

Testimony of  
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Testimony of Robert N. Driscoll before the United States Senate Committee on the Judiciary on November 14, 2006.

Thank you, Chairman Specter, Ranking Member Leahy, and members of the Committee for the opportunity to discuss the work of the Civil Rights Division. My name is Bob Driscoll and I am currently a partner at Alston & Bird LLP, here in Washington. From 2001 to 2003, I had the honor of serving as Deputy Assistant Attorney General under Assistant Attorney General Ralph Boyd. During that time I worked on a variety of issues, including racial profiling guidance to federal law enforcement, desegregation, and police misconduct.

Although I appear on this panel primarily to answer any questions that Committee members might have, I did want to take the opportunity to express my support for the Division's work in one less controversial (and therefore less publicized) area: enforcement of the Civil Rights of Institutionalized Persons Act (CRIPA), which protects the Constitutional rights of residents of state-run institutions such as nursing homes, juvenile facilities, and prisons. When I joined the Division in 2001, the Special Litigation Section was, at the direction of Congress, hiring additional attorneys to enforce CRIPA. Ralph Boyd also chose CRIPA enforcement as a priority, as have Assistant Attorney Generals Acosta and Kim. My view is that these resources have been put to good use.

CRIPA is important both in its substance - the statute protects some of the most vulnerable members of society - and in its procedure. In particular, CRIPA is a statute that expressly makes litigation a last resort: it requires the Department of Justice to explain what the Constitutional problem is to the state or locality being investigated, explain the minimum necessary remedial measures that will cure the alleged violations, offer any available technical or financial assistance to the jurisdiction being investigated to help it achieve compliance with the Constitution, and offer sufficient time for the jurisdiction to cure any Constitutional problem on its own. Only after the Attorney General personally certifies that the jurisdiction has been provided adequate time to cure the alleged violations and that all good-faith negotiations have failed at reaching a voluntary resolution, can litigation be initiated.

I think CRIPA makes sense because it allows both federal and state or local resources to be spent attempting to bring a facility into compliance with Constitutional standards and not on litigation, except in rare instances. As this Committee considers future Civil Rights legislation, I would encourage you to look to CRIPA as a model. I would also encourage the Division to continue to use the cooperative approach mandated by CRIPA in other investigations of states and local jurisdictions.

Again, thank you for inviting me to testify and I look forward to answering your questions.