Department of Justice

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ADDRESS

BY

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ATTORNEY GENERAL OF THE UNITED STATES

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Chancellor Schwartzberg, Members of Tau Epsilon Rho, Ladies and Gentlemen:

I am greatly honored to have been selected to receive the Benjamin N. Cardozo Memorial Award for 1960. Previous recipients of this award by their accomplishments have contributed much to the public good. To be included in such a distinguished group is a recognition which I shall always prize and for which I am grateful to you.

In accepting the award I would emphasize two things. First, the members of this legal fraternity are to be commended for their sponsorship of a program which each year gives renewed recognition to the ideals of one of America's outstanding philosophers and jurists. The writings and legal decisions of Justice Cardozo in the area of individual rights and liberties are landmarks which continue to guide our nation in its efforts to secure full realization of constitutional guarantees for all of our citizens.

Then, too, this award expresses your recognition and approval of the recent work of the Department of Justice in the field of civil rights. It is a record of progress of which, I believe, all Americans can be proud. In acknowledging your recognition I want to pay special tribute to the many dedicated career people in the Department who have contributed so much to its achievement.

Despite the progress which has been made there is much which remains to be done. For this reason I would like to discuss with you briefly tonight one or two matters which are of current

interest.

There is no more important concept in our system of government than that all men are equal in the eyes of the law. This ideal expresses our belief in the worth of each individual in our society. It reflects our determination that no one, however powerful or prominent, has any more rights nor are his rights determined any differently than the humblest or least known among us.

In the broad sense, this is what we mean when we talk about civil rights. Obviously men are not equal in all things; some are wiser, some are richer, some are stronger; but in terms of rights and privileges guaranteed by law and protected by government all men are the same regardless of race or religion. No thoughtful person, I believe, seriously quarrels with this--in the abstract.

Why is it, then, that there are so many otherwise thoughtful persons who are vehement in their opposition to the principle when it is put into practice?

There are many complex, and often confused reasons, why this is so. I shall refer only to two of them.

The first is the group response which manifests itself in the general phrase, "states' rights."

The second is the individual response which manifests itself in the statement, "I've got some rights, too."

From these two starting points it is an easy matter to become convinced of the rightness of a wrong cause.

How can you explain the constitutional guarantees, in easily understood terms, to refute these responses? It might be stated this way - the Constitution prohibits government from having prejudice. The Constitution does not prohibit private prejudice -- that is a matter of individual conscience. It does, however, prohibit discrimination based on race or religion by government. Stated another way, the Constitution does not attempt to prevent an individual from being a bigot or a racist. The Constitution does proscribe, however, bigotry or racism by governmental action, federal or state, direct or indirect. No government by statute or by any governmental action may say--or defend in the name of "states' rights"--"you do this because you are a Negro" or "you do this because you are white" or "you may not do this because you are an Oriental." It may not build a highway to be used only by certain religious groups -- it may not build public parks to be used only by certain racial groups -- it may not build and maintain public schools for any racial or religious group or groups. Stated simply then, the Constitution means that no government -- federal, state or local -- may treat people differently because of race or religion.

What about the contention, "I've got some rights, too"? The answer which I have already suggested is, of course, that the Constitution does not prohibit individual prejudice or bias as long as it is confined to that. However, an individual may not take any action

either alone or with others to intimidate or coerce any person from exercising his constitutional rights. Nor may he look to governmental sanction or protection of his prejudices.

For purposes of illustration, let me turn to two major areas -- voting and school integration -- where we have encountered some of the problems I have mentioned and where, I am happy to say, we have made some significant progress.

Most people recognize that in the field of voting there can be no racial discrimination by law or by any state official. On the other hand, it is not so well understood that certain types of "private conduct" by private citizens can also violate federal law. It is here that the "I have my rights, too" argument is heard most vociferously.

This point is illustrated by three cases initiated by the Department this fall under the Civil Rights Acts of 1957 and 1960 which permit the government to seek injunctions to protect the right to vote and to proceed against any person who resorts to reprisals, threats or economic coercion to intimidate citizens, regardless of their race, from voting. Parenthetically, I want to say that I believe that these statutes are great landmarks in the struggle for human rights. I hope you will understand and excuse my pride in the significant role taken by the Department of Justice in conceiving, drafting, and fighting for their passage in Congress.

These cases to which I refer are in Haywood and Fayette Counties, Tennessee, and involve massive boycotts by more than 150 defendants

against Negroes who voted or attempted to vote. The boycott even extended to those who do business with those Negroes who voted or attempted to vote. The government alleged that defendants circulated lists containing the names of Negroes who were registered or who had attempted to register. These lists were used by storekeepers who kept them under their counters to identify Negro customers to whom they would refuse to sell groceries. Certain defendant banks are alleged to have referred to the lists and denied credit for crop loans to Negroes whose names appeared there. Other defendants, who are gas distributors, are charged with having refused to deliver gas to the farm tanks of Negroes for their tractors. Still other defendants are accused of refusing to sell fertilizer and other farm necessaries to listed Negroes. In short, in these farm counties, the Government has charged the defendants with removing or attempting to remove from Negroes who sought to vote all of the necessities for earning a living and, indeed, of subsisting.

