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Liberty, Civility, and Professionalism

Ming W. Chin

What an honor and a pleasure it is to participate in a Distinguished Trial Lawyer Lecture Series named after United States senator Orrin Hatch, whom I have long admired and respected, not only for his remarkable service to the nation but also for his steadfast commitment to the rule of law and judicial independence.

In a book entitled *The Lost Lawyer*, Professor Anthony Kronman of Yale Law School laments the near disappearance of what he calls “the lawyer-statesman.” He describes an outstanding lawyer not simply as an accomplished technician but as a person of prudence, of practical wisdom, of good judgment. He gives the historical example of Abraham Lincoln as the ideal of a lawyer-statesman, and who could argue with that? Today, I walked through the beautiful BYU law library. I stopped to admire the sculptures of Abraham Lincoln in the three stages of his life.

Frankly, I do not agree with Professor Kronman that lawyer-statesmen have nearly disappeared from the legal scene. All you have to do is look to the distinguished lawyer for whom this series is named to find an ideal lawyer-statesman. Senator Hatch has served in the United States Senate since 1977—the longest-serving senator from Utah. He ably chaired the Judiciary Committee from 1995 to 2001, and again from 2003 to 2005. He also chaired the Labor and Human Resources Committee from 1981 to 1987. You could find no greater lawyer-statesman, or champion for the rule of law, than Senator Orrin G. Hatch.

To the law students attending this evening—you will all soon be lawyers. Through this series Jim Parkinson, Justice Doug Miller, and Michael Goldsmith hope to inspire you to become trial lawyers. I began trying cases when I was in the army handling courts-martial. When I returned from Vietnam, I became a prosecutor. I tried numerous cases before a jury

before I went into private practice in 1973. I was a business trial lawyer for 16 years before I was appointed to the trial court.

For me, being in the courtroom was the best part of being a lawyer. In these remarks, I will share with you some of my personal background, which affected my decision to become a trial lawyer.

I grew up on a small potato farm in southern Oregon. When I was in junior high school, I lived with a judge for two years. The judge's name was David Vandenberg. Judge Vandenberg was one of the most highly respected jurists in the state. He was obviously well educated and very well read. He was also a great conversationalist. The judge had a friend with whom he spent hours in animated conversation. The unusual part of the relationship was that the judge's friend didn't speak English very well and had never attended a day of school in his life. Yet the judge saw in his friend a remarkable man who was self-made and certainly devoted to his family. The judge's friend was my father. It was the judge who inspired me to become a trial lawyer.

Theme

The theme of my remarks today is liberty, civility, and professionalism. Why these ideas are important for trial lawyers, I hope, will become apparent.

Journey

There is an old Chinese proverb that tells us that a journey of a thousand miles begins with a single step. My father took that first step 95 years ago. He left the village of Fu Shan, China. He stepped aboard a ship—destination: the United States of America. He began his odyssey in search of the American dream. The year was 1913. He was only 18 years old. He came without family, without funds, and without language. When you think about it, he came to an America that was not all that friendly to Chinese immigrants. After all, in 1902 the U.S. Congress extended the Chinese Exclusion Act indefinitely.

My father ignored the hate. He ignored the hostility. He ignored the discrimination. He worked long, hard days in the potato fields. He saved the little money that he made to support his family in China. In 1917 he returned to his village to marry my mother. It was a marriage that was to last a lifetime of 59 years. Together they raised eight children—I am the youngest. My brothers' and sisters' names are Mary, George, Joe, Betty, Jack, Jeanne, and Tom. I have no idea where my name, Ming, came from.

My parents came to this country not demanding the best that America had to offer but willing to accept the worst, because even that was so much better than life in their homeland. As it turned out, America gave them its

best, but it was not without pain, it was not without struggle, and it was not without disappointment.

For many years my parents worked together in the potato fields in Stockton. They started their own family and continued to support their families in China. In 1930 they tried farming in Fallon, Nevada, and then Alturas, California. Both were failures. While they were in Alturas, my mother ran a Chinese restaurant. She saved the profits from the restaurant in a coffee can.

In 1936 they moved to Klamath Falls, Oregon, and again raised potatoes. This time it was on 50 acres of fertile land that were loaned to them by a friend. The first potato crop was so successful that they almost had enough money to purchase the land. My father said we would have to wait until the next year's crop was in before they could buy the farm. My mother went to the kitchen, pulled the coffee can from the shelf, and poured the money onto the table. They bought the land.

That small family farm flourished over the years. But my father and mother also carefully fostered, nurtured, and educated their family. My parents did not have the opportunity to go to grammar school or high school, much less college, and yet they were among the very best teachers I have ever known. They taught by example, never by edict or demand. They taught us to respect and care for our elders. They taught us to live life to its fullest and remain loyal to our family and our friends. They taught us the importance of giving back to the community. They taught us the importance of education, optimism, determination, and hard work. They taught us to celebrate freedom.

