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Destined to change the world

Lawyers, discover your destiny to turn the world upside down by becoming legal pioneers!

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I] What is the attorney's destiny?

A. The common aims of "We the People"

The United States of America are founded on the Constitution. The preamble states:

"We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America."

The founders – and with them "We the People" – have therefore expressed their 6 aims.

The first three objectives – States being unified and therefore organized, justice and local tranquility – are concrete and immediate needs which are necessary for ensuring the long-term vision of the founders: liberty for them and their posterity.

There can be no liberty without justice. A nation where there is no justice – no application of the rule of law – is a very unsecured territory working on a system of tyranny and

oppression. Justice however ensures peace and tranquility: when evil manners are punished with equity, the ones willing to commit crimes and infractions may reform their ways and victims may receive a true restoration. One can either run a nation through justice or govern it through oppression.

Justice is therefore the foundation of freedom.

B. Rejoice! Lawyers are meant to fulfill it

Lawyers are servants of Justice hence they are guardians of freedom.

Since this workshop takes place in New Orleans, we shall look at the Lawyer's Oath of Louisiana:

"I solemnly swear (or affirm) I will support the Constitution of the United States and the Constitution of the State of Louisiana;

I will maintain the respect due to courts of justice and judicial officers;

I will not counsel or maintain any suit or proceeding which shall appear to me to be unjust, nor any defense except such as I believe to be honestly debatable under the law of the land;

I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by an artifice or false statement of fact or law;

I will maintain the confidence and preserve inviolate the secrets of my client, and will accept no compensation in connection with a client's business except from the client or with the client's knowledge and approval;

To opposing parties and their counsel, I pledge fairness, integrity, and civility, not only in court, but also in all written and oral communications;

I will abstain from all offensive personality, and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged;

I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay any person's cause for lucre or malice.

So help me God."

What an oath!

Attorneys must therefore bring honesty, truth, honor, fairness, integrity and civility. They are meant to bring justice and therefore ensure freedom.

Of course, it shall not remain the first "dead" sentences we say as attorney. We must live it and never leave it! Each of our relationships should be able to witness our way of life as attorneys: clients, employees, judges, clerks, other attorneys, and so on.

The preamble of the ABA's Model Rules of Professional Conduct states in its first paragraph:

"A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice."

The last paragraph of the said preamble very accurately expresses the attorney's destiny:

"Lawyers play a vital role in the preservation of society. The fulfillment of this role requires an understanding by lawyers of their relationship to our legal system. The Rules of Professional Conduct, when properly applied, serve to define that relationship."

Our destiny is tremendously important. As attorneys, we are liberty watchmen. We have a chance to participate in the establishment, restoration, and safeguarding of liberty. We shall not diminish our objectives. We have an immense role in society.

On the other hand, injustice comes when attorneys are self-centered, money-driven, and self-listeners, when they are aligned with their clients' wicked ways of proceeding, thinking that an end justifies any means, even if it misleads judges or a jury.

II] Presentation of implementations

A. Ethical implementations: come back to the basics

We shall look at the sixth paragraph of the ABA's Model Rules of Professional Conduct:

"As a public citizen, a lawyer should seek improvement of the law, access to the legal system, the administration of justice and the quality of service rendered by the legal profession. As a member of a learned profession, a lawyer should cultivate knowledge of the law beyond its use for clients, employ that knowledge in reform of the law and work to strengthen legal education. In addition, a lawyer should further the public's understanding of and confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority. A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance. Therefore, all lawyers should devote professional time and resources and use civic influence to ensure equal access to our system of justice for all those who because of economic or social barriers cannot afford or secure adequate legal counsel. A lawyer should aid the legal profession in pursuing these objectives and should help the bar regulate itself in the public interest."

This general rule states practical keys for attorneys to accomplish their duty:

- To develop knowledge.
- To reform the law.
- To strengthen legal education.
- To strengthen public's understanding of and confidence in the rule of law and the justice system.
- To take pro bono cases.

One role - although important – is particularly difficult and of course does not rely on advocates only e.g., ensuring public's confidence in the rule of law and the justice system.

We shall reflect on ways to achieve it: demonstrate truth, competence, promptitude, diligence, honor, honesty, and respect to all including, of course, those who serve the legal system, e.g. judges, other lawyers and public officials.

B. Legal pioneers: creation of precedents and laws

Pioneers are not afraid; they do not look at the mountain with despair and tiredness. They are zealous and full of faith for their cause.

