

Testimony of

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TESTIMONY OF ROBERT N. DRISCOLL ON "THE FIFTIETH  
ANNIVERSARY OF THE CIVIL RIGHTS ACT OF 1957 AND ITS  
CONTINUING IMPORTANCE" BEFORE THE COMMITTEE ON THE  
JUDICIARY, UNITED STATES SENATE

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Thank you, Mr. Chairman and members of the Committee for the opportunity to discuss this important topic. 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 in the Civil Rights Division, which was created by the 1957 Civil Rights Act. During that time I worked on a variety of issues, including racial profiling guidance to federal law enforcement, school desegregation, and police misconduct investigations.

Today's panel is a distinguished one, and I look forward to hearing all of the panelists' perspectives on this important topic. I believe that every other panelist has, in some way, dedicated his or her career to the advancement of civil rights and for that I am both grateful and humbled. My own perspective is that of a working lawyer who spent several years in a leadership position in the Civil Rights Division - an institution for which I have the greatest respect. It is my experience doing my best to help manage the Division that provides the basis for comments on the Civil Rights Act of 1957.

As I reflected on the 50th anniversary of the passage of the Act, I was struck by several points. First, I was struck by the progress that this country has made over fifty years in living up to the ideals that inspired the Act. Second, I was struck by the role played by both the Civil Rights Division and the U.S. Commission on Civil Rights in not only carrying out the mandates of the 1957 Act, but eventually in expanding the protections of civil rights laws to persons and situations that would have been inconceivable in 1957. Finally, I was struck by how the 1957 Act can serve as an historical example of the role that can be played by legislation in changing the culture of a Nation for the better.

## Progress since the 1957 Act

Although the 1957 Act will likely be best remembered substantively for its provisions protecting Voting Rights, I think it also is properly viewed as a key building block necessary for the passage of the Civil Rights Acts of 1964 and the 1965 Voting Rights Act - much broader pieces of legislation. The institutions created by the 1957 Act helped to document discrimination in voting, public accommodation, and education (to name only a few areas of inquiry) and thus create the record on which future civil rights legislation was grounded. When one looks at the breadth and depth of racial discrimination in America at the time of passage of the Act, it is hard not to be struck by the racial progress that has been made in 50 years. I am almost reluctant to speak of progress for fear of being misinterpreted as saying that racial discrimination no longer exists (it does) or that there are not many areas where we as a society have fallen short of our ideals of equality among all men and women (we have). Nor do I mean to suggest that the gains that have been made were not hard fought, or that progress was not resisted every step of the way by some individuals and governments. However, I think there is no escaping the fact that the moral imperative of equal opportunity that animated legislation such as the 1957 Act has largely taken hold and been internalized by the vast majorities of Americans 50 years later.

To take an obvious example, efforts to desegregate school systems in the wake of Brown encountered "massive resistance" and spawned a wave of litigation by the Civil Rights Division and the NAACP Legal Defense Fund against

school boards to remedy the prior de jure segregated systems. 50 years later, it is the school boards themselves that are seeking to promote integration and diversity - so much so that the Supreme Court has ruled on the outer Constitutional limits on the steps districts can take to promote integrated settings for students. To be sure, I am certain some on this panel disagree with the Court's most recent ruling on this question, but I would submit that the fact of the litigation itself is a sign of progress. Litigation over whether school districts have gone so far in their efforts to promote an integrated student body that they have violated the Constitution is very different matter than litigation against recalcitrant school districts that had no intention of implementing Brown. Indeed, I think many of the Civil Rights Division lawyers who served immediately after the passage of the 1957 Act would have never guessed that 50 years later, a question before the Supreme Court would be whether the Louisville, Kentucky school district had been too aggressive in its efforts to integrate its schools.

#### The Role of the Civil Rights Division and U.S. Commission on Civil Rights

As I stated earlier, the creation of the Civil Rights Division at the Department of Justice and the U.S. Commission on Civil Rights were other key components of the 1957 Act. I am sure Commissioner Heriot will discuss the role of the Commission in greater detail, but the creation of institutions focused on civil rights issues has proven to be a great triumph of the Act.

The Civil Rights Division, which I am familiar with, still protects the right to vote, as envisioned in the 1957 Act, and even still enforces desegregation orders entered in the wake of Brown. In addition, however, the institution has grown throughout the years to do so much more. In my view, the existence of a law enforcement body focused on enforcing civil rights statutes has allowed Congress to expand civil rights protections. For example, today's Civil Rights Division enforces many statutes that were not even on the drawing board in 1957.

Today's Civil Rights Division enforces the Americans with Disabilities Act, statutes protecting religious freedoms, and a host of laws that prohibit discrimination in education, employment, credit, housing, public accommodations and facilities, and voting. On a daily basis, Civil Rights Division attorneys are engaged in activities such as prosecuting violations of human trafficking statutes; ensuring that places of public accommodation are accessible to disabled persons; and enforcing laws that prohibit acts or threats of violence that interfere with federally protected activities, such as voting. Thus, the 1957 Act was critically important because it put an institutional structure in place to address all of these issues. In my view, this paved the way for Congress to enact the broader protections of the Civil Rights Acts of 1964 and the 1965 Voting Rights Act, in addition to all of the other civil rights legislation that has since followed.

#### 1957 Act as Inspiration

Legislation changes the law. It cannot and does not in and of itself, change people's attitudes towards others or what is in their heart. Plenty of citizens were offended by the passage of the 1957 Act and their animosity was undeterred by the statute itself. However, legislation can be an important marker of progress as society grapples with civil rights issues, and those who seek to advance civil rights today can learn, from the 1957 Act, several important lessons. First, the Act was a compromise. It did not cover public accommodation discrimination, it was not as sweeping as some would have wanted, and, as evidenced by subsequent legislation, it was in historical terms, fairly modest. But as we all now recognize, it was an important first step, not a failure. Today's advocates can learn from this perspective as they press for new or expanded rights for fellow citizens and recognize that not all victories will be won in the first battle, nor will the first attempt to address a problem necessarily be comprehensive, but that does not mean even incremental progress is not worthwhile. Second, the Act set in place fact-finding capabilities, through the Commission, that could serve as the basis for future legislation, some of which, in retrospect, can be directly tied to the work of the Commission or the early work in the Civil Rights Division. These institutions, it turns out, were likely of more historical importance than the substantive provisions of the Act. Today's advocates should turn to these institutions to find the intellectual and factual underpinnings that will support tomorrow's legislation. Finally, apart for the mechanics of the legislation, the Act can serve as inspiration that attitudes and perceptions in the Country can be changed. It is hard to imagine, given the opposition by some to the 1957 Act, the unanimity today on the issue of equal rights today. There are issues today that seem just as intractable, just as controversial, and just as divisive as the civil rights struggle must have seemed to those who advocated for legislative change in 1957. The 50 years since the Act's passage serve as a reminder of what is possible.