Hard work was definitely something with which they were familiar. They were determined that I learn it as well. Beginning at the age of nine, I learned to drive and operate farm equipment. By the time I was 14, there was not a piece of equipment on the farm that I could not operate. The entire family, including my mother, worked from sunup to sundown, seven days a week. During the summer we spent most of the time irrigating the potatoes. My goal was to get the irrigation system so well organized that I could sit down and read a book in the fields. Because I always had a book in my hand, my father called me "Mr. Lincoln." One time I was actually reading a biography of Abraham Lincoln. I got so engrossed in the book that I neglected my duties in the field, and the whole field was flooded. My father was not amused. He had a few choice words for me, but he never told me to stop reading. I think that incident told him early on that farming was not going to be my strong suit.

When I was four years old, a fire consumed our family home on that farm. We lost everything in that fire. My brother Jack, who was only nine at the time, was killed. Although we lost all our material possessions, the loss of Jack was, of course, the most devastating. I learned at a very young age that people are more important than things. But even in the face of

that disaster, my parents never gave up. We all pulled together to put the shattered pieces of our lives back in order. But we also had some help. We lived in one of those small-town communities where people took care of each other. It did not matter that we were the only Asian family in the community. When our neighbors from the farm next door to us heard about our tragedy, they were away on their honeymoon. They immediately returned and gave us the keys to their home, where we stayed until we got back on our feet.

Since the farm was located some distance from the closest town, the three youngest of us attended Sacred Heart Academy, a Catholic boarding school run by the Sisters of St. Francis. The Sisters were wonderful teachers as well as great role models.

When I entered junior high school, Sacred Heart stopped its boarding program. Fortunately, I found another place to live so that I could continue attending the school. Judge Vandenberg offered to let me live with him, which I did for two years. He took me down to the courthouse to observe trials and gave me law books to read; it was a terrific introduction to the law. He taught me everything a good judge ought to be.

My parents waited for 30 years, until 1943, for the U.S. Congress to decide that the Chinese Exclusion Act was wrong and to finally permit Chinese immigrants to become U.S. citizens. That decision made it possible for my parents to enter a courtroom for the first and only time in their entire lives and to take the oath as American citizens. It was one of the proudest days of their lives. In spite of the discrimination they endured, they loved their adopted country. They loved the freedom and liberty it gave them in such great abundance. They were free to raise and to educate their children, to give us the education they were denied. They treasured the same liberty that so many of us so often take for granted. Why? Because they knew from firsthand experience what it was like to live without it.

As you embark on your own journeys as lawyers, remember this place, remember this time, remember that you as lawyers have a special responsibility to be the guardians and the champions of this most treasured of American rights that we call freedom and liberty. When you leave this great university, remember why you came.

Learned Hand

I'm sure you are familiar with Judge Learned Hand, one of America's finest jurists. In 1944, when my parents became naturalized citizens, there was a ceremony in New York City's Central Park. It was called "I Am an American Day." Judge Hand spoke about his concept of liberty to 150,000 newly naturalized citizens who swore the oath of allegiance in the midst of World War II. Judge Hand had this to say to the new citizens:

What then is the spirit of liberty? I cannot define it; I can only tell you my own faith. The spirit of liberty is the spirit which is not too sure that it is right; the spirit of liberty is the spirit which seeks to understand the minds of other men and women; the spirit of liberty is the spirit which weighs their interests alongside its own without bias.¹

Open Minded

In those few words, Judge Hand described the philosophy that made him one of the last century's greatest judges. Judge Hand was open to all points of view, including those with which he disagreed. He was both skeptical and open minded; he considered these qualities central to the art of judging.

But these words convey more than a philosophy on the art of judging. Judge Hand taught us that in order to foster change and growth in our communities and the legal profession, we must be open to new ideas, be compassionate, and attempt to understand other people's points of view. In short, we must learn to discuss our differences in a civil manner. If we will all lower our voices, do a bit more listening than talking, and resist the urge to marginalize viewpoints, perhaps we will learn the lesson Judge Hand was trying to teach us.

Judge Hand also recognized that the other side of the liberty coin is individual responsibility from each of us who is blessed to live in this great land. But this responsibility is even more important for those of us who take the oath as judges and lawyers.

Justice Kennedy

Justice Anthony Kennedy, in an address before the American Bar Association, borrowed from Judge Hand the theme of liberty and individual responsibility. Justice Kennedy said the rule of law will survive only if we have individual responsibility, rationality or reason, and civility. He also said, "Liberty was born in protest, but it survives in civility."²

The importance of *liberty*, *civility*, and *professionalism* to the rule of law and, in particular, to new *lawyers* cannot be overstated.

