History and Antecedents," reprinted in United States Courts in the Second Circuit, supra note 1, at 62, 98 n.4.

11. See Kermit L. Hall, William M. Wiecek & Paul Finkelman, American Legal History at vii (1991); Stephen B. Presser, "'Legal History' or the History of Law: A Primer on Bringing the Law's Past Into the Present," 35 Vand. L. Rev. 849, 849 (1982) ("Ten years ago, legal history was not taken particularly seriously . . . ."); David W. Raack, "Some Reflections on the Role of Legal History in Legal Education," 26 Duq. L. Rev. 893, 894 (1988) ("Although legal history is now a moderately popular law school course, such popularity is relatively recent. In the 1950's and 1960's, the subject was not highly regarded by most law students or faculty, and even by the early 1970's, it had not generated much enthusiasm."); Edward D. Re, "Legal History Courses in American Law Schools," 13 Am. U. L. Rev. 45 (1963) (discussing results of a 1961 survey conducted by the Committee of the

American Society for Legal History on the Teaching of Legal History in the Law School Curriculum).

12. Michael Grossberg, "Legal History and Social Science: Friedman's History of American Law, the Second Time Around," 13 Law & Soc. Inquiry 359, 361 (1988) (reviewing Lawrence M. Friedman, A History of American Law (2d ed. 1985)) ("There are more legal historians writing now than at any time in the past . . . ."); Kermit L. Hall, "American Legal History as Science and Applied Politics," 4 Benchmark 229, 229-30 (1990) ("more than 4,000 articles, books, or dissertations were published in American legal history from 1980 to 1987").

13. See, e.g., United States v. R.L.C., 112 S. Ct. 1329, 1334 (1992) (using legislative history to reconcile ambiguities in the text of the Juvenile Delinquincy Act and the Sentencing Guidelines).

14. See, e.g., Mistretta v. United States, 488 U.S. 361, 397-405 (1989) (reliance on historical sources dating from 1790s to hold that federal judges sitting on U.S. Sentencing Commission did not violate separation of powers principle).

15. See, e.g., Flood v. Kuhn, 407 U.S. 258, 283 (1972) (relying on precedent to reaffirm antitrust exemption for major league baseball).

16. See Theodore Y. Blumoff, "The Third Best Choice: An Essay on Law and History," 41 Hastings L.J. 537, 572-73 (1990); William M. Wiecek, "Clio As Hostage: The United States Supreme Court and the Uses of History," 24 Cal. W. L. Rev. 227 (1988).

17. Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 593 (1951) (Frankfurter, J., concurring).

18. See Morris S. Arnold, "A Judge's View of Legal History," 4 Benchmark 265 (1990) (discussing the importance of legal history to the practitioner and judge).

19. Oneida Indian Nation of N.Y. v. New York, 649 F. Supp. 420 (N.D.N.Y. 1986), aff'd, 860 F.2d 1145 (2d Cir. 1988), aff'd, 493 U.S. 871 (1989).

20. State ex rel. N.Y. State Dep't of Envtl. Conservation v. Federal Regulatory Comm'n, 954 F.2d 56 (2d Cir. 1992); Connecticut Light & Power Co. v. Federal Power Comm'n, 557 F.2d 349 (2d Cir. 1977).

21. United States v. Schmidt, 923 F.2d 1253 (7th Cir.), cert. denied, 112 S. Ct. 331 (1991); United States v. Sprogis, 763 F.2d 115 (2d Cir. 1985).

22. Socialist Workers Party v. Attorney Gen. of the United States, 642 F. Supp. 1357 (S.D.N.Y. 1986).

23. Friedman v. Board of County Comm'rs of Bernalillo County, 781 F.2d 777 (10th Cir. 1985), cert. denied, 476 U.S. 1169 (1986).

24. Wisconsin v. Yoder, 406 U.S. 205 (1972).

25. Dillard v. Crenshaw County, 640 F. Supp. 1347 (M.D. Ala. 1986).

26. Golden Budha Corp. v. Canadian Land Co. of Am., 931 F.2d 196 (2d Cir. 1991).

27. John v. City of Salamanca, 845 F.2d 37 (2d Cir.), cert. denied, 488 U.S. 850 (1988).

28. Collins v. Promark Prods., Inc., 956 F.2d 383 (2d Cir. 1992).

29. Morgan Guaranty Trust Co. v. Republic of Palau, 924 F.2d 1237 (2d Cir. 1991).

30. See Calvin Woodard, "History, Legal History and Legal Education," 53 Va. L. Rev. 89, 101 (1967). Interest in the history of legal institutions continues to grow. Congress recently amended the Federal Judicial Center's mandate, authorizing it to "'conduct, coordinate, and encourage programs relating to the history of the judicial branch of the United States government.'" "Judicial History Program Inaugurated by the Federal Judicial Center," The Court Historian (The Federal Judicial Center, Washington, D.C.), Dec. 1989, at 1 (quoting 28 U.S.C. § 623(a)(7) (1988 & Supp.)); see also Roger J. Miner, "Book Review: Rewriting the History of the Judiciary Act of 1789: Exposing Myths, Challenging Premises, and Using New Evidence," 36 N.Y.L. Sch. L. Rev. 525, 528-29 (1991).

31. See Woodard, supra note 30, at 111-12.

32. See M.H. Hoeflich, "A Renaissance in Legal History?" 1984 U. Ill. L. Rev. 507, 508 ("[S]tudying legal history is like learning to play golf. At worst, when one has tired of doing serious work and needs amusement, one can turn to a round of golf or a good book on legal history.").

33. Miner, supra note 10, at 66.

34. Id. at 67.

35. Hall et al., supra note 11, at 305.

36. Id. at viii.

37. Id. at 332-33; Barry Sullivan, "The Honest Muse: Judge Wisdom and the Uses of History," 60 Tul. L. Rev. 314, 315 & n.5 (1985).

38. F. Raymond Marks, The Lawyer, the Public, and Professional Responsibility 12 (1972).

39. Martin, supra note 2, at 15.

40. Id. at 37.

41. Roscoe Pound, The Lawyer From Antiquity to Modern Times 5 (1953).

42. Martin, supra note 2, at 37.

43. Tom Roberts, "Pro Bono News," State Bar News, (New York State Bar Association, New York, N.Y.), Oct. 1992, at 4.

44. Vice President Dan Quayle, Remarks at the Annual Meeting of the American Bar Association 2 (Aug. 13, 1991) (transcript available from the Office of the Vice President).

45. Id. at 6.

46. Id. at 6, 2.

47. See Kenneth Jost, "Tampering With Evidence," A.B.A. J., Apr. 1992, at 44, 46.

48. Deborah R. Hensler, "Taking Aim at the American Legal System: The Council on Competitiveness's Agenda for Legal Reform," 75 Judicature 244, 245 (Feb.-Mar. 1992).

49. Marc Galanter, "Pick a Number, Any Number," Am. Law., Apr. 1992, at 82, 84.

50. Id. at 84.

51. President's Council on Competitiveness, Agenda for Civil Justice Reform in America 3 (1991).

52. Jost, supra note 47, at 46.

53. "In Their Own Words," N.Y. Times, Aug. 21, 1992, at A14 (transcript of President Bush's speech accepting the 1992 Republican presidential nomination).

54. Marc Galanter & J.T. Knight, "When Bush Sang Praises of Lawyers," Nat'l L.J., Oct. 12, 1992, at 13, 13-14.