

Solemn reassembly of the *Conférence du Stage* and the Paris Bar
Friday 5 December 2008

Speech of Mr Christian Charrière-Bournazel
President of the *Ordre des avocats* of Paris

Mr President of the Republic,
Mr President of the Constitutional Council,
Senior Judges,
Distinguished personalities,
Dear Colleagues,

May I express my profound gratitude to you all for being here today at this ceremony marking the reassembly of the Conference.

The daily performance of our duties, which we all discharge conscientiously, leaves us little time to reflect, to question our way of life or anticipate the future.

Today's ceremony, which we celebrate each year, gives us an opportunity to take stock. Just as the pilgrim striding steadfastly towards the goal he has set himself, comes to a halt and looks inwards, I would like that, for a few moments, each one of us weighs up the realities we face and the hopes that sustain us.

We have devoted our worldly lives to the service of the law, about which Paul Valéry declared that he is "*the interlude of the forces*". A mysterious expression! Does it mean that the forces find support in the law to better exert themselves, or that the law is merely a moment of rest in the cruel game of the forces, or that it is their moderator, or that it tempers them, or neutralises them? Every human being on this earth aspires to be free, respected and, if not loved, at least treated as an equal by his fellow man.

May I be permitted for a few minutes to ponder out loud about the law and about justice before talking to you about the Paris Bar and its 20,000 lawyers, so diverse in their practices and with such a rich seam of talent, despite the dangers threatening us.

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I - A practitioner of the law and justice, I do not lay claim to being either a philosopher or a theorist. Thirty five years of professional life have simply convinced me that the qualities to which we should aspire are humanity and humility.

Humanity because we exist only for others whom we are united in serving. From the law and justice they expect protection, security, better welfare. What it

means to be human is integral to the service rendered to those going through a painful divorce, workers being laid off, businesses facing financial difficulties, company managers concerned about good governance, those accused and those found guilty of crimes. Judges of the bench, prosecutors, lawyers, we are the sacred custodians of the anguish and the faults of our fellow men; placed in our uncertain hands is the “wretched human livestock crushed under the press”. We should never stop repeating the fabulous verse of the poet: *“Oh madman who believes that I am not you!”*

Humility, sister of humanity, is required of us all because of the very weakness of the law. Unlike the world order that existed billions of years ago, human intelligence, the order of the law are the product of our conscience. It is therefore changeable, contingent, ephemeral. It can change completely in one lifetime: in their youth, lawyers still practicing today defended women who were criminals for having had an abortion. These same lawyers, at the end of their lives, have sometimes to defend men and women who are criminal because they tried to prevent women from exercising their right to an abortion. Voltaire taught us that one can be guilty in one or two places in the hemisphere and totally innocent in the rest of the world. Changeable in time and in space, the law should not be confused with the search for truth. Sometimes it sits against the truth: for example, current legislation prohibits a child born and put up for adoption from knowing his genetic parents. And one can cite many examples of this inconsistency of the law. Of course, we have to obey it but we should never be taken in by it like fundamentalists convinced that they hold the truth.

What can we say about our relationship with justice ? When I say “us”, I am thinking not only about those who dispense it, but also about those who demand it, as well as those who stand up for it. We know that it is necessary. *“Without sanction, the law has no force ; it is no more than a moral precept instantly scorned by cynics”*, as Georges Bernanos said. But, ladies and gentlemen judges, we know how difficult your task is, and the modesty, independence and diligence it requires. Justice is an ardent passion, absolute, burning in the hearts of the very young and the very old. But the human institution that bears its name, though declaratory and punitive, is only rarely correctional. And even then, it only goes half-way. It provides a service that is both very necessary and very disappointing. It is our condition to be driven by an ideal that we serve with all our might, knowing that we cannot achieve it. Realising our common failings, a former minister for justice (garde des sceaux) summed it up magnificently as follows: *“The garde des sceaux is the minister of the misfortunes of others”*. And it is our honour as lawyers to aid and assist them when they are brought before the judge.