Lawyer Jokes

It is very popular these days to denigrate lawyers and the legal profession. You've all heard lawyer jokes; I'm even known to tell a few myself. But this is certainly not a recent phenomenon. There is a famous line from Shakespeare that is often quoted: "The first thing we do, let's kill all the lawyers." Many people take great delight in using it to malign lawyers. I believe it has even been adopted as a title to a popular book decrying the so-called decrepit state of the legal profession. The quote is from

Shakespeare's play *Henry VI*. However, it is far from being a negative comment against the legal profession. Shakespeare was really paying the ultimate compliment to lawyers. In the play, the Duke of York was stirring up the people to overthrow the government. A boorish man named Jack Cade was leading the rebellion. In the midst of their plot, one of the villains, Dick the Butcher, shouted, "The first thing we do, let's kill all the lawyers." The butcher was concerned that the rebellion could not succeed so long as there were lawyers around to act as a voice of reason. The line from Shakespeare praises the legal profession because throughout history lawyers have been the conscience of the community. It is lawyers, judges, and courts that are called upon to resolve the toughest and most difficult disputes. Down through the centuries, we have been the protectors of the poor, the weak, and the powerless. We have been the protectors of individual rights, the defenders of liberty.

Perception

I am convinced that most of us chose to become lawyers, at least in part, because of a deep-seated passion for justice and a commitment to freedom. But that is often not the public perception. Several years ago about half of the respondents to a poll of the National Center for State Courts felt that lawyers were too expensive and 23 percent felt that lawyers were more interested in themselves than in their clients.³ A recent survey of the *National Law Journal* reveals that these sentiments remain true. Thirty-six percent of respondents said that the image of lawyers has worsened.⁴ Of all the honored professions, lawyers are ranked by the public last in honesty and integrity.⁵

Civility

This is not simply a public relations problem. It is a crisis that goes to the very heart of the legal profession. Too many trial lawyers have focused on winning at all costs. Civility and professionalism, which are essential to the art of lawyering and to justice, are too often forgotten. Trial lawyers are not and should not act only as "hired guns." Too many lawyers have apparently forgotten that the dispute is between their *clients*, not their clients' *lawyers*. As U.S. Supreme Court Justice John Paul Stevens once said:

[A] lawyer's most important asset is her reputation for integrity. Few lawyers would dispute—in the abstract—the wisdom of maintaining your integrity while advocating on behalf of your client. . . .

. . . [L]et me remind you how often the paths of [trial] lawyers cross and recross over and over again. . . . Lawyers have long memories, particularly about the conduct of colleagues or adversaries.⁶

Justice Stevens also reminded us to be civil. He said, “A polite rejection of a settlement proposal can be just as firm as a show of indignation, and a succinct objection as telling as an unnecessary harangue. . . . Courtesy is an essential element to effective advocacy.”⁷ He could not be more correct.

Solution

The solution to this loss of civility and professionalism in the practice of law will require a firm commitment, from each of you, to do better. The question each of you must answer is whether you, as a lawyer, will be part of the problem or part of the solution.

In order to be part of the solution, lawyers must reclaim their reputation for integrity, honesty, and public service. You must return civility to the practice of law. You must become dispute resolvers rather than dispute enhancers. You must become problem solvers within your communities. You must return professionalism to the practice of law.

Sol Linowitz

In his book *The Betrayed Profession*, Ambassador Sol Linowitz lamented the loss of professionalism among lawyers. He said: “Professionals are people who make decisions and take responsibility for them. Professionals do not take orders and do not prostitute their judgment.” Linowitz went on to say, “We inherited a noble profession, and we made it a business. We have lost the ability to differentiate between what we can do and what we ought to do.”

Public Service

Public service honors our profession and elevates our spirits. There is no finer example of a lawyer in public service than Utah’s senior senator, Orrin Hatch. Other walks of life, other trades, other professions are very, very different. Few professionals are as committed as lawyers to public service and improving the community. This commitment sets lawyering apart. It makes the law a true profession rather than just another business. I strongly urge all of you to follow Senator Hatch and dedicate your legal career to public service. But if you choose to be trial lawyers, I urge you to volunteer some of your precious and valuable hours for the public good.

In the end, our ability to meet and solve the many problems in our communities depends on you. What you do will matter. How you do it will matter. You have the ability to affect people’s lives in a positive way and to improve the quality of life in your communities. The future of the legal profession and its commitment to liberty and public service is up to you. We all share responsibility to ensure that the legal profession continues to be a noble and compassionate profession.

As author Anna Quindlen once said, “All of you want to do well. But if you do not do good, too, then doing well will never be enough.” Follow the outstanding example of Jim Parkinson, who delivered medical equipment to Tanzania with Wilbur Colom and Doug Miller, researched the plight of American prisoners of war in Bataan and wrote about it in a book titled *Soldier Slaves*, and started this Orrin Hatch Lecture Series with Mike Goldsmith and Doug Miller.

