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ABSTRACT

In these remarks, the Assistant Attorney General of the Civil Rights Division, Department of Justice, discusses the current Administration's policy and enforcement efforts on civil rights for the handicapped, particularly the blind. First, Reynolds stresses that the Administration's commitment to the principle of nondiscrimination in all areas rejects the notion of a "protected class" and the practice of favoring some to the disadvantage of others. Consistent with this commitment, he says, policy on equal opportunities for the blind emphasizes that blind people are entitled to equality that can be achieved through removal of social discrimination, education of the public to new concepts concerning blindness, and measures that would enable all blind people to fully exercise their individual talents. Reynolds then discusses how the Federal government enforces this policy through public awareness programs, agency coordination activities to standardize service accessibility requirements, and regulation, investigation, and litigation regarding civil rights for the blind. In conclusion, Reynolds reiterates that all American citizens are individuals with unique characteristics and talents; that preferences for certain groups will not be tolerated; and that the Federal government is committed to ensuring that artificial barriers to a free society and discrimination in all its forms are obliterated. (MJL)

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REMARKS

OF

THE HONORABLE WM. BRADFORD REYNOLDS
ASSISTANT ATTORNEY GENERAL
CIVIL RIGHTS DIVISION

BEFORE THE

1983 CONVENTION OF THE
NATIONAL FEDERATION OF THE BLIND

HOTEL RADISSON MUEHLEBACH
KANSAS CITY, MISSOURI
JULY 5, 1983

WA 023 016

It is a distinct pleasure to be here with you this afternoon to discuss Civil Rights' Policy Trends and Perspectives. For over 40 years, this organization has been in the forefront of the fight to end prejudice and discrimination against blind citizens, and to insure throughout our society equal opportunity for blind citizens. That is a battle that has long been waged by the Federal Government as well. Through our collective efforts, great strides have been made, but much remains to be done. What I would like to do today is to review for you this Administration's continuing efforts to remove those barriers that still stand in the way of a full enjoyment by all Americans of equal treatment in every form of human endeavor.

Civil rights enforcement at the Federal level is not one-dimensional. Unlike advocates in this area from the private sector--who understandably, and quite appropriately, take on the challenges of one group to the exclusion of others--our responsibility is to see to it that the civil rights of all individuals are protected. As a consequence, little that we do is free from controversy.

Blacks who applaud our recent challenge to a racial quota system used by a California developer, to limit the number of housing units that could be rented to blacks, are the first, and most vocal, to condemn a Government challenge to a similar racial quota system that unfairly deprives white police officers of equal promotion opportunities. Women's groups which endorse our broad interpretation of "federal financial

assistance" to include Pell Grants that go to students of educational institutions, or medicare and medicaid payments that go to hospitals, remain highly critical of the Government's insistence that the civil rights legislation in this area-- that is Title VI, Title IX and Section 504--is, by its terms, "program-specific." And, disabled citizens of America, who cheered the Administration's decision not to revise the existing 504 coordination regulations pertaining to "federally assisted" programs, have objected to our issuance of similar prototype regulations for "federally conducted" programs.

None of this is surprising. Our society is becoming increasingly diverse, and the delicate balance to be struck among the many competing interests is that much more difficult. Civil Rights is not the preserve of a few; it is a haven for all. It belongs not to "protected classes," but to individuals who have far too long been denied equal opportunity largely because others have gratuitously put them in what is euphemistically called a "protected class." This Administration does not subscribe to that approach. We are as committed as our predecessors to the principle of nondiscrimination, and we are fighting for that principle no less vigorously than they on behalf of blind Americans, on behalf of Americans with other handicaps, and on behalf of every American who suffers discrimination based on race, color, gender, national origin or religion.

But, we have declined to wage that battle by assigning to any group an artificial preference--a so-called "catch-up" factor"--that favors some to the disadvantage of others who are innocent of any wrongdoing. In our view, such preferences perpetuate discrimination, rather than eliminate it. They demean individual worth, rather than accentuate it. They make a mockery of equal opportunity, rather than giving it the exalted place it deserves in our galaxy of constitutional protections.

