

REAUTHORIZATION OF THE CIVIL RIGHTS DIVISION OF THE UNITED STATES DEPARTMENT OF JUSTICE

HEARING

BEFORE THE

SUBCOMMITTEE ON THE CONSTITUTION

OF THE

COMMITTEE ON THE JUDICIARY

HOUSE OF REPRESENTATIVES

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REAUTHORIZATION OF THE CIVIL RIGHTS DIVISION OF THE UNITED STATES DEPARTMENT OF JUSTICE

THURSDAY, MAY 15, 2003

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON THE CONSTITUTION,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to call, at 3:05 p.m., in Room 2141, Rayburn House Office Building, Hon. Steve Chabot (Chairman of the Subcommittee) presiding.

Mr. CHABOT. The Committee will come to order. This is the Subcommittee on the Constitution. And as I mentioned before, Mr. Boyd, the votes on the floor have concluded for the week and attendance at the Committee meetings has a tendency to be a bit lower once the final votes have ended for the week, so please don't take that personally.

This afternoon the Subcommittee on the Constitution convenes to review the progress of the Civil Rights Division of the Department of Justice for the purpose of reauthorizing the Department.

Since its inception in 1957, the Division has sought to protect the civil rights of all Americans by enforcing laws prohibiting discrimination on the basis of race, sex, handicap, religion, and national origin. We are proud of the accomplishments of the Division in combating discrimination in areas as diverse as education, employment, housing, lending, public accommodations, and voting. Over the years, the Assistant Attorney General has played a crucial role in establishing Division policy and providing executive guidance and direction to further the important work of the Division.

Beginning in 2001, the Division added 52 new positions, which has allowed it to expand its work related to enforcement of the Americans with Disabilities Act, the Civil Rights of Institutionalized Persons Act, the Voting Rights Act, and its trafficking in persons program. As a result, the Division has opened 194 percent more CRIPA investigations than were opened in 1999 and 2000; the Division has charged, convicted, or secured human trafficking sentences at a rate that is at a 300 percent increase over the Division's related work in 1999 and 2000; the Division has twice as many pending human trafficking investigations than were pending in January of 2001; and it has more than doubled the number of formal settlement agreements reached under the ADA when compared to the last 2 years of the prior Administration.

Finally, on November 5, 2002, the Department of Justice sent 324 Federal observers and 108 Justice Department personnel to 26 counties in 14 States to monitor the general election. In addition, the entire Washington, DC, office was on standby to address any issues that arose, and the U.S. Attorneys offices across the Nation were instructed to field calls throughout the day. The Department's efforts to ensure that all Americans had access to the voting process during last fall's general election was its largest effort in 10 years.

I should also highlight the Division's ongoing work related to the terrorist attacks of September 11, 2001, and incidents of discriminatory backlash. Since September 11, 2001, the Division has investigated nearly 500 incidents of discriminatory backlash and has helped coordinate efforts leading to approximately 90 prosecutions initiated by Federal, State, and local prosecutors. Of the 13 Federal prosecutions initiated to date, there have been convictions of 15 defendants in 12 of the 13 cases. Indeed, Hussein Ibish, Communications Director for the Arab American Anti-Discrimination Committee called the efforts of Federal, State, and local law enforcement officials since the attacks "excellent," and characterized the investigations and prosecutions as "vigorous." Similarly, a report released by Human Rights Watch in November 2002 concluded that "in many cases, Government officials responded quickly and vigorously to the backlash violence."

I know that all the Members of our Subcommittee will have various questions regarding specific cases and policies. In fact, we plan to discuss the Division's extensive involvement in the patterns and practice investigation in my community in Cincinnati.

It is important for the Division to continue to play an important role in safeguarding the civil rights of all Americans. I look forward to examining the Division's work over the past year this afternoon. And I would turn now to Mr. Watt to see if he would like to make an opening statement.

Mr. WATT. Thank you, Mr. Chairman. I won't take the full 5 minutes, but I appreciate the Chairman convening the hearing.

I am anxious to hear the testimony of Mr. Boyd. And I am always anxious to hear what this Administration says it is doing in the area of civil rights because the perception in my community is that it has taken some major steps away from some important principles. So whatever I can be—whatever I can hear, particularly from my friend Mr. Boyd, that will help me to feel better about that; I want to be the first to hear. So I hope that he will make me feel better and that we can do something to address this perception in the minority community of this Administration's position on affirmative action and whatever is going on in Texas at this moment. I would especially like to hear something about how we got into another round of redistricting off the 10-year scheduled cycle. So if he could address those at some point, I would be delighted.

