



51st Charles Evans Hughes Memorial Lecture
Monday, October 6
6 p.m.
NYCLA Home of Law
14 Vesey Street
New York, New York

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REMARKS OF LEWIS TESSER
PRESIDENT, NEW YORK COUNTY LAWYERS' ASSOCIATION
AT 51st CHARLES EVANS HUGHES MEMORIAL LECTURE

As President of the New York County Lawyers' Association, I would like to welcome you to the Home of Law and to NYCLA's 51st Charles Evans Hughes Memorial Lecture, sponsored by our partner, Hughes Hubbard.

We are thrilled to have U.S. Attorney for the Eastern District of New York Loretta Lynch, here with us tonight to deliver the Memorial Lecture.

Ms. Lynch was appointed by President Barack Obama and in 2010 took the oath of office

as United States Attorney for the Eastern District of New York—many years after I was an Assistant in that office. In so doing, she returned to the Office she previously led as United States Attorney from 1999 to 2001 under President William J. Clinton—which was still many years before I was an assistant there. Ms. Lynch oversees all federal criminal and civil investigations and cases in Brooklyn, Queens, and Staten Island as well as Nassau and Suffolk Counties on Long Island. Ms. Lynch has expanded the office's leading national security practice into the area of cyber security, and has also made community outreach a priority. Attorney General Eric Holder appointed Ms. Lynch to the Attorney General's Advisory Committee in 2010, naming her Chair of the Committee in 2013.

Tonight Ms. Lynch follows in the footsteps of the leaders in the legal field, including Dean Roscoe Pound, Judge Henry J. Friendly, Judge Jose Cabranes, ABA President James Silkenat, Chief Judge Judith Kaye and US Attorney Preet Baraha, who over the years have delivered the Hughes Lecture on pertinent topics of the day. We carry on the tradition established 64 years ago by NYCLA's Board of Directors who created this special event to honor Justice Hughes for his dedication to the legal field and for his service as NYCLA President.

Few lawyers in the first half of the 20th century had a more distinguished career or a greater impact on the evolution of law and public policy than Charles Evans Hughes. Not only was he Associate Justice of the Supreme Court of the United States, United States Secretary of State, Chief Justice of the United States Supreme Court, and a candidate in the 1916 U.S. Presidential election, losing narrowly to Woodrow Wilson, but he was a founder of Hughes, Hubbard, and Reed, and served as NYCLA's President from 1919 to 1921.

NYCLA was established not long before Hughes served as our President, and over the past century, has grown a community of nearly 9,000 attorneys, judges, academics, and law students. We offer professional networking opportunities, preferred pricing on CLE seminars and webinars, professional and personal development opportunities, an online Career Center, Committees, a library, publications, goods and services discounts, a members' lounge and more. Historically, NYCLA has been one of the largest and most influential county bar associations in the country, and offers opportunities for members to grow their own careers, but to help society as a whole through our offering of *pro bono* opportunities. WE ARE THE OPEN, INCLUSIVE,

PROGRESSIVE BAR ASSOCIATION. Whether you're looking to take the next step in your career, dabble in a new area of law, make connections, or take on a *pro bono* case, I encourage you to visit our website to learn more about membership.

Now I'd like to welcome James B. Kobak, Jr., former NYCLA President and Partner and General Counsel at Hughes, Hubbard, & Reed, to provide introductory remarks before we hear from Ms. Lynch. Thank you and enjoy.

REMARKS OF JAMES B. KOBAK, JR.
PAST PRESIDENT, NEW YORK COUNTY LAWYERS' ASSOCIATION
AT 51st CHARLES EVANS HUGHES MEMORIAL LECTURE

Welcome to the 51st Charles Evans Hughes Lecture, a series which began with an inaugural lecture by Dean Roscoe Pound, by whom CEH greatly influenced early in his career and has included many notable public officials, jurists and legal scholars. The lecture was sponsored originally by the Hughes family. My firm was founded by CE Hughes and his son -- in between the elder Hughes serving in almost every public service role imaginable and the son serving as Solicitor General of the U.S. -- and as part of contributing to NYCLA's centennial campaign it agreed to take over sponsorship of the lecture -- and the reception which will follow across the hall which you are all warmly invited to join.

CEH not only supported but exemplified ideals of public service, education of lawyers and the public, and proper role of government and legal system in society. He had a concept of liberty which was progressive for its time. He served in many governmental and private capacities, including as Governor of New York and Secretary of State as well as two terms on the U.S. Supreme Court. He vigorously attacked public corruption and misuse of authority and as Governor and Secretary of State affected many reforms in procedures and hiring practices. He believed so strongly in bar associations for New York lawyers that he was president of 3 of them, NYSBA, the City Bar and this association.

