



Department of Justice

ADDRESS

OF

THE HONORABLE BENJAMIN R. CIVILETTI
ATTORNEY GENERAL OF THE UNITED STATES

BEFORE THE

STATE BAR OF NEW MEXICO ANNUAL MEETING

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HILTON INN
ALBUQUERQUE, NEW MEXICO

I am pleased to have the opportunity to appear this morning before the New Mexico State Bar Association. As I flew into Albuquerque yesterday, I was again struck by how well the magnificent deserts and mountains of this country, its vast open spaces, and its varied colors symbolize the immense promise, potential, and human richness of our society. It is a society involved in a continuing experiment, in which the constant strivings of people toward freedom, prosperity, and simple dignity fuel our economic, social, and political lives. I would like to speak briefly today about some important ways in which the Department of Justice is involved in that continuing experiment by attempting to harness much of its talents, energy, and resources for the best protection of all citizens and particularly for the protection of the least protected, the underprivileged in our society. I am speaking of our enforcement of the civil rights laws through our Civil Rights Division and other mechanisms within the Department.

Historically speaking, the Department's activities in this direction are of relatively recent vintage. For nearly a century following the immediate aftermath of the Civil War, there was no federal civil rights legislation, and the Department of Justice had no Civil Rights Division. In the late 1930's,

Attorney General (later Justice) Murphy created a civil rights unit in the Criminal Division, the mission of which was to enforce criminal civil rights statutes which had been enacted during Reconstruction. But despite the fact that the constitutionally protected rights of blacks were systematically denied, there were still relatively few prosecutions. Thus, the story of our furtherance of the civil rights of Americans really begins three years after Brown v. Board of Education, when Congress passed the Civil Rights Act of 1957. That act, among other things, created the Civil Rights Division in the Department of Justice which was to be responsible for civil rights enforcement. The act also authorized the Attorney General, through that Division, to bring suits on behalf of the United States to enjoin racial discrimination with regard to the right to vote. It was the nation's first meaningful step towards making the Department of Justice into a Department for justice in the area of civil rights.

For the first six years, our litigation efforts were directed primarily against voting discrimination and to a lesser extent, against conspicuous violations of criminal civil rights laws. The Civil Rights Act of 1964, however, marked the beginning of an expansion of the Division's authority and mandate into the areas of racial, ethnic, and sex discrimination by private employers, public schools, public facilities, and recipients of federal financial assistance. That pattern of expansion of the Attorney General's duty to enforce civil rights laws was sustained

by such congressional initiatives as the voting rights act of 1965 and its later amendments; the Civil Rights Act of 1968 which covered fair housing, Indian civil rights, and criminal interference with federally protected activities; the Education Amendments and the Equal Employment Opportunity Act amendment of 1972; and the Overseas Citizens Voting Rights Act of 1976.

These corrective actions of the legislature presented an early challenge to the Justice Department which it met impressively. Yet the Department's many litigation efforts in the civil rights field in the 1960s, as critically important as they were, were primarily directed at combatting quite blatant forms of discrimination against, and intimidation of, blacks. For example, early employment cases involved such issues as segregated lines of progression or an absolute refusal to hire blacks. Public accommodation cases sought to eliminate segregated motels, restaurants, and restrooms. School desegregation cases addressed the problems faced by students and faculty in school systems marked by de jure segregation. And the criminal cases we filed often involved violent, retaliatory actions against civil rights workers or others who attempted to exercise their constitutional rights. Perhaps the most famous of these were successful prosecutions of local officials and citizens in the murders of three civil rights workers in Philadelphia, Mississippi in 1964. What all of these suits and prosecutions had in common was that the issues were clearcut, the wrongs

were dramatic, and the relief needed was not difficult to formulate.

It is a distinct measure of our success **that such overt** forms of discrimination are not as rampant today. But the battle is far from being over, because these clearcut cases have largely been replaced by subtle and sophisticated techniques of discrimination which are often difficult to detect and certainly to demonstrate in a court of law. Our employment discrimination cases, for instance, now frequently involve complex issues, such as employee testing practices and affirmative action requirements. Our fair housing cases challenge such discriminatory practices as redlining by mortgagees or insurers and racial steering or blockbusting by realtors. Sex discrimination cases might be directed by credit policies which require a wife, whose income is applied toward a loan, to sign a pledge not to become pregnant for several years. Blatant racial, ethnic, or sexual prejudice is rarely present in this new generation of civil rights cases; intent to discriminate must often be inferred from evidence such as the discriminatory effect of the action, lack of legitimate purpose, and departure from the ordinary or regular pattern of activities. A particular frustration is felt by the victims of these more subtle forms of discrimination, for they cannot even be sure of identifying the particular persons or organizations responsible for their plight, let alone successfully suing or prosecuting them. The Civil Rights Division has faced a more

formidable challenge, which is to take deliberate actions to eliminate the discriminatory sources of these frustrations, which are inimical to everything for which this country stands.

As many of you know, trial lawyers pride themselves on their ability to cope with patterns of fact and principle. As a trial lawyer myself, however, I know well that litigation is not a pastime in which the government should indulge unnecessarily. On the contrary, litigation should be a last resort, since it may take years to come to a final resolution, all the while absorbing large quantities of public resources, and imposing high costs on the opposing parties. Indeed, the litigation option is often wisely restricted in just such a way by statute. Consequently, the great majority of our cases are settled without trial, and quite often on a basis which is satisfactory to all concerned. It will continue to be the policy of our Department, during my tenure, to negotiate settlements which will vindicate federally protected rights while limiting federal intrusion into the defendant's activities to the minimum level compatible with the full enjoyment of equal opportunity. In the vast majority of cases, we will continue to offer opportunities to negotiate a consent decree in advance of the filing of suit, in order to secure the requisite relief while avoiding unnecessary litigation.

