Testimony of

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The 50th Anniversary of the Civil Rights Act of 1957
and its
Continuing Importance

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of the
Honorable Gail Heriot
United States Commission on Civil Rights

Thank you for this opportunity to participate in the commemoration of the passage of the Civil Rights Act of 1957.

Many civil rights scholars like to characterize the Civil Rights Act of 1957 as a weak act. And in some respects they are correct. Compared to the ambitious bill that Senator Paul Douglas of Illinois earlier envisioned, the 1957 Act was puny indeed. Senator Douglas hoped that the first civil rights bill passed by Congress since Reconstruction would be a sweeping one-outlawing race discrimination in public accommodations across the county. But it was not to be-not in 1957 anyway. That kind of reform had to wait another seven years. Other members of Congress, like Virginia Rep. Howard Smith would have preferred no bill at all. But he didn't get his way either. Congress, after a long period of neglect, was finally taking notice of what would become one of the most important legislative issues of the post-war era; Mr. Smith would soon find himself left behind in the march of history.

I prefer to look at the Civil Rights Act of 1957 not as a weak legislative effort but as a vital building block, which may be what Dean Acheson was thinking when he enthusiastically stated, "I don't think it an exaggeration to say that the bill is among that greatest achievements since the war, and in the field of civil rights, the greatest since the Thirteenth Amendment." In retrospect, Acheson may have had a point: Without the 1957 Act, there may well have been no Civil Rights Act of 1960, Civil Rights Act of 1964, Voting Rights Act of 1965, Fair Housing Act of 1968 or Education Amendments of 1972. Seen in this light, the 1957 Act does not seem puny at all; it was, rather, Congress's first step on a long-overdue journey. It is therefore fitting that we should commemorate its passage today.

What did the 1957 Act do? You'll often hear the 1957 Act referred to as a voting rights act, and that is accurate in the sense that the portions of the Act that affected substantive law did relate to voting. Specifically, the Act prohibited the interference with any individual's right to vote in a federal election. The prohibition was not limited to interference motivated by race or to interference committed under color of law. It authorized the Department of Justice to bring, and federal courts to hear, actions for injunctive relief to prevent such interference.

But perhaps the most significant step taken by the 1957 Act was not the modification of substantive law or even the remedial provisions that backed up that modification, but the creation of two new arms of the federal government dedicated to the protection of civil rights. The first-and the one that I am most familiar with-- was the Commission on Civil Rights.

If the value of a federal agency could be calculated on a per dollar basis, it would not surprise me to find the Commission on Civil Rights to be among the best investments Congress ever made. My back-of-the-envelope calculation is that the Commission now accounts for less than 1/2000th of 1% of the federal budget; back in the late 1950s its size would have been roughly similar. And yet its impact has been dramatic. As then-Senator and Majority Leader Lyndon Johnson put it, the Commission's task was to "gather facts instead of charges" "[I]t can sift out the truth from the fancies; and it can return with recommendations which will be of assistance to reasonable men." In civil rights, as in any area of public policy, that is an important task.

Soon after the passage of the 1957 Act, the then-six-member bipartisan Commission-consisting of John Hannah, President of Michigan State University, Robert Storey, Dean of the Southern Methodist University Law School, Father Theodore Hesburgh, President of Notre Dame University, John Stewart Battle, former governor of Virginia, Ernest Wilkins, a Department of Labor attorney, and Doyle Carleton, former governor of Florida-- set about to assemble a record.

Their first project was to look for evidence of racial discrimination in voting rights in Montgomery. But they immediately ran into resistance. Circuit Judge George C. Wallace, who went on to greater notoriety as governor, ordered that voter registration records be impounded. "They are not going to get the records," he declared. "And if any agent of the Civil Rights Commission comes down to get them, they will be locked up. ... I repeat, I will jail any Civil Rights Commission agent who attempts to get the records." The hearing nevertheless went forward with no shortage of evidence. Witness after witness testified to inappropriate interference with his or her right to vote. The Commissioners spent the night at Maxwell Air Base, because the city's hotels were all segregated.

