Department of Justice

ADDRESS

BY

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BEFORE THE

LAW COUNCIL OF AUSTRALIA

AND THE LAW SOCIETY OF TASMANIA

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HOBART, TASMANIA
AUSTRALIA

I very much appreciate your invitation to speak today on the development of human rights in the United States.

During my visit here to Australia, I have commented frequently on the similarity of our systems. We have much in common besides our language, or to paraphrase with liberal license from George Bernard Shaw's observation, we share a commonality of tradition and value despite the separation of our language.

Our legal systems are descended from British common law tradition. The forms and instruments of government we have chosen, constitutional federal deomcracies, are remarkably alike and are relatively unique. Our national characters are similarly independent, energetic, and idealistic.

The beginnings of my own home state you will also find familiar. I am from a small town in Georgia, very near the better known but smaller town of Plains where President Carter was born. Georgia was one of the original thirteen Birtish colonies founded in America. It was founded as a British colony by General James Edward Ogelthorpe with the express purpose of having a place to send debtors and other British criminals to start a new life. I like to think that the people of Georgia, like

the people of Georgia, like the people of Australia, have demonstrated the unexpected genius of such a plan.

As it is with the tenets of our common heritage that emphasizes individual rights and liberties, President Carter has placed concern for human rights as the cornerstone of American foreign policy. In this, we have many partners.

We have sought to bring American influence to bear on nations who have denied basic rights to their citizens, whether those nations have practiced authoritarianism of the right or the left. We have joined in partnership with many nations of the world, such as Australia, to ensure that concern for human rights has an outreach in fact where the need exists. For example, in an area that the law requires my action, as Attorney General, Australia and the United States have responded generously and humanly to the problems and sufferings of Indochinese refugees. As you may know, by parole in May, I authorized specific commitments for 25,000 Indochinese refugees and 12,000 Eastern European refugees for the next twelve months. The Carter Administration supports legislation that would regularize this concern for specific numbers in coming years. Your country has responded to this same problem in a generous way.

As a matter of foreign policy, President Carter has said on many occasions that it is the objective of the United States human rights policy to reduce worldwide governmental violations of the integrity of the person -- whether by torture; cruel, inhuman or degrading treatment; arbitrary arrest or imprisonment; lengthy detention without trial, or assassination. He has said that it is our objective to enhance civil and political liberties to promote freedom of speech, of religion, of assembly, of movement, and of the press; and the right to basic judicial protections. And the President has said it is also a continuing U.S. objective to promote basic economic and social rights -- to attain adequate food, education, shelter, and health.

American concern for human rights is not just a passing fancy. Human freedom is surely a cause which can unite peoples everywhere in ending man's injustice to man wherever it may be found.

President Carter's pronouncements relating to human rights would, however, have a discernibly hollow ring if we were to confine ourselves to lecturing other countries about how they should treat their citizens, without applying the same principles to ourselves.

Quite properly, the international debate that has been triggered by our President's eloquent emphasis on human rights has focused attention on our own society.

At the recent international conference in Belgrade, the American Ambassador, Mr. Arthur Goldberg, formerly a distinguished justice of the Supreme Court of the United States, invited international scrutiny and constructive criticism of America's own performance in regard to human rights.

As you know, the United States Government has asked that international attention be focused in coming weeks on the upcoming trials in the Soviet Union of several prominent Soviet dissidents. As Secretary of State Vance said on July 8, these men and women "of uncommon courage" are being put on trial on a number of pretexts. He said that in truth, "they are being tried for asserting fundamental human rights -- to speak out and to petition and criticize their Government. These trials," he said," with their lack of due process violate fundamental principles of justice."

The best judge now is in the international court of opinion, and what the United States is now doing is inviting and encouraging the world to observe and judge for itself whether the Soviet Union affords due process

to its own citizens and manifests its own belief in the dignity of the individual.

We can hardly encourage such international attention without having consistently permitted world scrutiny of America's own legal processes and ultimately our own record of justice for our citizens. In the main body of my address today, I would like to respond to Ambassador Goldberg's admonition and discuss with you as candidly as possible some of the human rights problems confronting the United States, and to describe some of the steps which are being taken by our Government to resolve them.

In doing so, I wish to stress that the society which I will describe to you is neither perfect nor near-perfect. Americans have, over the centuries, inflicted great injustices on one another, and there are episodes in our past and present in which we were wrong. I do report, however, that the United States is a society which is confronting its problems vigorously, energetically, and with a measure of practical idealism, and that the government of the United States stands firmly behind the rights of its own citizens and of people throughout the world.

Since I cannot, in one address, deal with all of the human rights issues, I propose to deal today with one that is raised most frequently in discussions of the American performance on human rights -- discrimination against members of racial and ethnic minorities.

This is a particular problem that I speak to you from considerable personal experience. I was born and have lived all of my life until becoming Attorney General in the deep south. I served for nearly fifteen years as a judge on the Fifth Circuit Court of Appeals which as a federal appellate court in the South has the constitutional mandate to give reality to the black citizens of our region the full meaning of the constitution's equal protection clause.