In so stating, I am well aware that I have taken a page from the book of the National Federation of the Blind. Never has this organization, nor its thousands of members, sought preferential treatment. Your statement of purpose underscores your philosophy in the following clear terms:

The ultimate purpose of the National Federation of the Blind is the complete integration of the blind into society on a basis of equality. This objective involves the removal of legal, economic and social discriminations; the education of the public to new concepts concerning blindness; and the achievement by all blind people of the right to exercise to the fullest their individual talents and capacities. [Emphasis added.]

How is the Federal Government helping to achieve that result? I think that basically our help comes in three areas--education, coordination, and implementation--albeit with differing degrees of intensity.

I hardly need to stand before this group and make the case for educating Americans on the realities of blindness--or, indeed, on the realities of any other disability--shared

by a significant portion of our citizenry. So much of the prejudice that is responsible for a continuing resistance among some to embrace blind people as equal partners in our school yards, in our places of work, and even in our neighborhoods, derives from ignorance, misunderstanding and a general insensitivity to the potential worth of the blind. We have made progress as a society in accepting handicapped individuals on the basis of their talents and capabilities--but not nearly enough.

The role of the Federal Government in this educational process has been marginal at best. Yet, this Administration is responsible for some new initiatives. The President last year established the National Council on the Handicapped in order, among other things, to help enhance public awareness of the significant contributions that can be made by handicapped individuals. There is a special White House advisor to the President on handicapped matters, Bob Sweet, who has as one of his responsibilities to raise public perceptions and sensitivities in this area. And, the Architectural & Transportation Barriers Compliance Board, which I currently chair, is involved in a number of workshops and conventions around the country to heighten public awareness.

These are, to be sure, modest beginnings, but they are an important step in the right direction. They mark a Federal appreciation of the need for a viable and continuing educational program--conducted in tandem with organizations such as this one--in order to break down the attitudinal barriers that

needlessly impair the vision of sighted persons, causing them unfairly to deny to you, and other handicapped persons, your right to equal consideration and treatment.

Let me turn to the second part of our program: coordination-- and by that I mean improved coordination with state and local authorities in an effort to enhance accessibility to the fullest extent practicable. There is, as you know all too well, a regrettable lack of uniformity in the accessibility requirements and procedures imposed by states and their subdivisions for the benefit of handicapped individuals. Some jurisdictions follow the ANSI standard in its entirety; others have adopted ANSI only in part; and still others look to ANSI not at all. Moreover, ANSI has announced that it is currently reviewing its standards and some parts may receive a major overhaul. To make matters a bit more unsettled, the ATBCB has published guidelines for Federal accessibility that dovetail with the ANSI standards to a degree, but also contain material differences. And there are currently the proposals from the four standard-setting agencies (HUD, DOD, DOE and GSA) also addressing the accessibility question.

In this climate, there is plainly the need for a greater degree of coordination among the various authorities that are developing and publishing guidelines and requirements designed to open wide the doors of equal opportunity to all handicapped

Americans. The Federal Government has an important role to play in this endeavor. We cannot--and indeed must not--undertake to impose rigid Federal requirements on state and local authorities; such intrusiveness would go well beyond the legislative authority that Congress has given to the several governmental agencies. But, we can--and should--seek to lead by example. The ATBCB last year finalized a comprehensive set of accessibility guidelines and requirements that were tailored to the extent practicable to existing national standards. It is our hope and expectation that state and local authorities, in concert with Federal agencies, will collectively use these minimum guidelines to establish a more uniform set of accessibility requirements throughout the country.

This is, of course, a continuing effort. The ATBCB guidelines and requirements reserved certain areas for further research and consideration, and thus much work remains to be done. But, here again a start has been made in the right direction. There has been established an open dialogue between the ATBCB and ANSI, as ANSI undertakes to revise its own standards; and state and local authorities are turning to us for guidance with greater frequency. This kind of coordinated assault at all levels of government on the barriers that yet prevent a full integration of blind Americans, and

other handicapped Americans, into the mainstream of American life is absolutely imperative if equal opportunity for all our citizens is to be realized.