From there, the Commission went on to hold hearings on the implementation of Brown v. Board of Education in Nashville and on housing discrimination in Atlanta, Chicago and New York. The facts gathered in these and other hearings along with the Commission's recommendations were presented not just to Congress and the President but the American people generally, and they become part of the foundation upon which the Civil Rights Act of 1960, the Civil Rights Act of 1964, the Voting Rights Act of 1965 and the Fair Housing Act of 1968 were built.

The revolution in public opinion that occurred during the late 1950s and early 1960s on issues of civil rights can hardly be overstated.. And although the Commission on Civil Rights was not the only institution that helped bring about that change, it was a significant factor. In 1956, the year before the 1957 Act, less than half of white Americans agreed with the statement, "White students and Negro students should go to the same schools." By 1963, the year before the 1964 Act, that figure had jumped to 62%. In 1956, a healthy majority of white Americans-60%-opposed "separate sections for Negroes on streetcars and buses." By 1963, the number had grown to 79% opposed-an overwhelming majority. Even in the South, minds were being changed. In 1956, only 27% of Southern whites opposed separate sections on public transportation for blacks and whites. By 1963, the number had become a majority of 52%.

The change in views about the desirability of a federal law was even more dramatic. As late as July 1963, only 49% of the total population favored a federal law that would give "all persons, Negro as well as white, the right to be served in public places such as hotels, restaurants, and similar establishments," and 42% opposed. By September of the same year, a majority of 54% was in favor, and 38% opposed. In February of 1964, support had climbed to 61% and opposition had declined to 31%.

The other new arm of the federal government established by the 1957 Act was the Civil Rights Division of the Department of Justice. Technically, the Act established a new Assistant Attorney General, who would be appointed by the President and subject to confirmation by the Senate. But it was understood at the time that this new Assistant Attorney General would preside over a new division dedicated to the enforcement of civil rights law, and just two months after President Dwight Eisenhower signed the '57 Act into law, Attorney General Herbert Brownell created the Civil Rights Division.

Would Brown v. Board of Education ever have been successfully implemented without a dedicated group of civil rights attorneys acting on behalf of the United States such as that assembled as a result of the 1957 Act? We will never know for sure, but for me the answer is quite possibly not. Similarly, I am not optimistic that the efforts to

enforce the Civil Rights Act of 1964, the Voting Rights Act of 1965 and the Fair Housing Act of 1968 would have received the priority that they did in the absence of the Civil Rights Division.

Both institutions-the Commission and the Division-are now celebrating their 50th Anniversaries. And that of course provides a useful opportunity to take stock of where we are and where we are going. Others on this panel will have more to say about the Division, so I will confine my remarks to the Commission, since it is what I know best.

In the 50 years since the 1957 Act, the Commission has been renewed, reconstituted and remodeled several times. But certain things have remained the same. It still tackles controversial issues. And it still is made up of individuals with often sharply differing opinions.

We are particularly proud today of two things. First is our ability to do what might be called the basic research of civil rights policy. Each year, for example, we submit a statutory report to the President and Congress. This year, the report is entitled, "Becoming Less Separate? School Desegregation, Justice Department Enforcement and the Pursuit of Unitary Status." It tracks school districts that have been subject to court supervision for long periods of time as part of their process of desegregation. It attempts to answer questions like: How many school districts continue to be under court supervision? How many have persuaded their supervising courts that they have achieved "unitary status" and should returned to the control of the school board? How many have tried and failed to persuade their supervising court of their unitary status? How many have not tried? What happens to school districts when courts return authority to the school board? Do they re-segregate? What happens to those that remain under court supervision? Why do some school districts seek to get out from under court supervision and others not? All of this is valuable information for policymakers, no matter what their political persuasion. And if the Commission on Civil Rights were not doing it, it is very likely that nobody would be.