Points need not be won in court in order to promote the rights of those in our society who need the protection of the

federal government to enjoy the full fruits of citizenship. The Department makes important use of devices other than litigation to further the cause of civil rights in this country over the long run, even when a specific case is not involved. Through LEAA, for example, the Department has funded a number of programs to increase police sensitivity, to provide bilingual training, and to create opportunities for community representatives and police officials to get together to exchange ideas. Moreover, the Department's Community Relations Service does essential work to remove friction, promote understanding, improve abraded community relations and to carry out other projects which enhance civil rights without aggravating tensions caused by ignorance and confrontation.

Even where litigation begins to loom as a real possibility, the increasing subtlety of techniques of discrimination to which I have already referred leads us to seek advice and information from persons familiar with local conditions and the possibilities for improved practices. Foremost among these are the United States Attorneys throughout the country, who are not only consulted prior to the filing of a suit in their district, but are relied upon increasingly for the handling of specific cases so that the Civil Rights Division is able to focus on more overarching problems of national scope. In addition, when appropriate, a proposal to sue is shared with another federal agency which may have an active interest in the matter. In fair housing suits,

for example, the Department of Housing and Urban Development is sometimes involved in investigative activity on matters related to the subject of a proposed suit. Accordingly, in order to avoid duplication, we seek and obtain HUD's cooperation in such instances. Such consultation with other branches of government often leads to negotiated settlements more readily. In a major suit against nine major steel producers, for example, the Departments of Justice and Labor, in concert with the Equal Employment Opportunity Commission, negotiated a consent decree with the defendants which provided, among other things, for offers of more than \$31 million in back pay for individuals who claimed to be victims of discrimination. Such activity not only streamlines enforcement but avoids the unfortunate frustrations of the public with bureaucracy, born of the necessity to deal and negotiate consecutively with numerous agencies over the same issues.

I welcome and support this evolution of the role of the Civil Rights Division. But in all candor, I must emphasize to you that, when we are forced to litigate civil rights issues in order to vindicate constitutionally protected rights, we will do so vigorously and with all the resources at our disposal. I believe the Department's historical performance bears this out. We will staunchly defend and enforce the rights of many segments of our population, including women, Hispanics, Native Americans,

Asian Americans, institutionalized persons, and the handicapped.

The Civil Rights Division currently receives approximately 1000 complaints a month, and may have as many as 1500 matters under investigation at any given time. Each year, **there are** some thirty to forty criminal trials on charges of police misconduct alone. Since 1972, well over 100 cases have been filed seeking relief from sex discrimination in employment, education and housing. Substantial resources have also been devoted in the past five years to the protection of the civil rights of American Indians. Since the establishment of a special Office of Indian Rights in 1973, the Civil Rights Division has participated in well over fifty legal actions involving Indian rights. These actions include suits brought against public hospitals for denial of emergency room services, employers for discriminatory hiring practices, and a city for refusing to provide police and fire services to a reservation within the city's boundaries. Another vitally important area of litigation is the protection of voting rights. The Department has taken action, for example, against redistricting plans which would dilute Hispanic and Indian voting strength, and against election officials who have failed to provide necessary bilingual materials to Indians who are non-English speaking.

During the past several years the Department has also expanded its efforts to combat other discriminatory practices directed at Hispanic citizens, owing to their ethnic origin or lack of facility with English. Areas of particular emphasis have been employment, education, and voting. We have filed or participated in over sixty law suits since 1972 involving discrimination against persons of Hispanic origin. Fourteen of those are voting suits brought since the voting rights act amendments added protections for language minorities. In addition, we have interposed a number of objections to proposed voting changes, submitted for preclearance by jurisdictions covered under the Voting Rights Act, on the grounds of discriminatory purpose or effect on Hispanic citizens. With respect to all ethnic and racial groups, the Civil Rights Division has participated as amicus curiae in numerous private actions.

I could go on to detail other initiatives we have taken in recent years, and some we are still considering. Laws already enacted, and others currently proposed, have expanded the duty of the Attorney General to bring suits to combat discriminatory credit practices as well as to protect the rights of institutionalized persons. We are considering a proposal to establish special Civil Rights Units in U.S. Attorneys' offices. But the recitation of these accomplishments must not obscure the fact that some of the most difficult civil rights

battles are still ahead, to be won not so much through litigation but through moral suasion, negotiation, community commitment, and, yes, if need be, in the courts. I believe that our democracy, the bedrock of which is freedom and equality, requires the Department of Justice to place the highest priority on civil rights protection for the underprivileged and for the benefit of us all.

As leaders of the community you have the duty and the opportunities to promote public awareness of the less obvious forms of discrimination that persist, and to help articulate and secure the national values implicit in the laws we are sworn to uphold.

Some critics of our society often contend that the government, like the legal profession, serves to keep the oppressed in their place and to prevent thoroughgoing reform of unacceptable social conditions. The vigorous enforcement of our civil rights laws proves that the opposite can and must be the case.

President Carter observed last year that "human rights is the very soul of our sense of nationhood." The goal of full protection of human and civil rights is one to which few governments in history have wholeheartedly pledged themselves. With your help, however, we in the United States will continue to redeem that pledge.

Thank you.