



DEPARTMENT OF JUSTICE

“Living in America”*: Protecting the American Dream, One Market at a Time

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Diversity and Inclusion: Make it Real**

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Good morning.

Thank you for that generous introduction and thank you to the National Diversity Coalition for inviting me to take part in this event and for your friendship the last two years. This conference is about ensuring that diverse communities are empowered to take advantage of business opportunity. You might be wondering, then, why the organizers invited me, the Assistant Attorney General of Antitrust—a law enforcer—to offer my perspective.

Let me explain what I believe the answer to that is. I will share with you first excerpts of some remarks I had the great honor to give earlier this week at a naturalization ceremony at the U.S. Courthouse in Washington, D.C.¹

As former Attorney General John Ashcroft once said, “How best to nurture and defend liberty is the unending challenge of any self-governing people.” In the United States, we know that freedom, including the freedom to pursue happiness through entrepreneurial spirit, nurtured and protected through the rule of law, has made America exceptional.

The Constitution was designed to protect the rule of law—the principle that all persons, institutions, and entities are accountable to laws that are publicly promulgated, equally enforced, and independently adjudicated.

* JAMES BROWN, *Living in America* (Scotti Bros. 1985).

¹ Makan Delrahim, Assistant Attorney General, “We the People”: Reflection on the privileges and Responsibilities of U.S. Citizenship, Remarks at the United States District Courthouse (Mar. 12, 2019), available at <https://www.justice.gov/opa/speech/assistant-attorney-general-makan-delrahim-delivers-remarks-naturalization-ceremony-0>.

As Rod Rosenstein, the U.S. Deputy Attorney General, recently remarked, “[t]he rule of law is indispensable to a thriving and vibrant society. It protects people from arbitrary government action. It allows businesses to enter into contracts. It gives innovators protection for their discoveries. It keeps people safe from dangerous criminals. And it allows us to resolve differences peacefully through reason and logic.”

This statement echoes the themes from President Donald Trump’s proclamation last year that “we govern ourselves in accordance with the rule of law rather [than] . . . the whims of an elite few or the dictates of collective will. Through law, we have ensured liberty.” These sentiments likewise are shared by our new Attorney General, William Barr, who testified at his confirmation hearing that “[t]he process that we go through is there to ensure that justice is not arbitrary, but that it’s done according to a set of rules and the basic protection that we have is that the rule that applies to one applies to all.” These are the conditions under which everyone can have the opportunity to turn into tomorrow’s success story.

Just yesterday, I listened to a discussion of these ideals that really brought them down to a personal level. Kenneth Lee is one of President Trump’s great nominees to serve as a federal judge on the Ninth Circuit Court of Appeals. In his testimony before the Senate Judiciary Committee, he talked about his experience of coming to the United States from South Korea when he was only four years old. There were times when this was not easy for him, and at one point, he told his father that he wanted to go back to Korea. His father’s response stuck with him to this day:

And, you know, my dad was a stoic man but said I know it's tough for you, tough on your sister, tough on me and your mom. But one thing I always remember, and, you know, maybe I didn't take it as seriously when younger, but something I remembered and learned more as I got older. He said, I know it's tough here but you don't want to go back because things aren't fair there. He said, you know, the families that control the conglomerates there, he said, they control the government, they control the economy, they control the laws. So you're not going to get a fair shot there. But he said, here in America, things are different. He said, it doesn't matter that you're not white, doesn't matter you weren't born here, doesn't matter that our family doesn't have wealth or power, everyone here is treated equally. And, you know, my dad wasn't a lawyer. He never read the Federalist Papers. But he had a gut understanding of what makes our country and our Constitution so great, and so unique in the world.²

All of Mr. Lee's story and testimony is available online, and I encourage anyone who is interested to watch it when you get home.

With those principles in mind, I'm grateful for your invitation to allow me to offer my perspective, as the Assistant Attorney General for the Antitrust Division, on what the nation's antitrust laws do to protect economic liberty and the opportunity for economic development in diverse communities.