We at my firm are proud of our association with his name and his legacy. And we at NYCLA are equally proud of this association. Both father and son served as presidents of this bar association and helped it evolve into what it is today while remaining true to its original mission of fostering diversity and access to justice. NYCLA has always been the inclusive bar association -- open and inviting to all lawyers of every race, gender, ethnicity and area of practice in New York. It has always been what I once called the feisty bar association, ready to defend the judiciary against unfair media attacks or arbitrary budget cuts and willing to take positions on the issues of the day affecting lawyers and citizens' access to the courts. And it has also been the leader in educational efforts in the New York City schools and in informing the public about our legal system and their legal rights and responsibilities.

We continue to embrace those values and not only the philosophy but the practice of inclusion for all lawyers, particularly now when so many are facing the challenges of a changing profession. The Hugheses helped ensure that this building and the Association which it houses are not just symbolically but actually a true Home of Law, and it is fitting that both their portraits hang here.

It is also fitting to welcome our speaker, the Honorable Loretta Lynch, U.S. Attorney for the EDNY to the Home of Law to deliver the lecture which bears the Hughes name. Always glad to

welcome her. She has served not once but twice in her present role as US Attorney as well as a long career in public service in a variety of positions in that office. Like CEH, she and her office have vigorously attacked corruption and misuse of office. Her office handled the Abner Louima case among others. She has also participated, like CEH, in policy at the highest levels of government. She was formerly a board member of the Federal Reserve Bank of New York and has been a member, and in 2013 was appointed Chair, of the AG's Advisory Committee. Like CEH she has interspersed that service with practice at distinguished private firms, including until a few years ago as a partner at what was then Hogan and Hartson, LLP. And again like CEH, and in the spirit of NYCLA, she has been engaged actively in legal ed (at NITA among others) and made community outreach and diversity priorities. As Lew noted, on one issue CEH would never have imagined -- and many of us can probably only guess at -- she has made her office a leader in cyber security.

I always feel inadequate at these lectures when I review the accomplishments of the speakers as well as CEH. In an interview our speaker described herself as having been a nerdy English major at Harvard who enjoyed reading Chaucer in Old English.

I too was an English major there (before her time) so that is one thing at least I can relate to -- especially the nerdy part. I read Chaucer in the original too but I'm not sure it was for enjoyment. In my day it was a required course for English majors.

But we are not here to learn about Geoffrey Chaucer. We are here to learn what a distinguished, experienced public servant has to tell us about matters relevant to legal issues of today. We are fortunate to have that opportunity with the Honorable Loretta Lynch this evening and to add her to the distinguished list of Hughes lecturers.

LORETTA E. LYNCH
UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK
51st CHARLES EVANS HUGHES MEMORIAL LECTURE

Good evening and thank you for that warm introduction. I especially have to thank James Kobak for his patience and persistence in arranging this event. I am notoriously hard to reach, and I think when we first began trying to schedule this evening I was headed to West Africa for a speaking engagement there. Jim receives the persistence award for the evening. He shares it with Ariella Greenbaum of the association, whose patience was never-ending. Thank you for your efforts to put this evening together.

Thank you for inviting me to give this lecture this evening. I looked over the list of past speakers, luminaries of the law and I am honored to join their company. And I am always honored to be here in this beautiful landmark building of the association. The building is beautiful, but even more striking is this association's history. Your very existence is a testament to openness and diversity in the legal profession. The founding of the New York County Lawyers Association was grounded in the recognition that the law is the great leveler of our society, the mechanism by which our most fundamental rights are made real, and that all admitted to practice are members of the same unique group. You have always been a leader in the field of access to justice, and your focus always on reform of the legal system to make it fair and open to all.

That is why I want to spend a few moments tonight speaking about the topic: equal access to equal justice.

Despite our ongoing recovery from the recent financial crisis, inequality, in both income and quality of life as in access to basic legal assistance, continues to grow apace. The work of the New York County Lawyers Association is growing to meet this need. The Eastern District of New York, indeed the entire Department of Justice, is proud to stand with you in that commitment.

Access to justice has always been an important part of DOJ policy, particularly through its grant making components that support state and local law enforcement and numerous community organizations that seek to better conditions and reduce crime.

In 2010, however, the Attorney General created the Department of Justice Access to Justice Initiative. The Initiative builds on existing work and pushes forward new solutions to address the access to justice crisis – and it is a crisis – in the criminal and civil justice systems. The Initiative works within the Department, across federal agencies, and with state, local and tribal justice system stakeholders to improve the justice delivery systems that serve our indigent and indigenous people.

All of us who are privileged to practice this great profession of ours know that without true access to justice, the promise of our laws and our constitution – of equality under the law – often rings hollow. Law is the system by which we all navigate the challenges of life, with justice as the overarching goal we seek to achieve – what is both right and fair.

