INSPIRING APA LAWYERS TO GIVE BACK TO THE COMMUNITY

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- Henry Su -

Good afternoon everyone. I am honored to have the *privilege* of addressing you all at this Inaugural Pro Bono/Public Interest Summit. It is fitting that during this month when many Americans everywhere will celebrate a uniquely American holiday known as Thanksgiving, we should be gathered here in Los Angeles to inspire each other to give back to our communities. By getting together as we are doing, we reaffirm our fellowship in the legal profession and rekindle our common commitment to serve for the greater good.

I have been asked to share with you today my own perspective on pro bono and public interest work and some of the cases I have handled. Let me start by taking a few minutes to talk about one of my guiding principles, which is my *strongly held* view that we have a professional obligation to advocate for the needy and the disenfranchised in our communities. If you want an inspirational quote on this principle, I would commend to you Supreme Court Justice Kennedy's concurring opinion in *Mallard v. United States*

District Court for the Southern District of Iowa, 490 U.S. 296, 310-11 (1989), in which he wrote:

> Lawyers, like all those who practice a profession, have obligations to their calling which exceed their obligations to the State. Lawyers also have obligations by virtue of their special status as officers of the court. Accepting a court's request to represent the indigent is one of those traditional obligations. . . . [I]t is precisely because our duties go beyond what the law demands that ours remains a noble profession.

In *Mallard,* Justice Kennedy wanted to emphasize that even if the law cannot compel a lawyer to provide representation to an indigent litigant, the basic principles of professional responsibility may nevertheless counsel him or her to do so, if requested by a court.

If it is not inspiration enough to recognize that the practice of law is—first and foremost—a *noble profession*, and not some common business or trade, then I would suggest that we pause to reflect on the critical role of skilled advocacy in our society. We begin

with the unassailable truth that our democracy is founded on the rule of law. We self-govern through three legal institutions—the administrative branch, the legislative branch, and the judicial branch. Although each institution has its own unique traditions, culture and process, all three function in fundamentally the same way, namely, that an individual in our society must petition each one for action, relief, or redress. The act of petitioning may take on different labels depending on whether the individual is appearing before an agency (where we call it petitioning), a legislative forum (where we call it lobbying), or a court (where we call it bringing a lawsuit) but in each situation, it is still advocacy just the same. The rights of advocacy and petition are, of course, among the *fundamental freedoms* guaranteed by our First Amendment. They are essential to an effective and vibrant, participatory democracy.

Perhaps our society would have less need for lawyers if individuals were able to exercise their First Amendment rights of advocacy and petition without assistance or advice. Unfortunately, what Supreme Court Justice Douglas keenly observed in a dissenting opinion in *Hackin v. Arizona,* 389 U.S. 143, 145 (1967), more than forty years ago, still holds true today:

> But to millions of Americans who are indigent and ignorant—and often members of minority groups—these rights are meaningless. They are helpless to assert their rights under the law without assistance. They suffer discrimination in housing and employment, are victimized by shady consumer sales practices, evicted from their homes at the whim of the landlord, denied welfare payments, and endure domestic strife without hope of the legal remedies of divorce, maintenance, or child custody decrees.

In *Hackin*, Justice Douglas lamented an Arizona state statute that made it a misdemeanor—a case of unauthorized practice of law—for a layperson to represent an indigent prisoner in state court at a habeas corpus hearing. Deeply troubled as he was about Arizona's effective denial of advocacy to an indigent habeas petitioner, Justice Douglas therefore dissented from the Court's dismissal of the writ for lack of a substantial federal question.

What you should take away from *Hackin v. Arizona* is the fact that our profession enjoys a *virtual monopoly* on skilled advocacy. Every State in our Union has some sort of statute or regulation that prohibits the unauthorized practice of law by laypersons. (I have not personally checked this but I am quite confident that is the case.) While there are admittedly some forums and proceedings that do not confine advocacy to licensed lawyers (for example, lobbying before Congress or representation of veterans before the Veterans Administration), the fact remains that advocates who have had legal training and experience are often much more effective and successful, especially in situations that become adversarial and procedure-bound. They are best able to crystallize the issues for deliberation, decision, and action.

Like it or not, then, our profession's virtual monopoly on skilled advocacy makes us the *principal stewards* of our participatory democracy. If we do not make skilled advocacy available to everyone who has need of it, then the First Amendment rights of advocacy and petition will indeed be meaningless to millions of Americans, as Justice Douglas had feared. Our legal institutions will then be unable to ensure *equal treatment, equal protection and equal*

justice under the law. And our society will inevitably lose its *faith* in the rule of law.

Of course we cannot let that happen. We would not want that to happen. With our country still mired in the current economic recession, the need for skilled advocacy has never been greater. Those of us in private practice therefore should seriously consider stepping outside the cloistered, client-centric environment of our law offices from time to time, and accepting the mantle of the *citizen lawyer*—a lawyer who, as Yale Law School Professor Robert Gordon has defined it, "acts in a significant part of his or her professional life with some plausible vision of the public good and the general welfare in mind."

Furthermore, as *APA lawyers*, I think it is incumbent that *we* step up to this challenge. On this point, let me leave you with this thought to ponder upon. You know that through NAPABA and the Asian American Center for Advancing Justice, we have worked tirelessly to increase diversity on the bench, especially the federal bench. You may know that through a long line of decisions from *Batson v. Kentucky,* 476 U.S. 79 (1986), to *Edmondson v. Leesville Concrete Company,* 500 U.S. 614 (1991), to *J.E.B. v. Alabama ex rel.*

T.B., 511 U.S. 127 (1994), we have worked to increase diversity in the jury box for both criminal and civil cases. But how about increasing diversity at the counsel table as well?

The reason we want diversity on the bench and in the jury box is because our courts are open for business to litigants of all races, creeds, colors, religions, genders, disabilities, sexual orientations, etc. We therefore want to ensure that our judges and juries—the persons who will decide the law and the facts governing each dispute—appropriately reflect the cross-section of the communities within their jurisdiction. Should we—can we—ask any less of our advocates, especially in causes and lawsuits that involve the needy or the disenfranchised? I think not. If we are to advance our own quest for justice, then we must not ignore the plights and pleas of others. We must lead by example.

Thank you. I will stop there and I look forward to our panel discussions and your questions.