First, I want to share something about myself. Because I speak from experience about the opportunity associated with the American Dream.

By now, you may know that I was born in Tehran, Iran. My life changed forever when the Shah was deposed and a hostile revolution caused my family to flee my home country.

² *Nomination Hearing Before the S. Comm. On the Judiciary*, 116th Cong. (2019) (statement of Kenneth Kiyul Lee, nominee to the U.S. Court of Appeals for the Ninth Circuit), *available at* <https://www.c-span.org/video/?458764-1/judiciary-committee-considers-nominations-ninth-circuit&live&start=5973>.

We began anew in Los Angeles in 1979. Soon after arriving in the United States, I learned English and who the Dodgers and the Rams were. Some of my fondest memories of our early years in the United States include working at my dad's gas station. I pumped gas, changed oil, tuned up cars, and sold tires.

Those experiences taught me a lot more than just how to work on a car.

My father, and others in my family who worked hard to feed their families, embodied the American entrepreneurial spirit and I am grateful that my father made the American Dream possible for myself and my sisters. He taught me the value of hard work, resilience, and dedication. He went through much hardship, but persevered. Like many of you, I strive to teach my three children these lessons each day.

Although my story is not unique, I think it demonstrates what is unique about this country. For as long as the United States has existed, hard-working minority communities with entrepreneurial dreams have helped shape American life. That is because in the United States, there are no limits to what hard work can achieve. Our free-market system rewards hard work and good ideas, and our commitment to equal treatment under the law means that everyone has to play by the same rules and compete fairly on the merits.

About a year and a half ago, I was appointed the Assistant Attorney General for Antitrust at the U.S. Department of Justice. I go to work every day at the Main Building of the Department of Justice to serve the country that gave me and my family the opportunity to succeed.

Along with the talented men and women of the Antitrust Division, I help ensure that markets are free and open to new entrants, and that every market participant competes fairly on the merits. We do this through vigorous law enforcement.

When we see a large company try to buy its biggest competitor so that consumers can no longer compare the merits of one against the merits of another, we bring a lawsuit to block that merger.

When we see a group of competitors getting together and agreeing to raise prices or to divide the market between themselves, rather than competing against one another to try to win customers on the merits, we bring a lawsuit to stop that anticompetitive conduct, and we bring criminal charges when the conspiracy warrants it.

Finally, if a company has succeeded to the point that it does not have much competition, we will bring a lawsuit if the company uses the advantages of its position to get in the way of companies that would otherwise be able to win customers on the merits and challenge the dominant player's market position.

We don't pick winners and losers at the Antitrust Division; we enforce the laws equally to protect a level playing field, or what we refer to as competition on the merits. Hard-nose competition ensures lower prices, increased innovation, higher quality goods and services, and improved opportunities for entrepreneurs to succeed.

This commitment to free markets is a significant reason why the United States is able to attract the best, brightest, and most motivated people from around the world. In some countries, where powerful members of the government pick winners and losers, your success is determined by the class into which you were born. In the United States, we

strive for an equal playing field. The great trustbuster and former U.S. President Teddy Roosevelt once said, “We should keep steadily before our minds that Americanism is a question of principle, of purpose, of idealism, of character; that it is not a matter of birthplace, or creed, or line of descent.”

With these principles in mind, I want to comment for a moment on the topic of economic opportunity and empowerment. I believe the antitrust laws have an important role to play in ensuring that entrepreneurs and small businesses can seize opportunity. Indeed, when small businesses face a level playing field, they have historically been the very best innovators. They have offered job opportunities to the benefit of the community and they have offered competition to the benefit of all consumers.

Small businesses have the freedom to think creatively about problems. They don't answer to shareholders, and they don't have to worry about serving big institutional clients who want things done the same way they've always been done. They can take a chance on business models with lower margins because they don't have the same overhead as bigger businesses. From an antitrust perspective, these are the companies with opportunity to innovate and disrupt the market with new approaches.

