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## Remarks at Memorial Service for the Honorable Morris E. Lasker, U.S. District Court, Southern District of New York

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**MEMORIAL SERVICE  
FOR  
THE HONORABLE MORRIS E. LASKER**

**U.S. DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK**

**Friday, July 9, 2010  
4:30 p.m.**

**Remarks of  
Michael B. Mushlin<sup>1</sup>**

United States District Judges, in the words of Paul Gerwitz in Tuesday's *New York Times*, are the "front line" of American justice. Being on the front line means ensuring the protection of the United States constitution extends to all including the politically powerless, the poor, minorities and even despised people, without consideration of the immediate wishes of the majority. It takes intelligence, maturity, learning, temperament, more than a little fortitude, even courage, to fulfill this role in service to our constitutional democracy.

Not every judge is equal to that task. Judge Lasker was. The record of his service on the bench demonstrates the wisdom of the founders' decision to establish an independent federal judiciary. In my brief remarks today I want to highlight one aspect of that record: the story of how Judge Lasker handled the landmark civil rights litigation regarding conditions of confinement in New York City's mammoth jail system.

The Manhattan House of Detention, known ominously, but appropriately, as "the Tombs," was a dark stain on this great City. Within walking distance of the world's most powerful financial institutions, New York's City Hall, state and federal courthouses, thousands

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<sup>1</sup> Professor of Law Pace Law School, Author, *Rights of Prisoners* (4<sup>th</sup> ed 2009), former Director of the Prisoners' Rights Project of the Legal Aid Society, Former Chair and current Vice Chair of the Correctional Association of New York, former Chair of the Committee on Corrections of the New York City Bar Association, Member of the American Bar Association's Task Force on the Legal Status of Prisoners and the Executive Committee of the New York City Bar Association.

of New Yorkers were being held in unspeakably abysmal conditions. It was, in the words of one observer a “human dumping ground.” When *Rhem v. Malcolm*, the case dealing with conditions in that jail, was filed and assigned to Judge Lasker in the heat of a sweltering New York summer, the Tombs was so crowded that people were held three to a locked cell in spaces so small and dark that it was impossible for one man to move without, literally, bumping into his cellmates. Many slept on the concrete cell floors without even a mattress. The tiers of cells were infested with rats, roaches and lice. The Tombs boiled in the summer and froze in the winter. Idleness was the norm. A prisoner could not touch his visiting wife, child or parent. To hear a man describe what it is like to see his infant or toddler in these conditions would break your heart.

Not one of the organs of government in New York was willing to deal with the crisis. The Mayor refused to act; indeed, he made matters worse by cutting the Department of Correction budget. The City Council was silent. The State Legislature contemplated remedial legislation, but did nothing. The State Commission of Corrections duly noted that there was an emergency, but, it, too, remained on the sideline. To their credit, two groups, the New York Board of Correction and the Correctional Association of New York, stood with the detainees. But they lacked sufficient clout to turn things around.

After a long, exhaustively thorough trial, Judge Lasker issued a historic decision. In that decision he held simply and forthrightly, and with memorable eloquence, that detainees of the Tombs were constitutionally entitled to be treated with basic human decency. Before that ruling detainees were consigned to what Justice Brennan called a “shadow world” without any constitutional protection. This was because of the “hands off” doctrine which said that prisoners might have constitutional rights, but federal judges would not enforce them. Judge Lasker

disagreed with that proposition, holding it to be inconsistent with the obligation of a federal judge.

After he ruled, Judge Lasker gave the City time to submit a plan to rectify the constitutional violations that he had found. But the City stonewalled, closing the Tombs and transferring detainees to Rikers Island where they were subject to conditions as bad as those at the Tombs, but even farther away from their families, friends and lawyers. Judge Lasker then ruled that the City could not evade its responsibilities by transferring inmates from one jail to another. He said plainly, “the Constitution protects people not places.”

Afterwards, when it became clear that this was not a judge who could be intimidated or ignored, Judge Lasker presided with patience and a watchful eye over negotiations that led to a comprehensive set of consent decrees for all the City’s jails. Judge Lasker made sure that these decrees were not empty promises. No matter how gracious and accommodating he was to all parties, he insisted upon compliance with his orders.

Because of Judge Lasker a jail system that had been systematically professionalized and transformed. One scholar summarizing Judge Lasker’s record said, “Absent the firm stewardship of Judge Lasker, pretrial detainees in New York City would still be suffering inhumane conditions.”

All of this came at a price. For having the audacity to rule in favor of inmates, Judge Lasker was excoriated by many, including those in public office. A Mayor of New York City once publicly called his orders “pure lunacy.” A New York Commissioner of Correction accusingly said blood would flow in the prisons because of Judge Lasker’s decisions. Elements of the media attacked him viciously. For a time, because of threats, he lived under police protection. Judge Lasker, however, was not deterred by these attacks. Indeed, he voluntarily took

action that exposed him to even greater risk. For example, when a serious riot erupted on Rikers Island, Judge Lasker accepted without hesitation an invitation to participate in the negotiations to end the disturbance. Thanks in large part to his intervention, that potentially disastrous incident was resolved without loss of life.

Despite the intense nature of this litigation and the passions it aroused, it is impossible to find anyone involved in the litigation who – looking back -- is not deeply impressed with Judge Lasker. Leonard Koerner, the chief lawyer for the City of New York during critical periods of the city jail litigation, has written that “Judge Lasker represents everything an advocate would expect from a judge.” William E. Hellerstein, the founder of the Legal Aid Society’s Prisoners’ Rights Project, has said, “Judge Lasker is ‘revered by all who appeared before him.’” Herbert Sturz, the Deputy Mayor during the period of the consent decrees, today recalls “Judge Lasker’s splendid combination of toughness and kindness . . . .”

This is the example that Judge Lasker has left us. It is the example of a man who courageously ruled for politically defenseless inmates at a time when the City was in the grips of severe fiscal crises and rising crime rates, even though at the time there was no direct binding precedent for his ruling. A man who understood that the courts are the last refuge of the powerless and that judges must enforce the law when the other branches of government default in that responsibility. A man who understood that the Constitution of the United States reaches into the darkest, most remote corner of a prison. A man with the determination and guts to hold firm despite a mountain of resistance and public attacks and threats to his safety. A man who never lost sight of the humanity of everyone who appeared before him.

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Near the end of his landmark Tombs opinion Judge Lasker observed that the conditions in the jail shocked his conscience. But he did not end his opinion there. He went on to say that the conditions “would shock the conscience of any citizen who knew of them.” These concluding words-- words rarely found in a judicial opinion--- demonstrate Judge Lasker’s profound understanding of the critical role that federal judges play as guardians of our constitutional values. They evidence Judge Lasker’s confidence in the American people’s basic decency and innate sense of justice. With these words, and his rulings, he fulfilled what Justice Cardozo described as a federal judge’s highest function: giving “continuity of life and expression” to our fundamental constitutional values by “making vocal and audible ideals that might otherwise be silenced . . .”

For his service Morris E. Lasker deserves the admiration and thanks of our community and of our nation.