The same applies to *legal* pioneers.

We have a particular role in the establishment of precedents. Gaining expertise to be servants from this perspective should be our aim.

Stare Decisis is important to bring law consistency, hence security, but we should always be led by our beliefs for our clients' cases and bear in mind that overruling is still possible. A list of overruling decisions is accessible online.¹

This is probably more natural for lawyers practicing in common law countries. That said, even in France, a civil law country, lawyers can be the creators of rules built up in a praetorian manner, thanks to reversals of case law.

One example is the recognition of the possibility of transferring a liberal clientele. Until the 2000s, case law traditionally invalidated transfers of liberal clientele. It considered that this clientele was inherent to the person of the professional and was based on trust. Its transfer would have been contrary to professional ethics, and in particular to the free choice of the client or patient. As a result, the magistrates had developed a rule - apparently absolute - of the illegality of the object of any agreement transferring a clientele. As time went by, however, the legal doctrine began to speak out against this ruling.

Despite this perfectly established and seemingly unchanging case law, Adroine Clauzel wanted to see this praetorian rule changed, given its iniquitous nature. She defended this cause to ensure that the ability to transfer a clientele is recognized. Lawyers or doctors for example have a certain way of working, specific values and methods, and a chosen

¹ <https://constitution.congress.gov/resources/decisions-overruled/>

clientele. Passing on a clientele - in the context of succession or retirement, for example - should be permitted.

Finally, Adroine Clauzel won a case judging the contrary from the Meaux civil court (*TGI Meaux, 24 juin 1999, 1^{ère} ch., Mme de Moraes c. Epoux Denecheau et a.*)

François Vialla, professor at the University of Montpellier, commented on this decision (*Ebauche de reconnaissance du Fonds libéral, Revue Médecine et Droit 2000 ; 41 ; 25-30*) :

“In this context, we consider a recent decision by the TGI de Meaux to be worthy of particular attention, since it breaks in a frank, even provocative manner, with the accepted praetorian position of, as we have said, prohibition in principle and implicit indulgence of agreements on clientele.”

Mr Vialla describes the case as “*banal*”. The case itself was indeed banal, opposing the assignors of a podiatrist's clientele and their assignee over the validity of the initial agreement. Furthermore, the decision was taken by a simple provincial court. One might therefore have thought that it had no particular significance.

That said, the author, at the time, rightly and foresightedly stated:

- *“This court rendered a most innovative decision by referring to the notion of liberal assets (fonds libéral)”.*
- *“It is to be hoped that, with the recognition of the fonds libéral, judges will seize the opportunity to put an end once and for all to the question of clientele”.*
- *“This recognition of the concept of fonds libéral, if confirmed by other decisions, opens up new perspectives in this area.”*

This is exactly what happened. In a decision handed down on November 7, 2000, the First Civil Chamber of the French Supreme Court (*Cour de cassation*) ruled that transfers of civil clientele were lawful².

This shows the extent to which, in any given case, lawyers can fight for what is right and have an impact that goes far beyond their clients' own interests and thus contribute to justice in a more general sense.

² <https://www.legifrance.gouv.fr/juri/id/JURITEXT000007042229/>

It should also be noted that the relationship between teacher-researchers and attorneys must not be neglected. In a footnote to the title of his article, Mr. Violla states:

“We would like to thank Ardoine Clauzel of the Avignon bar for kindly providing us with this decision in connection with our recently published work [...].”

The role of attorneys, as demonstrated above, is particularly important. We must not neglect any of our cases. They can have a greater impact than we think. Defending our clients is our primary mission, but we must always bear in mind the interests of society. We must not fall into the opposite trap.

An example of this risk can be seen in French labor law. At a time when the rights of employees were regularly denied, lawyers wanted to stand up for their salaried clients. As a result, case law has gradually developed a body of jurisprudence that is highly protective of employees. This led to inevitable abuse, and we are now witnessing that entrepreneurs are less and less willing to recruit employees. What a bad result for lawyers willing to protect employees... We are now seeing reversals in case law and changes in legislation, bringing things back into balance and bringing greater justice (for example: in a decision by its Social Division on February 1, 2017, the French Supreme Court (*Cour de cassation*) toned down the employer's - previously absolute - safety obligation by applying the *Nemo auditur propriam turpitudinem allegans* rule to the matter).