Legendary Harvard Business School professor Clayton Christensen calls this type of business strategy “disruptive innovation” and he warns big businesses to watch out for disruptors because they often get a foothold in small, neglected segments of the market and then build upon that success until they are in a position to topple giants.³

³ See generally CLAYTON M. CHRISTENSEN, THE INNOVATOR'S DILEMMA (HarperBusiness ed. 2000)

For an example from right here in DC that highlights diverse individuals using disruptive innovation to seize opportunity, think of Sweetgreen. In 2007, three Georgetown University graduates opened a fast food salad restaurant in a small location just a few blocks from Georgetown's campus. All three of these founders are the first generation in their families to be born in America. And one, like me, is from a Jewish family that left Iran for Los Angeles in 1979.

Now, you might be asking yourself, what's disruptive about opening a new fast food restaurant in DC? For starters, Sweetgreen wanted to make a different type of food into "fast food." Rather than compete with a new take on the burger and fries, they focused on making healthy food accessible. They also emphasized the origins of their ingredients, and the fact that their food is locally grown on sustainable farms. By displaying the location of their farming partners in their stores, they attempted to use transparency to differentiate themselves from their competitors.

Judging by the numbers, consumers like this new approach to fast food. Sweetgreen now has almost 100 retail locations in DC, Virginia, Maryland, Pennsylvania, New York, Massachusetts, Illinois, and California.

Sweetgreen's disruption is not limited to the type of food that they serve. They're also challenging traditional delivery models in an effort to get a larger portion of the lunchtime crowd. They're doing this by allowing companies to set up "outposts"—basically kiosks within office buildings—to which Sweetgreen will deliver orders, free of charge. They already have outposts in close to 100 office sites, and plan to continue rolling them out over the coming year.

All of these strategies have caught investors' attention. Late last year, Sweetgreen received funding that valued the company at over one billion dollars just eleven years after it was founded as a single store in Georgetown.

Now, access to funding is a critical piece of creating the conditions for economic opportunity. Without a source of capital, many great innovations would never make their way into consumers' hands. Historically, traditional banks were the main option for small businesses that needed loans. These banks generally required a lengthy application process and collateral before providing a loan.

Fortunately, the past several years have seen disruptive innovation in this sector as well. Companies such as Kabbage now allow businesses to apply for an unsecured small business loan on an app in a matter of minutes. Kabbage emphasizes increased speed, convenience, and access to funds for many small business borrowers. Applicants who were frequently shut out from loans by the consensus approach of the established industry are now being aggressively courted by companies that saw an underserved customer base.

Business owners also have more options than ever in how to receive and process their payments. Companies like PayPal and Square provide an easy means for accepting credit-card payments without going through a merchant service provider and an underwriting process. More options for how a business accepts payment allows for more goods to be sold to consumers. It's hard to imagine the explosion of food trucks in DC, for example, without Square's earlier innovation.

These examples of disruptive innovation are great for competition. But it is important to note that our goal at the Antitrust Division is not to make sure that Kabbage

grows to the same size as traditional banks or that any particular food truck or Sweetgreen becomes more successful than Subway or McDonald's. Our task is to apply the law in an evenhanded manner to ensure that market conditions permit competition on the merits, where consumers can decide who wins and who loses. By doing so, we lay the groundwork for fair competition, while still fostering the opportunity for disruptive innovation.

I hope you can see the benefits that free-market competition provides for equal economic opportunity. I also hope you will think of the Justice Department and the Antitrust Division as a partner in your quest for economic development. And if you see companies getting together and agreeing not to compete or working to block disruptive innovation, I hope you will reach out to the Antitrust Division and be partners in our mission to defend competition as well.

Thank you, again, for the invitation to be with you and for all your community does to advance the economy and economic hope for everyone.