

WHAT WE STAND FOR

We the defense bar serving under the Criminal Justice Act, stand for the human dignity of our clients.

Each and every one of them. But especially the guilty. The reviled. The obstreperous and the incorrigible. How well we do that is the measure of our own dignity, our commitment to the adversarial model of criminal justice, and to human rights.

Today we celebrate the creation of a law intended to improve a system that provided a due process track for the rich, and an express train to jail for the poor. We celebrate history because it waters the roots of memory, and reminds us who we are and what we are here for.

The idea that the state should pay someone to represent those unable to represent themselves, and too poor to pay someone else to do it, goes back— at least in this part of the world— not the five decades of the Criminal Justice Act, but almost five centuries.

In February of 1543, Fray Bartolomé de las Casas, begged Felipe II to name and pay a *defensor de los indios*— someone learned in the laws of Spain whose job it would be to defend the native inhabitants of the newly invaded territories, such as the one where we live today. Having no Criminal Justice Act or *Gideon*, he invoked the “natural law of defense.”

Las Casas advocated for an official, paid *defensor* for those did not speak the language of the Court, or know how to defend themselves within a complex code of foreign laws. He argued that the right to a defense is inherent in the dignity of every person, and that if the Crown paid persons learned in its law to impose its law upon the native inhabitants, it must pay others to defend their interests.

Today we celebrate the creation of a statute that helps us to live decently and do work that we love. Note I said “helps us to live decently” and “allows us to do work that we love,” not “helps us climb the ladder of success and live well.” The Criminal Justice Act is a corrective statute that asks us to sacrifice some of what we could earn in order to correct a historic injustice. When we abolish poverty and our clients can pay for our services, we will not need the Criminal Justice Act. Until then, we contribute countless hours to the “natural law of defense.”

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About 50 years after Las Casas first made his plea for a *Defensor de los Indios*, a man who had seen better times was locked up in prison in Sevilla. It was, he swore, the result of a misunderstanding about debt and/or taxes. While in jail, he whiled away his time by starting to write a tale about *un caballero errante*.

In what became Chapter XXII of his now celebrated classic, his hero comes upon some men chained together at the neck. Shocked to learn they were headed for a destination not of their own choosing, he inquired about the nature of their offenses and, finding the punishments disproportionate, took sword and lance to the marshals, and set the prisoners free.

He justified his acts as the mere “*ejecución de mi oficio: desfacen fuerzas y socorrer y acudir a los miserables.*”

The *cabellero*'s subsequent petition to the newly freed prisoners—that they stick around to explain his heroism to Dulcinea—acknowledges secondary motives we can all recognize. But I can think of no more apt description of our *oficio: deshacer fuerzas y socorrer y acudir a los miserables.*

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Criminal defense is a vocation, a calling we dedicate ourselves to because it permits us to use our energies to do something we believe has real value to society as a whole, and is something we love to do. Like *músicos y deportistas*, we know that this is what we are meant to do with what we've got.

I use the word vocation, with its religious overtones, deliberately. We take long-term vows to put the client's interest above our own, to be faithful to demanding ethical principles, and sacrifice a normal personal life. Ours is not a part-time, part-of-me, profession.

Like Cervantes' protagonist, we are called to this work because we are instinctively offended by the imbalance between the force of the state and the individual the mighty finger is pointing at. Our instinct is to run to the side of the person the state is trying to deprive of her or his freedom and yell, “You can't do that!”

We stand beside the most despised person in the courtroom, the one chained hands and feet in an ugly, over-sized uniform, not as our puny selves, but as the embodiment of the best ideals of our society: respect for the dignity of every person, freedom and autonomy as a corollary of that dignity.

We know that a society's respect for human rights is measured by its treatment of its least valued, its most feared and its most despised.

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Like those who take other kinds of vows, we need, from time to time, to reflect on what we stand for, and renew the vows of our *oficio*. I use the word *oficio* because it stands for both more and less than the lofty “profession,” and means far more than one who happens to hold a license to practice. It implies what one does with one's life, a vocation, art or a craft with special skills that need constant practice and polishing.

I invite you to join me in using this celebration as an occasion to reflect upon what we stand for, and what we must do to remain faithful to the vows of our *oficio* with its roots, deep in what Fray Bartolomé would call the laws of nature and human dignity.

Cervantes' *caballero errante* was often a comic figure, taking up lance and sword against the law of the land or the forces of nature. But he has survived in our hearts for five centuries because he represents a deeply human instinct to defend liberty, without careful calculation of

the odds.