But I will be happy to yield back in the interest of time because I am going to have to get out of here at 4 o'clock to get to the airport. So I am going to give him the opportunity to say what he has to say rather than listening to me.

I yield back.

Mr. CHABOT. Mr. King or Mr. Jenkins, either of you gentlemen like to make a statement?

The Ranking Member, Mr. Nadler, is here. Jerry, would you like to make a statement? As Mr. Nadler is getting things ready up here, I will make the introduction and then we will turn to him if that is okay with you, Mr. Boyd.

Our witness today will be Ralph Boyd, Assistant Attorney General for the Civil Rights Division of the Department of Justice. Mr. Boyd is responsible for the Department's enforcement of the Nation's civil rights laws prohibiting discrimination on the basis of race, sex, handicap, religion, and national origin in areas that include housing, education, voting, employment, and public accommodation.

Prior to his appointment in 2001, Mr. Boyd served as a partner at the Boston firm of Goodwin Procter. From 1991 to 1997, he served as an Assistant U.S. Attorney in Boston, prosecuting firearms, homicides, trafficking, and gang violence cases. Mr. Boyd coordinated Operation Trigger Lock, a national gun crime prosecution program, and served as a member of the Department's Urban Anti-Crime Initiative.

Mr. Boyd is a recipient of the Attorney General's Special Achievement Award. He graduated from Haverford College and earned his law degree at Harvard University.

And we welcome you here this afternoon, Mr. Boyd. And before we get to you, I will turn to Mr. Nadler and see if he would like to make an opening statement.

Mr. NADLER. I would indeed. Thank you, Mr. Chairman.

I want to join you in welcoming today's witness and to commend you for scheduling this important and timely oversight hearing. The protection of fundamental civil rights is one of the hallmarks of the American experiment. Without effective protection of our civil rights, many Americans would remain consigned to the margins of our society and unable to fulfill the promise of this great Nation.

The ideal of equality and freedom has too often been more an aspiration than a reality for too many of our neighbors. Indeed the history of the United States is reflected in an ongoing struggle to make good on the promises made in the Declaration of Independence and the Bill of Rights for everyone. In fact, I would say the history of the United States is largely a history of the expanding understanding of that phrase in the Declaration of Independence where it says that all men are created equal. When it was written, the understanding was that "men" meant men. Women didn't have the vote, and no one expected them to. Certainly didn't mean black people. Certainly didn't mean Native Americans. Today, at least formally, we all acknowledge that it means black people, it means women, it means Native Americans, it means people of every color, creed, et cetera. We don't live up to that all the time, but at least formally we say we mean it.

It does not yet mean in the conceding of everyone gay, lesbian people, and transgendered people. One day our age will be looked upon as ancient and barbaric because we still haven't recognized that. But one day we will recognize that. The day has not yet come. It is still possible for Members of Congress not even to pay lip serv-

ice. It is possible for some Members of Congress not to sign statements that say they won't discriminate in hiring based on sexual orientation. But that day will be regarded eventually as a barbaric day, too, because the continuing expansion of our understanding of the meaning of the Declaration of Independence will continue is inexorable. And to make sure it is inexorable is why we are having this hearing today.

In advancing that cause, the Civil Rights Division has a crucial role to play in the enforcement of those rights under law. As such, the Division holds a sacred trust in the fulfillment of our Nation's core values. However, exercise of that trust is the subject of today's hearings. I look forward to the testimony and to the opportunity to engage in a dialogue with our witness.

And, again, I thank you, Mr. Chairman.

Mr. CHABOT. Thank you.

And before we go on, I would ask for unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and to include extraneous material.

And now we will turn to you, Mr. Boyd, and thank you very much.

STATEMENT OF HONORABLE RALPH F. BOYD, JR., ASSISTANT ATTORNEY GENERAL, CIVIL RIGHTS DIVISION, DEPARTMENT OF JUSTICE

Mr. BOYD. Thank you very much, Mr. Chairman. I appreciate the opportunity to be here.