Contribution

As Professor Kronman says, “Each generation of lawyers makes its own contribution to the architecture of the law.” My question to our law students is straightforward: What contribution will you make to the practice of law? My hope is that you will not betray the legal profession and that each of you will embody the high ideals of a noble profession.

To paraphrase Ambassador Linowitz, lawyers must create a legal profession that is independent, willing to sacrifice money for pride, and eager to reassert its role as the guarantor of liberty. We must accept, not just assert, our responsibilities. Civic leadership should count for more than billable hours, a sense of justice for more than winning at all costs. We must provide legal services to those who need the law rather than those who merely *use* the law. San Diego practitioner Andrea Leavitt is an outstanding example of a fine attorney who helps those who need the law. In providing assistance to the victims of clergy abuse, she is the voice of the powerless and of the helpless.

Crisis

There is a Chinese character for crisis. It is made up of two characters: one meaning danger, the other, opportunity. The legal profession is at a crossroads. One road leads to the danger that a growing commercialism will come to dominate the practice of law; the other represents an opportunity to return professionalism to legal practice. The danger road leads to the practice of law becoming just another business, where the bottom line is of prime concern. If a case doesn't make money, it isn't worth pursuing. On the other hand, the opportunity road will restore civility and professionalism in the practice of law.

Conclusion

I am now going to utter the two most important words in any speech: *In conclusion*. In the chaotic rush to success in your legal careers, do not forget your personal lives. Do not forget your families. When each of us comes to the end of the road on this good earth, I doubt any of us will say,

“Gee, I really wish I had spent more time at the office,” or “Gee, I really wish I had billed more hours.” When I was a trial lawyer, I spent a lot of time away from home, taking depositions and trying cases. Of course, I would always call home to keep in touch with my family. Once I was in Los Angeles for a six-week trial. One night I called home. My daughter, Jennifer, who was three at the time, answered. I said, “Hello, Jennifer. How are you?” She said, “Fine.” “How’s mother?” “Fine.” “How’s your brother, Jason?” “Fine.” “How was your gymnastic lesson?” “Fine.” After about a minute into the conversation, Jennifer said, “May I ask who’s calling, please?”

Well, you’re about to become lawyers. As I look around the room, I can sense your eagerness and enthusiasm. I had an excellent conversation with your moot court boards this morning; I am confident you will be part of the solution for the legal profession, not part of the problem. In 20 years you will be the senior partners in the major firms around the state; perhaps some of you will be district attorneys or public defenders or the attorney general; perhaps some of you may become judges; perhaps one of you will inherit the seat of the distinguished senior senator of Utah.

I urge the graduates of this distinguished law school to make a difference to the legal profession as trial lawyers. It is my hope that you will help return civility and professionalism to the practice of law and that you will be the defenders of the liberty we all cherish. In 20 years when you look back on how well you have done, you can say with pride that you took the road less traveled and returned honesty, integrity, and public service to the legal profession. I wish you good luck and Godspeed in this great adventure you are about to begin.

As you leave this place, remember why you came.

This address was given at the Orrin G. Hatch Distinguished Trial Lawyer Lecture Series at BYU Law School on November 7, 2008. Reprinted from the Clark Memorandum, spring 2009, 20–25.

Ming W. Chin received his JD from the University of San Francisco in 1967, was awarded six honorary degrees by various law schools, and was given a Jurist of the Year Award by the Judicial Council of California in 2009. He served as Alameda County Superior Court judge 1988–1990 and as an associate and then presiding justice of Division Three, First District Court of Appeal in San Francisco 1990–1996. He is currently an associate justice of the Supreme Court of California.

Notes

1. Learned Hand, “The Spirit of Liberty,” *The Spirit of Liberty: Papers and Addresses of Learned Hand*, ed. Irving Dilliard (New York: Knopf, 1952), 144.

2. Address by the Honorable Anthony Kennedy, associate justice of the United States Supreme Court, American Bar Association Annual Convention, San Francisco, August 1996.

3. National Conference on the State Judiciary, "The Public Image of Courts: Highlights of a National Survey of the General Public, Judges, Lawyers, and Community Leaders," in *State Courts, a Blueprint for the Future* (1978), 39.

4. Randall Samborn, "Anti-Lawyer Attitude Up," *The National Law Journal* (August 9, 1993), 1.

5. *Id.*

6. John Paul Stevens, "Opening Assembly Address, American Bar Association Annual Meeting, Orlando, Florida, August 3, 1996," *Journal of Civil Rights and Economic Development* 12 (1996): 29.

7. *Id.* at 30.