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## FOOD FOR THOUGHT

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### *A Very Brief History of Litigation*

By Daniel N. Steven

Litigation is as old as civilized history: evidence of trials exists in the hieroglyphic stone tablets of ancient Egypt and Mesopotamia, the scrolls of Rome and Greece, and even the ideographs of the Chinese dynasties.

For instance, Pliny the Youngest (Caius Plinius Caecilius Secundus Junior) wrote: "If a citizen's concubine falleth beneath the wheels of a neighbor's horse cart, the *Praetor Urbanis* should order that the neighbor payeth the cost of the physician's cure, in recompense for the citizen's suffering in being deprived of the concubine's services. (Thrice the cost, if the horse cart shall not be equipped with side-view servants)." Pliny also implied that rich Romans — regardless of their social class — could influence the decisions of the Praetor through judicious offerings of "tribute." Of course, Pliny's lisp makes him hard to understand.

It is also noteworthy that the ancient Romans allowed law to be practiced directly by the "citizen," without the necessity of a representative — a crude practice that was abolished, coincidentally, shortly before the fall of the empire.

Likewise, the third century Chinese scholar Shao Chin Tse-Tse wrote in his seminal history of the Tang Dynasty, *Ten Percent Fruit Juice*, "The way of Confucius required that all disputes be brought before the Emperor by representatives of noble lineage, where justice was invariably served in favor of the petitioner who most enriched the Treasury."

America, of course, derives its "common law" system from Olde Englande, in contrast to the "civil law" system of Europe. A complete discussion of the comparative merits of these systems is beyond the scope of this article and its author, but can best be summarized as the judge/jury dichotomy. In the English system, the jury is paramount; under the European model, it is the judge. Since it is easier to bribe or intimidate one person than 12, the jury system is clearly preferable. This very virtue of the jury system was the genesis of American law: formulas to divert, sidetrack, and deflect the jurors from the truth.

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