Mr. Chairman, Ranking Member Nadler, and other distinguished Members of this Committee, thank you for inviting me to discuss the important work of the Civil Rights Division of the Department of Justice. I really do appreciate having the opportunity to tell you what the Division is doing, what it has accomplished, and of course to answer your questions about our work.

Now, I know that there may be individual issues in cases about which the distinguished Members of this Committee will have questions or concerns that they may wish to raise. And I look forward to addressing those concerns because as I have said many times before, I believe that the unvarnished record of the Civil Rights Division demonstrates its vigorous and, in many instances, stepped-up and, of course, even-handed and principled enforcement of our Nation's civil rights laws on this watch. And I hope the truth—maybe not necessarily me, but the truth of the Civil Rights Division's work—will give you, Mr. Watt, comfort and other Members of this Committee, as well as America's people, comfort about what we are doing and the vigor and commitment with which we are doing it.

Let me say something, though, at the outset, and that is that 99 percent of what we do, that is 99 percent of the hard work done by the lawyers in the Civil Rights Division, is never discussed, never heralded or criticized in the press, here or anywhere else, and that is simply because it is not controversial; yet that is very much the work—precisely the kind of work, the kind of vigilant civil rights enforcement that the American people and Members of this Committee expect of us.

I have said many times before that I am not a person who believes that the law and the facts are infinitely malleable. I believe and I think our approach bears this out. But I do believe that the law and the facts are discernible, the truth is discernible, and there are usually right answers and wrong ones, good arguments and weak ones, and that it is our job to get the right answers and make the right arguments.

We are lawyers for the United States, and that makes us different. As a consequence, our Nation's courts and the American people have a right to expect more of us. And I think that the way we are conducting ourselves and the vigor with which we are doing it and the principal approaches that we are taking vindicate the trust that is placed in us.

With that said, let me offer a brief summary of some of our work which reflects the extent to which the Civil Rights Division is doing as much as, or more in many instances, of the civil rights enforcement work of our Nation than ever before.

And here are some of the examples of what I am talking about. Since the beginning of our watch, our attorneys have opened—and you referred to this, Mr. Chairman—investigations of 37 nursing homes, mental health facilities, and jails for violating the constitutional rights of their patients or inmates. That number is an almost 200 percent increase over the prior 2 years. In fiscal 2002 alone, we pressed ahead with 173 cases from 33 different States. We have also charged, convicted, and secured sentences for 92 human traffickers in 21 cases for trafficking victims into the United States, a brutal crime marked by kidnapping, intimidation, assault, forced prostitution, and forced labor. That is a 300 percent increase over the prior 2-year period.

And we have twice as many current pending investigations as I sit here today than we had pending in January 2001. And I might also add that just recently our Civil Rights Division criminal prosecutors successfully completed a 3-month Federal court trial in the District of Hawaii involving over 250 trafficking victims, most of them vulnerable women from Indochina, China, and Vietnam.

We have also targeted employment discrimination by opening 65 new investigations in 2002, 14 more than in 2001 and 48 more than in 2000.

We are also targeting disability discrimination by more than doubling the number of formal settlement agreements reached under the Americans with Disabilities Act compared with 1999 and 2000.

Since January of 2001, we have received more submissions under section 5 of the Voting Rights Act than ever before. And I am happy to report that we never missed a deadline. And we have been vigilant in preserving the rights of minority voters, as the Voting Rights Act was intended to do. We have launched significantly more objections to voting changes submitted to us under the Act than were lodged in 1999 and 2000. And we litigated or opened five vote dilution cases in the last year alone on behalf of Hispanic, African American, and Native American voters.

And in the areas of housing, lending, and public accommodations, just in this past year alone we resolved the major redlining case in Chicago. That resolution resulted in a landmark settlement.

We have brought a number of exclusionary zoning cases involving racial discrimination and disability discrimination. And we successfully tried a sexual harassment case in Jackson, MS, involving a landlord who took advantage of and assaulted mostly African-American and poor women tenants. And we also settled, on very favorable terms, a case involving national origin discrimination against a major Midwest hotel for its handling of an Arab American businessmen's convention in the immediate aftermath of September 11.

These are just a few highlights of the work that we have done, Mr. Chairman and Members of the Committee.

And let me say a few words about our work with respect to the enforcement of our Federal criminal civil rights laws, especially in the context of the war on terrorism. I know that in the wake of September 11 and given the conflict in Iraq, many thoughtful people in our country have been concerned about our fellow citizens as well as welcomed guests to America who may be Muslim, who may be Arab, Sikh, South Asian, or who may appear to be Middle Eastern.