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II - Today the Paris Bar numbers more than 20,000 lawyers, which is a little less than half of the French Bar. It grows by more than 800 lawyers per year counting those leaving the profession; Today there is an equal (or almost) representation of men and women. To be accurate, on 23 November there was one more women than men. Their average age is around thirty eight. This year more than 1,400 students of the Bar School, holders of the lawyer’s certificate of aptitude, will become fully practicing lawyers by the end of 2008. We should not be alarmed by this remarkable demographic surge. In 1973 we were less than 4,500 lawyers. Today we are five times as many. And yet litigation has decreased, which underlines the myth

surrounding the profession: lawyers are not quibblers, they reach amicable settlements and prevent any number of disputes from arising. They have not caused a flood of litigation, in fact quite the opposite. Incidentally, France with its 48,000 lawyers is far behind Germany (150,000), Spain (130,000) or Great Britain (146,000 solicitors and 15,000 barristers).

The Bar is rich in expertise, devotion and selflessness. A large number of lawyers live very modestly, advise and assist our contemporaries without expecting to enrich themselves. Many do not pay themselves more than their own associates. I pay them my deep respect, equally to those who, victims of their age or life's ups and downs, find their business shrinking and their income severely reduced, but who remain lawyers, continuing to serve selflessly and with dignity.

I would like to put an end to the malicious prejudice that blames lawyers for the difficulties of access to justice by reason of its costs.

At the request of a senator, who quite rightly wanted to know the truth, the *Cour des comptes* carried out an audit of the management by the CARPA – the professions' organisation through which payments are made – of the funds allocated by the State to the legal profession to remunerate lawyers working on legal aid cases. This audit showed the magistrates of the *Cour des Comptes* that not one cent had been squandered, which is to be expected, but also that the legal profession, which discharges its public service mission of distributing the funds allocated by the State within timelimits that the State failed to meet when it had this responsibility, demonstrates the thoroughness of its impeccable professional conduct.

The audit revealed that the proceeds of these State funds paid twice annually only amounted in Paris to 3 euros per case, to cover the costs of handling each case, whereas each case costs more than 24 euros : It is the Paris Bar that makes up the difference to cover the operating costs of 5000 civil legal aid cases per year.

Does it still need to be underlined that access to justice through the legal aid system means that willing lawyers are being paid at well below the cost to law firms of dealing with the case and that no other profession is obliged, like we are, in the name of solidarity, to supply products or services at a knock-down price? There is no food aid forcing the grocer or the butcher to sell their products for a lower price to the less fortunate.

It is to our credit as lawyers that we are not driven by profit and that we place our sense of service above our personal interests.

I would add, to remove any doubt on the matter, that France spends 4 euros per inhabitant on legal aid whereas Great Britain spends 46! I felt it was important to point this out to put an end once and for all to the twisted idea that the poor constitute a money-making business for lawyers, whereas these same lawyers should be celebrated and thanked on a daily basis for taking on, as they have, what the State has, for a long time, either been unable or unwilling to take on.

It is true that a new finance law has been announced that will increase the budget for justice. It has a long way to go! A recent study of the European Council

revealed that out of forty-seven member countries, France occupies the thirty fifth place in terms of budget per inhabitant.

Lawyers do not demand anything for themselves, nor do they seek any State funding, they look after the training of their future colleagues (to which, it is true, the State contributes 10%), they do not seek any prebend, or any reduction in any of the social and other charges to which they are subject. They simply expect, in a spirit of justice, a little more recognition.

During 2008, with the help of the forty two members of the *Conseil de l'Ordre*, former members, staff of the Paris Bar and CARPA, we have implemented a number of reforms that, with pride, I would like to bring to your attention.

Thanks to the help of our bank, BNP Paribas, we have put in place, for Bar School students and those who have just obtained the *CAPA*, loans of up to 70,000 euros, at an interest rate of 2.73%, excluding life insurance, which are repayable over five years after a two-year deferral. These loans are available to all, without distinction, whatever the person's family situation, since no guarantee will be required. Thus, hundreds of young men and women will be able to obtain additional university diplomas in overseas countries which will enable them to widen their practices, broaden their horizons and ultimately to set up practice overseas.

We have introduced what I call: "The maternity opportunity". When a self-employed (*libéral*) associate is pregnant, the firm must guarantee to pay her professional fees for twelve weeks, in some cases twenty weeks, without being reimbursed an equivalent amount by the social security authorities, far from it. We have mutualised this expense, without increasing contributions. From now on, payment of lawyer's professional fees will be made in full to the young pregnant woman and will no longer be borne by the firm but by the Bar as a whole.

We are going to try a new experiment: the "incubator" scheme. Young lawyers who have not yet found employment may, for a period of two years, domicile themselves at very reduced costs, in premises belonging to the *Ordre des Avocats* where honorary lawyers will be present continually to help them resolve the technical or ethical issues with which they are faced. They will not be specifically allocated offices to receive their clients, but offices will be made available according to need.