Somewhat less elaborate than our statutory report but nevertheless valuable in that they often bring the research of others to public attention are our briefing reports. Several of these are issued over the course of any given year. Recently, for example, we have issued reports on Affirmative Action in Law Schools, Anti-Semitism on Campus, and Disparity Studies as Evidence of Discrimination in Federal Contracting.

The second thing we believe that we are particularly well-suited to is independence. The civil rights revolution is no longer is its infancy. Both in and out of the federal government, some of the institutions that are dedicated to civil rights are getting a little long in the tooth. Many of these organization have made great contributions to the country in the field of civil rights-things for which they have every reason to be proud. But along with a large measure of success often can come a certain complacency, an unwillingness to change those things that aren't working and replace them with things that might work. Particularly when people believe that their jobs depend on doing business as usual, they can get a little set in their ways.

We on the commission have day jobs that don't depend on civil rights policy as usual. I for example am a law professor, several members are practicing lawyers, one is a tribal leader and one is a stay-at-home mother. That allows us some independence in outlook that many of those who work for the Civil Rights Division, the Office of Civil Rights at the Department of Education, the Equal Employment Opportunity Commission or any other arm of the federal government concerned with civil rights can sometimes lack. We like to think that on those occasions on which the Emperor has no clothes that we will be among the first to notice.

Finally, I would like to return to the passage of the 1957 Act and recognize the contributions of the many people who made it happen. President Eisenhower and Attorney General Brownell were clearly crucial to its passage. During his 1956 State of the Union Address, Eisenhower had called for the creation of a civil rights commission that would be charged with the responsibility of investigating charges "that in some localities Negro citizens are being deprived of their right to vote and are likewise being subjected to unwarranted economic pressures." Brownell's Department of Justice had drafted the original version of the bill. Senators Barry Goldwater, Hubert Humphrey, Jacob Javits and William Knowland were important supporters in the Senate and Representative Peter Rodino was important in the House.

Perhaps most crucial was then-Majority Leader Lyndon Johnson, who earned his reputation as Master of the Senate for his expert political maneuvering to get the bill passed in the Senate. To my knowledge, no one argues that the 1957 Act would have passed without Johnson's hard work.

But right now I would like to honor an unsung or at least a less-celebrated hero of the Civil Rights Act of 1957. Unlike Johnson, Eisenhower, Brownell or I suspect any of the members of the Senate who voted in favor of the Act, this gentleman, at the age of 92 is still very much alive and still part of the active teaching faculty at the university at which he works.

I first learned about his role while flipping through the pages of Robert Caro's biography of Lyndon Johnson, Master of the Senate. It seems that the bill was hopelessly hung up over an issue of remedies law. Some of the bill's most enthusiastic supporters were convinced that no Southern jury would convict anyone accused of interfering with a black man's right to vote. They were therefore adamant that the bill that should eliminate the right to jury trial for anyone accused of being in criminal contempt of an injunction issued pursuant to the Act. Other potential supporters were just as adamant the right to a jury trial in such situations must not be tampered with even if it means a less effective Act. If something wasn't done, there was going to be no bill at all.

Something was done. A law professor wrote a law review article that suggested a compromise: Don't eliminate the right to a jury trial in those criminal contempt proceedings in which it would traditionally have been available. But add a provision allowing the court to impose civil sanctions for contempt, since civil contempt proceedings traditionally do not carry the right to a jury trial. Lyndon Johnson latched onto the idea and persuaded his colleagues in the Senate that it would work.

That law professor was Carl Auerbach, then of the University of Wisconsin, later Dean at the University of Minnesota and now for over twenty years a distinguished member of the faculty at the University of San Diego, where he is my colleague. Professor Auerbach is University of San Diego's own little piece of civil rights history and I would like to pay tribute to him today.