For those shut out of our system of justice – both civil and criminal – life is often Hobbesian in nature, that is, “solitary, poor, nasty, brutish and short.”

In more contemporary times and terminology, Robert Kennedy said, “unassisted, unknown, unavailable rights are no rights at all.”

The Access to Justice Initiative seeks to address this problem at several levels.

At the national level, the Department is working closely with other agencies. The Department, along with the White House, co-chairs the Legal Aid Interagency Roundtable – a place for discussion among federal agencies to find new and innovative ways to provide better access to health care, housing, employment, and other vital needs by using legal assistance.

For example, the Department of Labor is building legal aid into its grant programs and policy initiatives focusing on re-entry efforts, because legal assistance – in reinstating a driver’s license or correcting a rap sheet – can make the difference between getting a job and a chance to move forward or returning to incarceration.

The Department of Health and Human Services is supporting its health centers in building partnerships with local legal aid programs, because they have seen that integrating legal services into the healthcare setting can drive down health care costs and positively impact individual and population health.

The Veteran’s Administration undertook a national survey, which revealed that legal aid is among the top unmet needs of homeless veterans. It has started the Supportive Services for Veteran’s Families Program, which includes the provision of legal assistance for the many problems that continue to beset our nations’ heroes.

Within DOJ, we have seen the studies that show that civil legal aid is possibly the most effective strategy for helping survivors break the cycle of domestic violence. The Department’s Office on Violence Against Women funds civil legal aid, as well as training for local police and prosecutors in recognizing the issues and assisting victims.

At the local level, the benefits have been clear and direct.

An individual whom I'll refer to as "Andy" was prevented from pursuing his dream of becoming a New York licensed practical nurse by his ten year old felony conviction. All he asked for was the chance to make his case to the licensing board. The Fortune Society, a grantee of the Department of Labor's reintegration of ex-offenders program, referred him to MFY Legal Services in New York. With their representation and help, Andy was able to gather the records he needed and make the case for rehabilitation he presented, and obtain a New York State license and ultimately a job.

A woman I'll refer to as "Nazia", an immigrant to New York from Guyana, fled her abusive husband, taking her two young children with her. Relying on Legal Services Corporation funded Queens Legal Services, a recipient of HHS' Family and Youth Services Bureau funding, she successfully obtained an order of protection and full custody of her children. When her husband sought modification of custody, her Legal Aid lawyer continued to represent her throughout the process and also referred her to a Queen's Legal Services social worker, who counseled Nazia and her children throughout the process. Ultimately Nazia, through her attorney, settled the case and retained sole custody.

There are other local efforts that will soon bear fruit.

The Eastern District of New York recently played a major role in settlements with both Bank of America and Citigroup for their roles in the residential mortgage backed securities debacle that contributed to the housing crisis of the last decade. Working with our federal and state colleagues, including four other U.S. Attorneys' Offices and attorneys from Main Justice, we helped secure from Bank of America over \$16 billion dollars, the largest civil settlement with a single entity in history. From Citigroup, working with just one other U.S. Attorney's Office and our colleagues from Main Justice, we secured \$7 billion dollars.

Both settlements call for substantive and direct methods to ensure that homeowners and consumer victims receive assistance in staying in their homes, including affordable legal aid to help them do just that. Bank of America pledged \$7 billion towards consumer relief and Citigroup pledged \$2.5 billion. Within that portion of the settlement, based on input from the Access to Justice Initiative, a minimum of \$45 million will be set aside to shore up the state-based IOLTA's, or Interest on Lawyers' Trust accounts, that had been severely depleted during the financial crisis but are a vital source of non-governmental funding for access to justice for low income people.

These funds will be spent preventing wrongful foreclosures and in providing legal help related to community redevelopment, in furtherance of those settlements.

We still face many challenges. The recent budget woes have devastated many legal services providers. The 50th anniversary of *Gideon v. Wainwright* saw some of the greatest cuts to public defense those organizations have yet sustained. Sequestration was a blow from which we are all

still working to recover. All the more reason to focus on targeted, proven efforts such as the ones outlined here.

The focus on access to justice is part of the department's overall look at our legal system, also echoed here in New York.

An important part of that has been the Department's Smart on Crime Initiative. Through this Initiative we are taking a hard look at our prison population and how we prosecute low-level drug offenders. We are revitalizing deferral and re-entry programs. Smart on Crime restores discretion to prosecutors and directs us to rely heavily on our individualized review of defendants at both charging and sentencing. It helps us keep our criminal justice system both fair and responsive to the needs of the communities we are sworn to protect.

The Eastern District of New York was already in the forefront of the policy when it was announced. We have always done the individualized review and scrutiny called for. We reserve mandatory minimum drug charges for the most deserving – who are in fact the focus of our narcotics practice – not for the drug mules who flood JFK airport.

