Department of Justice

REMARKS OF

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AT

COMMENCEMENT

UNIVERSITY OF MARYLAND AT BALTIMORE

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A recent survey by a university of its undergraduates produced the following paradoxical results: 62 percent of the black students believed the university had not given **enough** consideration to minorities. Eighty-six percent of the white students believed that it had given enough or too much special attention to minorities.

To understand why both answers have meaning we must place our efforts to eliminate discrimination in a historical context. Racially segregated public schools were not declared unlawful until 1954. Virtually all of the legislative gains in civil rights have occurred within the last 16 years. In that time, Congress enacted major civil rights legislation to end pervasive discrimination in voting, housing, public accommodations, public schools, employment, and the use of federal funds.

To ensure full equality, stereotypes of racial or sexual inferiority and entrenched patterns of discriminatory behavior must be changed, and they do not change quickly. Enforcement of civil rights laws over the past decade and a half has produced substantial changes, but the change has also made the job of enforcement more difficult.

During the 1960's, our lawsuits were primarily directed at combating the most blatant forms of discrimination. Our early employment cases focused on employers and unions that totally excluded blacks or limited them to menial jobs. We had to obtain federal court orders to force some motel and restaurant owners

to serve blacks. In school desegregation cases, we sought to eliminate the legacy of separate and inherently unequal schools. The criminal cases we filed often involved violent, retaliatory actions against civil rights workers or others who dared to exercise their federal rights. The issues were clear-cut and the wrongs dramatic.

These types of blatant civil rights violations have not been entirely eliminated. For example, in a recent housing case, we found that an apartment-finding agency had a section on its application entitled "special requirements." Some applications had "no pets" or "no smokers" marked under that heading. Others had "is" or "no is." It turned out that "is" meant the applicant was black and "no is" meant the landlord did not want black tenants. That's not good English. But it's effective racism.

In an employment case, we found that women were not hired as environmental health inspectors. The personnel director explained that males were needed because inspectors had to work in places where snakes might be lurking.

These direct evidence cases will continue to be pursued relentlessly.

But these overt forms of discrimination have to a great extent been replaced by subtle and sophisticated techniques of discrimination which are often difficult to detect and prove in a court of law. Our fair housing cases, for instance, challenge the discriminatory effects of exclusionary zoning by suburbs or "redlining" by mortgage lenders who refuse to make loans in

predominantly minority or low-income neighborhoods. In our employment cases, we often confront employers who use apparently objective tests as a basis for their hiring which exclude a disproportionate number of minorities or women and do not accurately predict how well employees will perform on the job. Such tests serve no legitimate purpose.

Proof of intent to discriminate must often be inferred from such circumstances as the discriminatory effect of the action, lack of legitimate purpose, or departure from the ordinary pattern of activities. Victims of these more subtle forms of discrimination are especially frustrated, for they cannot even be sure of identifying the particular persons or organizations responsible for their plight.

Ending discrimination requires changes in patterns of education, behavior, and thought. It requires that individuals judge each other on merit, rather than on invidious generalizations and stereotypes. It requires basic fairness and human decency.

Systemic patterns of discrimination are as difficult to remedy as they are to prove. Simply ordering someone to stop discriminating is not enough. Patterns of non-discriminatory behavior need to be institutionalized.

For these reasons, the Justice Department, in its employment discrimination suits, has sought and obtained temporary hiring goals to correct for past discrimination and to preclude future discrimination. Affirmative action plans will necessarily upset past discriminatory practices that have over-benefitted whites

and males. But the plans should not and need not unfairly hinder legitimate employer interests.

Equally innovative remedies are required to end school segregation. We have found that housing discrimination often exists in conjunction with segregated schools. Where the effects of discriminatory actions extend beyond one school district, the remedy must extend to the surrounding school districts. For that reason, the Justice Department has recently called for a metropolitan desegregation plan to remedy purposeful discrimination in the Houston area.

Congress has recognized the important role of the Justice Department in enforcing civil rights. Earlier this month it passed legislation that gives the Justice Department express authority to file suit on behalf of persons institutionalized in prisons, jails, mental institutions and juvenile facilities who are subjected to unconstitutional deprivations.

Discrimination, then can be turned around. But we should realize that the Justice Department cannot single-handedly combat the discrimination that continues today. Although we shall continue vigorously to enforce civil rights law, litigation is extremely time-consuming, costly, and limited by the number of cases which can be brought. If minorities and women are to reach their rightful place in the near future, then affirmative action and equal opportunity must become a part of all of our activities, both within and without our professions.

For many years, the Justice Department has assisted the

President and members of the Senate in selecting candidates to fill a large number of vacancies in the federal judiciary. During President Carter's Administration, we have engaged in exacting reviews of the qualifications of candidates for judgeships and have solicited recommendations from advisory groups to broaden the pool of candidates. One result has been to open access to the federal judiciary to women and minorities. Women, blacks and hispanics are now serving as federal judges in numbers far greater than ever before.

At the Justice Department we are practicing what we preach. We have adopted an affirmative action plan aimed at increasing minority and female representation among our employees, especially in the top ranks.

Our nation has made major strides toward eliminating discrimination. But we cannot rest easy, for all persons, irrespective of race, religion, national origin, sex, and age are not on an equal footing.

-- Blacks still have lower median income and higher unemployment rates than whites.

-- The gains blacks and hispanics made in participating in the workforce between 1966 and 1976 were primarily in low-paying blue collar and service worker positions.

-- The average earnings of women college graduates are still lower than those of male high school dropouts.

-- Despite all the controversy about affirmative action in higher education, blacks comprised only 4.4 percent of those enrolled in law schools in 1978 and hispanics

comprised only 2.3 percent of that number.

-- In 1977, minority firms received less than one percent of the federal public works money.

Sometimes the accumulated effects of discrimination in housing, employment and education combined with the frustration and sense of hopelessness which forms of discrimination produce, create pent-up explosive anger. In such a situation, even isolated cases of injustice or an apprehension of additional loss of opportunity can produce a tragic loss of control and a riotous community. Such was the case in Miami just ten days ago. In addition to the immediate tragedy, loss of property and life, such riots deeply wound the minority community itself in all ways. I believe Miami to be a special situation. Although there are elements of frustration or discrimination present in many communities, the efforts of the federal, state and municipal governments and the progress of minority leaders serve to produce tangible results which can be measured and enjoyed as well as sustain the hope and promise of full equality. Riots are a set-back to every effort to achieve racial and ethnic civil rights. In addition to the human loss and suffering which are so tragic, they create new prejudices and advance discrimination.

As you can see, hard work is left to be done. It is work that requires time, energy, and commitment. The courtroom and the negotiating table will continue to be a battleground for major equal opportunity initiatives. But the work cannot be done by lawyers alone. All of us must dedicate ourselves to

eradicating discrimination in our daily lives. We cannot expect to succeed without a struggle.

As one of our great thinkers, Frederick Douglass, observed:

> If there is no struggle, there is no progress. Those who profess to favor freedom, and yet deprecate agitation, are men who want crops without plowing up the ground. They want rain without thunder and lightning. They want the ocean without the awful roar of its many waters.