As you all know, blacks were first brought to America as slaves. They had no rights whatever. They were often prohibited by law from marrying and raising families, and in some states, it was a crime to teach a slave to read and write. In 1856, in the famous Dred Scott case,[1/] the Supreme Court of the United States, in denying a black man the right to bring a lawsuit in a court of the United States, remarked that for the past two hundred years the Negro had been universally regarded

1/ Dred Scott v. Sandford, 60 U.S. (19 How) 393, 407 (1856).

as being of an inferior order, with no rights whatever which a white man was bound to respect.

The institution of slavery and the problems associated with it led to the American Civil War, or as the American South still refers to it -- the War Between the States. The war led to the end of slavery, and, after the war, the Constitution of the United States was amended in an attempt to ensure black citizens legal equality. The Thirteenth Amendment formally prohibited slavery and involuntary servitude except as punishment for crime. The Fourteenth Amendment assured all persons the equal protection of the laws. The Fifteenth Amendment forbade denial of the right to vote on account of race, color, or previous condition of servitude. In theory, the black man was now to be the white man's equal before the law. For the greater part of a century, however, that equality proved to be at best an illusion.

The blacks' political impotence was accompanied by discrimination and degradation in practically every aspect of life. Segregation was required by law in schools, hospitals, prisons, insane asylums, parks, waiting rooms, places of amusement, and other facilities.

How could such conditions continue to exist almost a century after the Civil War? First, the Supreme Court construed the Thirteenth, Fourteenth and Fifteenth

Amendments restrictively. In 1896, it held that enforced racial segregation on railway trains (and, implicitly, in other areas of life) did not deny blacks equal opportunity under the law.[2/] By legitimizing segregation, the stepchild of slavery, the Court sustained a caste system which degraded the Negro and made him into a second-class citizen. While the Court ostensibly required the separate accommodations for Negroes to be equal, that part of the decision was ignored or forgotten. Indeed, in the school year 1939-40, one Southern state spent $31.23 per child on its white pupils and $6.69 per child on blacks -- a chilling example of the injustices that prevailed. The Supreme Court proved largely inhospitable for more than three quarters of a century after the Civil War to the civil rights claims that did reach it, and it was not unitl 1954 that the black man found a committed judicial ally in his struggle for equal opportunity.

You should also understand that racial discrimination in America was not restricted to the Southern states. In the North and West, blacks were allowed to vote, but suffered other serious deprivations. The Federal Government actively supported racial segregation in housing throughout the first half of the twentieth century. The National Association of Real Estate Boards, the leader of the real estate industry, forbade sales to blacks in white

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2/ Plessy v. Ferguson, 163 U.S. 537 (1896).

areas in its canons of ethics. The armed forces were racially segregated, and so was the national capital of Washington, D.C. It is difficult to believe today, when so many of our greatest athletes are nonwhite, that the first black man was not permitted to play on a major league baseball team until 1947.

Black veterans who had served in the armed forces during World War II and in Korea were understandably bitter when the democracy for which they had risked their lives in foreign lands was still not available to them at home. Pressure for equal rights from both Negroes and sympathetic whites increased. It had become obvious that "separate but equal" was a myth. The United Nations Charter, the universal Declaration of Human Rights, and the rhetoric of the war against Nazi tyranny, all combined to create a new atmosphere fovoring equal opportunity. President Truman expressed strong support for civil rights and appointed a distinguished commission to study means of realizing them. He also ordered the desegregation of the armed forces. Lawyers for the federal government were urging an end to discriminatory practices, and sometimes alluded to international instruments ensuring human rights, and to foreign criticism of discrimination in America, in urging the courts to prohibit them. It was thus a reflection of the change that had come to the world, as well as to the nation, when the Supreme Court held in the

landmark Brown decision[3/] that state-enforced racial segregation in public schools was unconstitutional. Brown was followed by a series of decisions which invalidated compulsory segregation in virtually every aspect of American life.

Change also occurred on the legislative front. In 1957, Congress enacted the first civil rights act since the Reconstruction period, which dealt primarily with voting rights. The statute was designed to circumvent the obstacles which had previously hampered Negro efforts -- intimidation and lack of access to adequate representation -- by putting the Justice Department in the enforcement business. The Attorney General of the United States could now sue state or local officials who denied blacks the right to vote, and could obtain court orders requiring their registration and the elimination of discriminatory procedures and practices. This introduced federal resources into what had previously been a private quarrel between blacks and southern local officials.

The 1957 Civil Rights Act began a dramatic change in areas where equal opportunity had previously been a pipe-dream. Government lawyers and investigators went to the homes of southern blacks, interviewed them about their complaints, and made it clear that they were there to assist them. Local officials who had engaged

3/ Brown v. Board of Education, 347 U.S. 483 (1954).

in discrimination were brought into court by representatives of the national government, and it was suddenly clear whose side that government was on. Much of this activity took place under the leadership of Presidents John F. Kennedy and Lyndon B. Johnson.

The provision of the Civil Rights Act of 1957 which authorized civil suits by the Attorney General was copied in the civil rights legislation of the next eleven years. In 1964 Congress prohibited racial segregation and discrimination in employment, in hotels restaurants, theaters and other places of public accommodation, and in public facilities, such as courthouses, prisons, and public parks.