Upon my return to the office in 2010 I put in place a review and approval policy designed to ensure that we were using sentencing enhancements appropriately.

What I am most proud of is a change I made to ensure that our attorneys maintained their connection to the communities they all live to serve.

There is now a requirement that every attorney in the Office performs at least one community outreach event or program a year. It is mandatory and factors into their evaluations. They start with one, and they want to do more. We have hosted student groups, taught high school moot court teams, facilitated court visits, assisted the Red Hook Youth Court - a community organization that has students adjudicate punishments for serious school infractions - with training and information, and a host of other projects.

We have done all this while maintaining our focus on aggressively prosecuting the worst of those who seek to do our communities harm.

As the Attorney General stated when unveiling the Initiative, the goal is to become “both smarter and tougher on crime.”

An important part of the Smart on Crime Initiative has been the National Clemency Project, unveiled by the Deputy Attorney General in January of this year here in New York in a speech to the New York State Bar Association. Speaking of the national crisis in our criminal justice system caused by the crushing prison population, the Deputy Attorney General outlined many of the ways in which the Department is seeking to reduce that population consistent with advancing public safety. He then used New York as his platform to announce the Department's Clemency Initiative, focusing on low-level non-violent offenders who are languishing in prison under

sentences substantially higher than if they had been convicted today. In a call to arms, he asked for the assistance of New York lawyers in helping potential candidates for executive clemency. That call went out to other bar associations, and most recently the ABA has invited assistance as well.

I am pleased to report that the private bar has answered this call. To date over 500 private sector attorneys nationwide have taken the training provided by the clemency project to become proficient in the assistance needed. But more are needed.

Tonight I reiterate the deputy Attorney General's call to action, and ask you, your partners and associates to help us with this important initiative. Reach out to learn more and receive training at www.clemencyproject2014.org, and join those who have answered this call. Make a concrete difference – both in an inmate's life as well as in one of the most vexing issues of our day.

I ask that you join me and my colleagues at the Department of Justice in this grand project of ensuring equal access to equal justice for all.

From the clemency project to indigent defense – we need you.

From support for Legal Aid organizations to volunteers to take the cases – we need you.

Our dispossessed, our discriminated against, our downtrodden and defeated – all need you.

I am certainly in the right place for this call to arms.

The New York County Lawyers Association – from the beginning open to all who are admitted to this noble profession of ours – has long been the lodestone for those seeking a way to serve.

Your pro bono opportunities are focused on the most challenging legal issues facing people today – re-entry, consumer debt, family law and others. Your justice center – led by James Kobak – has its finger on the pulse of the needs for access to justice.

We are all here tonight in memory of Charles Evans Hughes, one of the early presidents of this association who, as Governor of the State of New York, worked to improve New York's standard of living for all and who enacted social reforms that championed workers' rights and immigrant issues when those were not popular causes.

But we do not do this work because it has won a popularity contest.

We in the Eastern District do it because it is part of the mission of the Department of Justice, which is the protection of the American people.

All of us do it because it is part of the greater mission of our role as lawyers.

As the Attorney General has said “providing ...legal aid is much more than just a professional responsibility. It’s also a personal obligation. It’s a national duty. And it’s a moral imperative that lends meaning to the promise of equal justice – and weight to the pursuit of our highest ideals.”

Access to justice is the way by which we make real the promise of America. Over 200 years ago, we decided what kind of a country we wanted to be. We have not always lived up to our ideals. As Barbara Jordan famously noted in her remarks to the senate judiciary committee upon the impeachment proceedings of Richard Nixon, when our constitution was written “I was not included in that ‘we the people....’”

But as she goes on to note, we have come so far since then. And in the present day, we have come even farther still.

The challenge of our legal system and of our time is to continue to extend the benefits of the law – the promise of equality – to ‘all the people.’

This is important work because when legal services are cut it is always those who have the least who suffer the most.

And yet, when those individuals stand, buffeted by poverty, overtaken by despair, feeling as a stranger in a strange land, they still turn to the law as their sword and their shield.

That faith in our system is humbling, it is moving, it is inspiring.

If indeed, as Martin Luther King Jr. said, “the arc of the moral universe bends towards justice,” the law is the counterweight that ensures it moves straight and true along that path. It requires all our hands to bend that arc on its appointed way.

All of us who are privileged to be members of this wonderful profession of ours must ready ourselves to answer the call as our abilities dictate.

This is more than just our obligation.

It is our honor.

It has indeed been my honor to have been with you tonight to deliver this lecture.

Thank you for inviting me to this outstanding event.

And thank you for all that you have done and will continue to do to ensure equal access to equal justice.