To stimulate our collective reflection, allow me to propose the following:

Seamos rigurosos y rigurosas:

en el análisis de los hechos y la investigación jurídica, y verticales en nuestro trato a los demás. No podemos defender la dignidad de nuestros clientes si no proyectamos la nuestra. Nuestro conocimiento del derecho y los hechos, nuestro lenguaje y trato en el tribunal dan fe de nuestra dignidad;

Seamos confiadas y confiados:

Somos invencibles ante la injusticia, la desigualdad, y la prepotencia. El conocimiento y el convencimiento son nuestras espadas y lanzas. No hay batalla perdida, sólo la que no se emprendió con estrategia fina y táctica bien ensayada.

Seamos humildes:

Ante nuestros clientes,
porque, por más experiencia que tengamos, la nuestra es una muestra muy corta y privilegiada de lo que es la experiencia humana, y ellos no tienen por qué confesarnos todo lo que han sobrevivido;

Ante los jueces,
porque ellos han visto más casos que nosotros, y han desarrollado un sentido de acuerdo al cual se esfuerzan para hacer la justicia, cada cual según su visión y experiencia. Para entender la realidad particular de nuestro caso, dependen de nosotros. Seamos, cortos y concisos, porque el caso nuestro no es el único en calendario;

Ante los fiscales,
porque ellos son seres humanos, y ejercen su oficio tan convencidos como nosotros que lo hacen para el bien del pueblo. Y, a lo mejor, no tienen la dicha de querer a la libertad tanto como nosotros.

Seamos creativos y creativas:

Que nunca merezcamos el látigo de Nelita Vientós Gastón cuando condenó a los abogados quienes: (y cito) “*Parecen ignorar que el peso de la ley cae siempre sobre los pobres, los oprimidos, y los disidentes; que respetar la ley no significa sumisión incondicional a sus disposiciones, significa cuestionarla, luchar por derogar y reformar las que son injustas, discriminatorias u obsoletas, las que no responden a remediar los males del presente, ni preparan para los cambios del futuro*”. (cierro la cita)

Seamos compasivos y compasivas

Con nosotros mismos y con nuestros compañeros y compañeras de camino porque, por más que quisiéramos, no estamos hechos de piedra o cemento, nuestro oficio desgasta, y la vida es prestada.

Somos abogadas y abogados de defensa porque somos incapaces de desoír la llamada a *desfacer fuerzas y socorrer y acudir a los miserables*. Somos caballeros y caballeras errantes, hermanas y hermanos de una cofradía de impenitentes, irremediablemente opuestos a las cadenas, y las condenas inmerecidas y desproporcionadas.

Nuestro instinto nos dice que la injusticia no es necesaria, ni inevitable, y que, el acudir a los miserables para que no se cometa es nuestro deber. Nuestra lucha no es contra molinos de viento. Hacemos una diferencia porque ganemos o perdamos el caso, defendemos la dignidad humana de los más miserables de nuestra tierra.

Y no caminamos solos. Hay esperanza.

Linda Backiel
September 5, 2014

Translation of vows:

Let us be rigorous:

In the analysis of the facts and the law, and upright in our treatment of others. We cannot defend the dignity of our client if we do not project our own. Our knowledge of the law and the facts, our language and conduct in court are testimony of our dignity.

Let us be confident:

We are invincible in the face of injustice, inequality and arrogance. Knowledge and conviction are our sword and lance. There are no lost battles, only those we failed to undertake with a well-defined strategy and well-rehearsed tactics.

Let us be humble:

Before our clients, because, no matter how much experience we may have, ours is a very short and privileged piece of human experience, and they have no reason to confess to us everything that they have survived.

Before judges, because they have heard more cases than we have, and have developed a sense according to which they strive to do justice, each according to his or her vision and experience. They depend on us to understand our case. Let us be brief and to the point, because ours is not the only case on the calendar.

Before prosecutors, because they are human beings, and they do their job as convinced as we are that they do it for the good of the community. And, perhaps, they are not so fortunate to love freedom as much as we do.

Let us be compassionate:

With ourselves and with those who travel the same route because, no matter how hard we try, we are not made of stone or cement, our calling wears us down, and life is on loan.

We are defense lawyers because we are incapable of ignoring the call to loosen bonds and help those in need. We are itinerant knights, brothers and sisters of a society of the unrepentant, irremediably opposed to chains and disproportionate and unwarranted sentences.

Our instinct tells us that injustice is not a necessary evil, and that it is our duty to rush to the side of those threatened by it. We are not fighting windmills. We make a difference because, win or lose the case, we defend the human dignity of the wretched of our earth.

And we do are not alone. There is hope.

Linda Backiel
5 September 2014