

History of lawyers, part one | Marcel Strigberger

By **Marcel Strigberger**

Law360 Canada (February 18, 2022, 2:58 PM EST) -- I ask where in history do we see lawyers mentioned? Actually after thinking about it, I see no sign of lawyers for millennia.

Let's start in the beginning. The good Lord forbids Adam and Eve from eating from the tree of knowledge. They disobey and they have to fig leaf. Then they get booted out of the Garden of Eden. Would it have helped if they had a lawyer to plead their case? However since Adam blamed Eve for hounding him you would have needed two lawyers: conflict of interest. Make that three lawyers; let's not forget that talking serpent.

Forward onto Cain and Abel; history's first homicide. When confronted by God as to Abel's whereabouts, Cain blurts out, "Am I my brother's keeper?" This would have been an opportune time to have a lawyer argue for Cain's right to remain silent. But alas, no lawyer.



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Jumping ahead a few begats to Noah. Even if there were lawyers, Noah certainly did not invite them aboard the ark. Why not? Maybe he retained one to advise him on say, environmental issues. But there was a dispute about the bill? So he decided to throw his lawyer under the bus, or rather under the ark. I suppose had he had one aboard, this would have represented history's first in-house counsel.

Centuries later Moses comes down the mountain lugging two stone tablets bearing the Ten Commandments. Not being a spring chicken, chances are he would have injured himself. I'm much younger and I have problems dragging out the trash. Perhaps he did hurt his back, but there was no lawyer around to advise him of his workers' compensation rights. The book of Exodus is definitely silent on this issue. I checked. Just stuff about a sea splitting, some golden calf idol worship and a plague or two. (Not sure which variants; Greek letters were not around yet).

Speaking of ancient Greece, we see orators like Demosthenes doing the talking for others. Demo was a great speaker, practising talking with pebbles in his mouth. (Caution colleagues: Do not try this one at home). But orators were not lawyers per se. I have seen no evidence of archeologists coming cross a shingle reading something like, "Demosthenes — if I don't win, you don't pay."

We start seeing some semblance to the legal profession in ancient Rome. However, for ages these advocates were prohibited from charging a fee. Emperor Claudius fixed this problem somewhat, but permissible fees had a low ceiling. Presumably this remuneration status likely led to the phrase, "pro bono." Who knows? It certainly wasn't bono for the lawyers.

Then for the next millennium plus we hear diddly about lawyers. I googled "Dark Ages any lawyers?" "I found nothing even remotely resembling anything like "Goth, Visigoth and Leif the Lucky, barristers and solicitors."

And I wonder if a lawyer drafted the Magna Carta. I'd say this would garner some awesome testimonials on his website. "We retained Norman to draft the Magna Carta. He finished it in a timely manner and at a reasonable cost. We would definitely use his services again."

Interestingly Chaucer in his *Canterbury Tales* mentions a number of callings participating in the pilgrimage. There was a "Man of Law," but I wonder whether the pilgrims took too kindly to him.

Maybe they all had something to fear or dislike about lawyers. The physician may have asserted, "Drop him lest he sues me for malpractice." Or the Wife of Bath may have commented, "My lawyer cleaned me out during my divorce case. I really took a bath." Or the Monk simply said, "No lawyers. They talk too much."

If it's any consolation, this eclectic group did not include a dentist. No clue why.

The next reference to lawyers that I could think of did not make me too comfortable. I speak of Shakespeare's reference, "The first thing we do, let's kill all the lawyers." Provocative comments such as these might certainly discourage some law school prospects from writing the LSATs.

At least not mentioning lawyers is preferable than threatening them. Better silence. Like that monk.

Charles Dickens is kinder with his Sidney Carton lawyer character in a *Tale of Two Cities*. This English barrister gentleman switches places with a French look doppelgänger, choosing to take his place with madame Guillotine. I'd say this character was a far far better thing that happened to lawyers' reputation than anything most authors have done.

Personally, I first heard of lawyers as a grade schooler watching *Perry Mason*. Episode after episode Mason would get clients charged with murder off the hook, to the dismay of prosecutor Hamilton Burger. This resonated with me big time.

In grade school I was the class comedian and for my efforts my teacher, Mr. Webster, used to inflict cruel and unusual punishment. He would make me write out 20 times, "I shall not joke in class." Watching *Perry Mason* made me realize there is a profession where the individual represents the innocents and secures justice. I thought to myself I'll show Mr. Webster. And other Mr. Websters including prosecutor Hamilton Burger. I decided, that's it; I'm becoming a lawyer. I have no clue how the world functioned without lawyers for millennia.

After all we are the gatekeepers of access to justice.

I do know I am proud of our noble profession. I don't really care what others thought about us, like that physician, Wife of Bath or that monk.

Marcel Strigberger retired from his Greater Toronto Area litigation practice and continues the more serious business of humorous author and speaker. His just launched book Boomers, Zoomers, and Other Oomers: A Boomer-biased Irreverent Perspective on Aging is now available in paper and e-book versions where books are sold. Visit www.marcelshumour.com. Follow him @Marcelshumour.

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