It also strengthened the Supreme Court's school desegregation ruling by providing that recipients of federal financial assistance had to desegregate to remain eligible for federal money. Later, in 1968, Congress refined the coverage of the civil rights laws by prohibiting discrimination on account of race, color, religion, and national origin in most privately owned housing. Each of these laws provided that the federal government may go to court to eliminate the discrimination, and, where the discriminator received federal government funds, those funds could be cut off until compliance had been secured.

In 1965, Congress enacted the Voting Rights Act, which suspended literacy tests and other devices which had been used to circumvent equal opportunity in the states where discrimination had been practiced, and also authorized federal officers, in effect, to register citizens on a nondiscriminatory basis where local officials would not do so. The Act broke the back of voting discrimination, and blacks and other minority citizens now vote freely and in large numbers throughout the United States. Their votes have an important effect on the outcome of elections, not only for President, but for congressional, state, and local offices as well. Black officials have been elected in considerable numbers throughout the South, and are the mayors of major cities, North and South.

The civil rights laws have been vigorously enforced, and there has also been a great deal of voluntary compliance. Hotels or restaurants which engage in discriminatory practices are today few and far between. There are no more public schools designated for blacks or whites, and today's litigation in the area of equal educational opportunities often involves appropriate remedies when schools are attended predominantly by students of one race as a consequency of past, not present, racially discriminatory practices. A major issue is whether and to what extent children should be transported to schools other than those near their homes in order to achieve a result that satisfies

constitutional requirements.

In the field of employment discrimination, few employers openly refuse to hire or promote members of minority groups, and the issues today are often quite sophisticated, e.g., whether a pre-employment test, though applied equally to all, contains a "cultural bias" which results in the denial of jobs to disproportionate numbers of non-whites on grounds unrelated to job qualifications. Most civil rights cases were once brought on behalf of blacks; today, the government, while still pressing for black equality, is also involved in protecting Mexican-Americans, Puerto Ricans, American Indians, and members of other minorities from discrimination. The rise of the women's movement has seen a dramatic increase in activity designed to combat sex discrimination.

Perhaps the nature of the work being done by the United States Government to promote equal opportunity can be illustrated by two cases, one a relatively small one involving a single victim of discrimination, and one affecting many thousands.

Cassandra Parker, a black schoolteacher in California, applied for an apartment for which she was qualified, but was rejected because of her race. The evidence showed that the resident manager wanted to rent to her, and told the landlord she was qualified.

The landlord, a doctor, told the manager, however, that if the applicant was black, the manager should not rent to her, and "I don't care if she's the Queen of Sheba." The case came to trial and, even though Ms. Parker could show little in the way of out of pocket loss, the jury awarded her $20,000 in damages, to which the Court added almost $6,500 in counsel fees. The landlord claimed that the amount was excessive. The U.S. Department of Justice, through its Civil Rights Division, entered the case as a friend of the Court, arguing that the verdict was reasonable. The Supreme Court had held in 1968 that racial discrimination in housing is a badge of slavery,[4/] and the government argued to the Court that, if that holding is to be treated as meaningful and not as mere rhetoric, then substantial awards of this kind must be upheld. The Court sustained the verdict, and the uncharitable doctor had occasion to regret his unkind act.

In the field of employment discrimination, the results have been ever more spectacular. The United States brought suit against nine major steel producers, which represented 80 percent - 85 percent of the nation's steel industry, alleging discrimination based on race and sex. The case was ultimately settled with a decree which required the companies, among other things, to offer more

4/ Jones v. Mayer Co., 392 U.S. 409 (1968).

than #31,000,000 in back pay to individuals who were claimed to be victims of discrimination.[5/]

This is not to say that all is rosy on the American racial front. In the past year or so TV viewers have once again been exposed to the sight of white adults screaming curses and imprecations at black school children who were being transported to previously white schools instead of the overcrowded schools in black neighborhoods. The scene was Chicago, not the rural South. The looting of stores in New York during the power blackout, largely by black and Puerto Rican youths, reflects in a rather dramatic way the alienation of some urban nonwhites from the mainstream of American society.

In spite of these blemishes on our record, however, the point to be made is that the government institutions of our nation are, for the most part, working to eliminate the injustices of the past. The Government's civil rights lawyers appear in court on the side of the victim of discrimination, helping him or her to secure the full enjoyment of the rights guaranteed by the Constitution. Contrary to political dogmas rooted in the past, our Government is not an instrument of oppression in the field of race relations, but a powerful force for justice and, if anything, an aid to the oppressed.

5/ United States v. Allegheny-Ludlum Industries, Inc., 517 F. 2d 826 (5th Cir. 1975), cert. den. sub nom. N.O.W. v. United States, 429 U.S. 944 (1976).

I hope that these remarks have given you some perception of how our country approaches human rights problems within our borders. It would be foolish to suggest that we have righted all the wrongs or even most of them, and it is my guess that this statement would be true of any country on earth. I am nevertheless proud of the efforts and the progress which we have made.

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