The argument advanced by the defendants and other interested parties is that the Department is really seeking to interfere with the right of persons to conduct their own business as they see fit. They claim a right to do business or not to do business with anyone they choose. They say the reasons for their acts are no affair of the Government.

The Government does not dispute that ordinarily a private citizen may run his own business in his own way. What we do contend is that no one has the right to resort to economic coercion or acts of reprisal to discourage or thwart any person from exercising his

constitutional right to vote. Stated simply, the law forbids acts committed by private citizens in the conduct of their private business when aimed at depriving persons of their right to vote. In these cases we are contending that the defendants are not seeking to exercise a legitimate business right -- they are seeking to punish others for exercising their lawful constitutional rights. This the law is designed to forbid.

Turning now to the argument of "states' rights" let me illustrate how the doctrine has been distorted in an effort to prevent Negroes from enjoying their constitutional rights in the field of school desegregation.

In considering school desegregation it must be borne in mind that for some 150 years we lived in a legal and social framework which did not prohibit the building of separate but equal school systems in many states. For understandable reasons, this has posed a number of difficult problems in adjusting to the Supreme Court's decision in 1954. The most persistent false notion and one that has been the most difficult to dispel is that there is some legal means of overcoming that decision and preserving public school systems on a racially segregated basis.

To a large degree this is what has been involved in the New Orleans school case. Since 1954, it has been the law that a state violates the Constitution of the United States when it denies a Negro child who is otherwise qualified for admission to a particular public school, and who seeks admission, the right to enter that school. Nevertheless, starting in 1954 and continuing right up until this month, the Louisiana Legislature

in a series of extraordinary sessions has enacted more than 30 statutes and resolutions designed to prevent desegregation of the Orleans Parish school system.

Recently the various pressures such as impairment of credit, withholding of salaries, attempts to legislate out of office School Board members and similar acts convinced the District Court that the Department should participate in the basic cases for the purpose of protecting and implementing federal court orders and processes. The Department had already intervened in a related suit to restrain enforcement of a Louisiana statute making it a crime for Federal judges, lawyers and marshals to make and implement orders of the Federal Court in connection with school desegregation cases.

In the light of these developments certain observations about the Orleans Parish school desegregation problem, though obvious to most of us, cannot be overemphasized. Notwithstanding the resistance of the Louisiana Legislature and other state officials, I believe it fair to observe that this difficult litigation and the so-called "continuing crisis," discouraging as it has been, may provide greater understanding that the obstructive, belligerent course is of no avail but merely causes grief for all concerned. If this lesson has been learned it may provide hope of enhanced progress in the future, not only in Louisiana, but in other states as well. Let me point to some of the results to date.

First, the Supreme Court and the Federal District Court, have reiterated that "interposition," which after all is only a polite

term for nullification, is a thoroughly discredited legal doctrine and, indeed, has been since the days of President Andrew Jackson.

Second, the case clearly emphasizes the important legal proposition that state legislation, seemingly innocent on its face, must fall where it is obviously designed to impede or obstruct federal court orders based on clear-cut constitutional principles.

Third, this school crisis has underscored the fact that opposition to federal court decrees is activated by a small minority of the population in the community affected -- a group, by and large, which is susceptible to the passions aroused by white citizens' councils and similarly oriented groups.

Fourth, steadfast and objective devotion to their law enforcement duties by the police force -- in this case the New Orleans police force -- can be a very stabilizing influence in a crisis of this kind.

Fifth, it is heartening to observe how successful and effective groups can be, such as the League of Women Voters, Save Our Schools, and the business organizations which have spoken with increasing vigor against the interposition tactics of state officials.

Finally, the New Orleans experience is increasingly demonstrating to people of good will in Louisiana and elsewhere that state officials, who are sworn to observe the Constitution of the United States, can only cause widespread economic and social problems for themselves and their constituents by massive legal resistance to the Constitution.

In conclusion, let me leave you with these thoughts. A sound legal framework now exists upon which to build further and substantial progress in the field of civil rights. The question which remains is whether that progress will come in an orderly fashion or only after last-ditch resistance which is so harmful to our nation.

The United States, of course, can and will compel compliance with the Constitution and laws. Legal actions such as those to which I have referred serve to teach and mold attitudes and crystallize public opinion in support of Constitutional concepts. But a lasting solution in the field of race relations requires that people in their home communities accept the principle of equality under law and practice it in their daily lives.

We must always remember that scrupulous regard for the rights of others and for the integrity of the law's processes lies at the very core of ordered liberty. It is in this spirit that we must ultimately achieve, for all our citizens, the full realization of the freedoms which our Constitution guarantees.