They will have space to work alone when they are not receiving clients. There will be a common area for each lawyer to store his/her first files, codes and robe. Meeting rooms will be available to enable them to organise meetings or receive additional training on matters of professional conduct or other areas of legal work. This scheme will be operational from next spring.

To enable small and very small businesses to gain access to legal assistance, we have signed a charter with the Chamber of trades and artisanal workers of Paris (36,000 members). A presence will be maintained at the Chamber, at regular intervals, to provide answers to the questions raised by artisans and traders. Those who want regular assistance will sign an agreement with the lawyer of their choice from a list drawn up by the *Ordre des Avocats* based on objective criteria. The agreement will detail the frequency of the lawyer's visits to advise the trader/artisan, the amount of the fees, fixed by mutual agreement of the parties acting reasonably,

and all of the services required: preparing employment contracts, relations with suppliers, clients, administrative authorities, the owner of the commercial premises, etc. This locally provided assistance will contribute to the dispensation of the law to those who have neither the time nor the means to concern themselves with it on a daily basis. A teaching module is being introduced at the Bar School under the name “business general practitioner” aimed at providing initial and on-going training for lawyers from home.

Other projects are underway that we will bring to fruition and which I will be pleased to explain to you next year. In short, the Paris Bar is dynamic, enterprising and concerned to be ever more useful to those whom it is our mission to serve.

In parallel there will be many more placement opportunities for lawyers from outside the Paris Bar. Students of the *École nationale de la magistrature*, foreign lawyers from more than forty countries. The less well-off amongst them will be found lodgings with families within six months of their arrival at the Bar School and places in law firms.

Finally we are considering the new School to replace the *rue de Charenton* building, which is now too small for our needs. The issue, which is as yet unresolved, is whether we should provide a School to house future lawyers only or whether we should provide even larger premises for a future School of the new “enlarged profession”, which is looming on the horizon at the behest of the president of the Republic who has requested that thought be given to the mission chaired by our colleague Jean-Michel Darrois.

This enlarged profession of the law, the new profession of the lawyer, is not at all a myth. It will bring together, from the legal professions which today are disparate, both general practitioners and specialists who will have followed stringent training programmes: some will prepare official deeds; others will carry out administrative duties in judicial or civil matters, others will practice industrial property, some will remain dedicated exclusively to the supreme Courts (*Cour de cassation* and *Conseil d’État*) whose procedures require specific training, finally lawyers working in-house in companies, with some in-house legal executives choosing to become lawyers (*avocats*) and themselves join this enlarged profession.

For all that, the strict ethical code that defines the lawyer and which no one wants to see compromised, will remain inviolable. The five pillars of our identity will remain sacred.

- We practice as advisers and advocates, a profession of service in the law;
- We are independent, whichever form our practice takes, self-employed or employee, associates or partners;
- We are bound by an absolute duty of professional secrecy which is not a flag of convenience but the corollary of the right of each person to confide in the person of their choosing; no lawyer has authority to betray this trust;
- We are uncompromising on conflicts of interest;
- We are disinterested, which does not mean that we must not earn our living as well as we can, but we are not driven by profit; we are not our clients’ partners; we are not in business with them.

Such is the lawyer, and such he should remain.

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III - Lawyers, my dear colleagues, who have come from all corners of the world and who share this noble ambition and exacting code of ethics, let us piously protect their flame!

We call on each other for help when some disruption threatens one of our number, when tyranny is trampling them underfoot. Garantors of the law and guardians of freedom, as I proclaimed thirty years ago in one of my first conferences, we are the tribunes of universal peace and unwavering pilgrims of universal chaos. The present day brings hope: the terrible twentieth century witnessed the most bloody wars and the most crazy ideologies.

There was also, sixty years ago, the Universal Declaration of Human Rights. There arose against an order of law that was strictly local and circumstantial, the conscience of a universal order no longer founded on the supreme law of the gods, such as Antigone invoked against Créon, but on the human person conceived as the source and final authority of all law.

Like the Government of Alphonse de Lamartine which one hundred years earlier had the courage to say that "*no French territory will hold slaves any longer*", bringing down an entire economic and legal edifice illustrated by the Black Code, repealed in one go, the Universal Declaration rendered illegal and unlawful all discrimination based on nationality, sex, religion or race, any legal edifice that alienated one group of humans for the benefit of another, any judicial institution that did not first respect the person brought to be judged and grant him rights, before declaring him guilty.

