

Memorandum



Subject

Conflict Between DOL and DOJ Testimony
on Affirmative Action

Date

October 13, 1981

To The Attorney General

From

John Roberts *JR*
Special Assistant to
the Attorney General

A conflict has developed between the Department of Labor and the Department of Justice concerning "affirmative action" under Executive Order 11246. That Order covers the requirements imposed on government contractors as a condition of doing business with the government. In testimony before the Subcommittee on Employment Opportunities of the House Committee on Education and Labor, Brad Reynolds announced the Department of Justice view that Title VII prohibited preferences based on race in employment. In testimony before the same subcommittee, Under-Secretary of Labor Malcolm Lovell affirmed the Department of Labor and Office of Federal Contract Compliance view that affirmative action was required under Executive Order 11246. He specifically endorsed the use of quota-like concepts such as goals, timetables, and "underutilization" calculations. Although this approach is concededly consistent with regulations issued under Executive Order 11246, it and those regulations are inconsistent with the Department of Justice view that Title VII requires color-blindness and sex-blindness in employment decisions. In short, DOJ and OFCCP read Executive Order 11246 as requiring conduct which the Department of Justice considers prohibited under Title VII.

This conflict should have been resolved through the OMB clearance process. OMB only received a copy of Lovell's testimony on the eve of its delivery, however, and thus there was insufficient time to resolve the conflict. OMB agrees with our interpretation of Title VII. The problem of the conflict has been raised with Mike Uhlmann at the White House and steps are being taken at that level to resolve any inconsistencies.

cc: W. Bradford Reynolds
Assistant Attorney General
Civil Rights Division