"Education" and "coordination" cannot alone achieve the promise of full equality under law that has for too long eluded members of this organization and other similar organizations. What is needed as well is strong and active enforcement of the Federal civil rights laws. I referred earlier to this feature of our three-pronged strategy as "implementation" so as to be sure that the term was broad enough to include both court litigation and administrative regulation.

I am particularly proud of this Administration's civil rights enforcement efforts on behalf of handicapped persons, and I therefore take strong exception to those who claim that this is an area of demonstrated insensitivity and uncaring. As you know, Section 504 of the Rehabilitation Act of 1973 protects against discrimination on account of handicap in federally assisted and federally conducted programs. The trend in recent years has understandably been that a growing percentage of all complaints received by Federal agencies arise under this provision--indeed since 1978 the number has almost doubled.^{*} Most of the meritorious complaints are resolved satisfactorily through the agency's negotiation and conciliation process.

^{*}/ In FY 1978, HEW received 1,292 complaints under Section 504, comprising about 36% of all identifiable, single issue civil rights complaints of the agency. In FY 1981, the combined total of HHS and DoEd (formerly HEW) was 2086 complaints under Section 504, comprising about 61% of all identifiable, single issue civil rights complaints at the two agencies.

As the agency responsible for coordinating the Government's enforcement of Section 504, the Department of Justice has in place a coordination regulation for "federally assisted" programs. When this Administration came into office--despite the fact that Section 504 had been on the books for eight years--there were still agencies that had not promulgated their own "federally assisted" regulations in conformance with those of the Department. At our insistence, an additional ten agencies have now established Section 504 regulations in this area.

Most of you are aware that the Civil Rights Division of the Justice Department recently completed a lengthy and intensive review of the existing 504 coordination regulations to determine what, if any, changes were needed. There was general opposition from the handicapped community with respect to this activity, including Resolution 82-07 of this organization, adopted at your convention last summer. Largely as a result of the grave reservations expressed by those most directly affected by the regulations, we determined, earlier this year, not to suggest any modifications to the existing 504 guidelines.

Let me add a small postscript to that decision. Regulations are rarely shaped in an environment that produces a perfect set of rules and procedures. The notice and comment period, even when it works well, invariably results in regulatory decisions suitable to the immediate circumstances, but hardly ever sufficiently

anticipatory to be fully responsive to future developments. The Section 504 coordination regulations are, of course, no exception to the rule. They have been subjected to judicial scrutiny, variously interpreted by different courts and shaped by their administrative experience; this history has understandably had its impact. In our conversations with handicapped citizens and their representatives during the regulatory review process just completed, it was generally acknowledged that there was room in certain areas for improving and strengthening the 504 guidelines, both substantively and procedurally. I would hope that this realization is not completely lost under the avalanche of criticism for regulatory reform.

We have been somewhat responsive to judicial guidance in the development of a companion prototype 504 regulation for "federally conducted" programs. Congress extended Section 504's coverage to "federally conducted" programs in 1978, but, to date, only a few agencies have promulgated regulations implementing that amendment. While I cannot speak to the inattention to this matter of the prior administration, our lengthy review of Section 504 in connection with "federally assisted" programs led us to conclude that our guidance to agencies with respect to "federally conducted" programs should closely track existing 504 regulatory requirements. We expect that Federal agencies will use our prototype regulations as a

model for the development of their own regulations which, in turn, will be subject to public notice and comment before they become effective.

The prototype regulation provides, among many requirements, that agencies take appropriate steps to ensure effective communications with personnel of other Federal entities, applicants, participants, and members of the public, including the provision of auxiliary aids for hearing-impaired persons and sight-impaired persons. Agencies which administer a licensing or certification program may not do so in a manner that discriminates against handicapped persons on the basis of handicap. The prototype regulation also forbids agencies from using discriminatory criteria in the selection of procurement contractors. Further, the prototype regulation requires agencies to ensure effective communication with hearing-impaired and sight-impaired persons involved in hearings conducted by the agency. We believe that, in the next several months, the Government's regulatory activity generated by the distribution of our prototype regulation will greatly advance the cause of equality of opportunity for handicapped citizens.