Then, ten years ago already, the International Convention of Rome established the international criminal Court to try criminals, those who have committed genocide, acts of barbarity and crimes against humanity, with no distinction as to seniority or office, however eminent that may be, in all corners of the world.

Of course the work is still not finished: some of the great powers that supply many defense lawyers to work at this international court and in *ad hoc* courts, have not even ratified the Convention of Rome. The right to bring concurrent civil proceedings for damages by the victims of the crimes is not yet established: it soon will be however for the trial beginning in Camodia against the Khmer rouge criminals of the contemptible Pol Pot regime.

There still remain in some places radical punishments like the death penalty which cannot be part of a human justice system that is prone to error. The death penalty should be abolished everywhere in the world. Only relative punishments befit a relative human justice.

Everywhere, continually, untiringly, lawyers are present to assist and defend, make heard the voice of the victim, and put before judges the facts that will ensure

informed justice is rendered. But lawyers can ruffle feathers and judges give the impression that power is uncertain or easily influenced. The system of minimum penalties or pre-trial custody, like tomorrow the crack-down on minors, are all limitations on the free discretion of judges and their independence. At the same time, these measures are the mark of an unacceptable desperation as regards the human person whom we should never presume to be lost to humanity. The efforts of governments to improve security in the interests of their citizens is understandable. They should not however, without offending the human person or abusing his destiny, transform our societies into detention camps where each individual is catalogued, observed, monitored to be reduced in the end to an act, an attempt or even a mere risk.

The concern for transparency promotes fairness in corporate governance and must be observed in the context of decisions affecting other people or the collection and use of public funds. Taken to its extremes, it becomes a tyrannical weapon in the hands of the powerful, and which allows no leeway to the person rightfully desirous of protecting his privacy and secrecy.

Security is a legitimate aspiration. An obsession with it becomes pernicious when, in the name of the principle of caution, the mere prospect of potential harm being caused to another results in him being walled up alive or tracked night and day, and the person in whom he confided being forced to inform on him, betraying the trust he believed he could place in him.

These dangers are not imaginary: They are real in today's world.

What kind of society are we being faced with if in fact tomorrow, as the anti-money-laundering directive of 26 October 2005 intends, a lawyer instructed on a sale of a business or property or the incorporation of a company, is obliged to declare directly to the police fraud squad, without telling his client, that he suspects his client may have committed tax fraud, however minor ?

Lawyers, we all need one another: we need the Bar of Canada which was able to obtain judgment that this obligation to inform on clients transforms lawyers into forced auxiliaries of the State, and by annihilating their independence, aims to eradicate them.

We also appeal to lawyers in Australia, Japan and those in the fourteen European countries that, as of today, are the subject of proceedings for failure to have transposed this directive into their national law.

We need you at this time when France seems to be losing its bearings just like in 1791 when the Convention decided to prohibit lawyers from wearing their robes, dissolved the professional orders and prohibited associations of lawyers.

What a strange country is France whose governors, two years after having proclaimed the rights of man, trampled defense underfoot. A strange country which is so proud of the heritage of the century of the Luminaries, but whose principles are sadly more often asserted by the opposition than by the powers that be.

Lawyers of the world, bar associations to which we have occasionally offered fraternal assistance, today I appeal to you, as I do to my judges, to refuse, when the time comes, to apply a law that is so blatantly unjust.

Because in the end, if we lawyers serve to awaken consciences, it is your judgments, you the judges, that change the course of events and prevent injustice from succeeding.

I do not want to end my speech without paying tribute to all lawyers on this earth who are fighting for the law to triumph and make arbitrariness fail in their own countries. So as not to offend anyone, I will not cite any of those to which the Paris Bar has sent official observers to support these heroes of defense advocacy. Sometimes having someone look over your shoulder, however exasperating this may be for unjust powers that divert justice to their own partisan ends, is a manifestation of solidarity with no aspiration to teach anyone a lesson. It is the official observer who is given a lesson by the lawyer he comes to assist: I want to pay tribute to all my fellow lawyers who have chosen, by conforming with the established order, to lead peaceful and prosperous lives, but who for a point of honour, the honour of defending, put their fortunes, their freedom and sometimes even their lives at risk.

It is these lawyers, some of whom are here today, that give each of us the determination not to give up. More than fellow lawyers, they are role models who, on our behalf, trace the path on which we must never cease to march towards invincible hope.

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