Our efforts on the litigation front are similarly promising. We have, for example, defended the statutory right of blind or visually impaired employees to have both readers and drivers provided by state and local authorities

in order to ensure equal employment opportunities. In the educational arena, the Department of Education has insisted that visually impaired children and children with other handicaps be educated in classrooms and other educational settings together with sighted and nonhandicapped children to the maximum extent appropriate to the needs of the handicapped students.

We filed a friend of the court brief in a federal district court in the case of Nelson v. Thornburgh, arguing that Section 504 requires the State of Pennsylvania to provide a reader at State expense for a blind case worker in the Pennsylvania welfare department. In Peck v. County of Alameda, we urged, before the Court of Appeals for the Ninth Circuit, affirmance of the district court's judgment awarding a deaf juror reimbursement for the cost of a sign language interpreter necessary to enable her to perform her civic responsibilities as a juror.

In the first major case heard by the Supreme Court construing the Education for Handicapped Children Act (the EHA)--a law that helps give meaning to a handicapped child's access to public education--the Administration argued that a grade school youngster was entitled to a sign language interpreter, in addition to the special education services the school board was already providing her. See Hendrick Hudson Central School Dist. Bd. of Education v. Rowley, No. 80-1002 (S. Ct. June 28, 1982). The Supreme Court rejected our position in the

Amy Rowley case by a 6 to 3 vote. Nonetheless, despite the limitations the Supreme Court placed on the interpretation of the EHA, we recently urged the Court of Appeals in the Eleventh Circuit to affirm a lower court decision in Georgia Association for Retarded Citizens v. McDaniel, holding that the EHA compels school boards to provide an extended school year, beyond the length of the regular 180-day year, to those handicapped children who need such extended schooling to obtain educational benefits.

And, if doubts remain as to our commitment in this area despite these litigation efforts, let me refer to our amicus participation in support of the estate of Mr. LaStrange in the pending case of Conrail v. LaStrange, which is clearly the most important Section 504 case to be heard by the Supreme Court since Southeastern Community College v. Davis. Conrail presents the question whether Section 504 covers employment in all programs or activities receiving federal financial assistance--or just in those discrete programs where the primary funding purpose is employment-related. We argue that all employment relationships are entitled to 504 protection against discrimination on account of handicap. Conrail presents the question whether handicapped persons have a private right of action to seek judicial relief under Section 504. We argue that a private right of action is available under the statute. And Conrail presents the question whether the individual litigant can obtain back pay (in addition to injunctive relief) in a private action under Section 504. We argue that back pay should be obtainable.

These are not easy legal decisions. Most of the issues discussed here today have divided the lower federal courts, and, as to some, there are a majority of appellate courts that have decided the question more narrowly than argued by your organization and other representatives of the handicapped community. This Administration has, as I have indicated, taken the more expansive view, however, because we believe, as do you, that the command of nondiscrimination in Section 504 compels equal treatment for all.

There are under the laws in this country no first-class citizens or second-class citizens. There are no preferred groups and non-preferred groups. We are all individuals, with unique characteristics, capabilities and talents; our laws regard us as such, guaranteeing to each the same opportunities as afforded to all others. It is the job of the Federal Government to see that those laws are faithfully executed, to ensure that artificial barriers to a free society--whether erected out of fear, ignorance, prejudice or bigotry--are obliterated. Discrimination in all of its invidious forms has no place in a land of equal opportunity.

That has long been the watchword of this great organization. It is important that together we renew the efforts that are already underway--through education, coordination and implementation--to hasten the day when the promise of full equality for all without regard to race, color, gender, religion or

national origin--and without regard to whether a person is blind or sighted, is handicapped or nonhandicapped--becomes the reality that all of us long for so desperately.

THANK YOU!