Since September 13, 2001, the Civil Rights Division has tracked and targeted what we have been calling backlash crimes, working with the 56 field FBI offices and the 94 U.S. Attorneys offices across America, and several hundred of the more than 18,000 State and local law enforcement authorities. And working with them, we have investigated nearly 500 incidents since September 11, ranging from the attempted fire bombing of a Seattle mosque to a conspiracy to blow up a Los Angeles area mosque, along with the district offices of one of your colleagues, a Palestinian-American Member of this body, to another conspiracy involving the stockpiling of weapons and explosives for the purpose of attacking a Florida Islamic community center, to an outright drive-by shooting and murder of an immigrant in the Mesa, AZ, area.

Through coordinated and combined efforts among Federal, State, and local law enforcement authorities, approximately 100 prosecutions have been initiated, and these prosecutions have proceeded in tandem with sustained outreach efforts to vulnerable people, and especially to vulnerable and insular communities across America after September 11, and also during the run-up to the Iraq war.

And just last February, while all of this was happening, our prosecutors, working with our other prosecutors from the United States Attorney's Office in Mississippi, convicted Ernest Henry Avants, a former member of the Ku Klux Klan, for killing an elderly African-American farm worker in 1966. Murder cases are often difficult to prosecute successfully when they are fresh, but a four-decade-old murder case presents difficulties and challenges of a whole other magnitude. But I am happy to say, I am gratified to say, that our people were more than up to it.

Mr. Chairman and Members of the Committee, we have been busy. Congress has been forthcoming with tools and resources, and I am pleased to be able to report that we have been putting them to good use. My hope is that this hearing today will help us do an even better job of that.

With that said, I thank you, Mr. Chairman, and I welcome the Committee's questions.

Mr. CHABOT. Thank you Mr. Boyd.
 [The prepared statement of Mr. Boyd follows:]

PREPARED STATEMENT OF RALPH F. BOYD, JR.

Chairman Chabot, Ranking Minority Member Nadler, and other members of the Committee:

Thank you for inviting me to discuss the important work of the Civil Rights Division of the Department of Justice. I appreciate the opportunity to tell you what the Division has accomplished, answer your questions about our work, and listen to your concerns about what I am proud to say is our even-handed, principled, vigorous enforcement of the Nation's civil rights laws.

Many offices in many agencies of the federal government handle what might be called civil rights issues, but only one office has as its sole mission the enforcement of federal civil rights laws across a broad spectrum of human activity. We are the ones who prosecute federal bias-motivated crimes; who enforce the federal voting rights laws; who fight discrimination in education and employment and housing; who target state-run nursing homes and mental health facilities that mistreat their patients.

It is a constant, vigilant effort; and it is my unique privilege to lead that effort, to serve as the Assistant Attorney General for the Civil Rights Division. I truly believe that the laws enforced by my Division reflect nothing less than America's highest aspirations: America is a place that, more than anything else—and more than *anywhere* else—cherishes the individual's right to find happiness, to find fulfillment, be that fulfillment physical or mental, material or spiritual. And the core underpinning of that highest priority, the central guarantee that each of us will, in fact, be free to pursue our dreams, is *equal justice under law*. That is laws that do not favor one race, one ethnicity, or one religion at the expense of another; laws that protect the vulnerable and the weak.

We have those laws. It is my great privilege to enforce them. And those laws, enacted again and again by a democratically chosen Congress, reflect a people concerned not just with protecting their own individual liberties, their own chances to succeed, but who have taken up the cause of their fellow man, and so are willing to protect the liberty of those *who are different from them*.

Justice Charles Evans Hughes once said, "While democracy must have its organizations and controls, its vital breath is individual liberty." He was right—anyone who doubts it should spend a few days in any of the litigating sections in my Division. What they would find is civil rights law enforcement conducted with *professionalism* and *integrity*.

Those are my watchwords. I came to this job as a former prosecutor and experienced litigator and, as my staff is sick of hearing, what I do is call balls and strikes—decisions in my Division are made based on the law and facts relevant to a given situation, and without regard to politics. The Civil Rights Division carries out its enforcement mission in a way that is faithful to the law and the factual truth as we find it. I will not budge from that principle, ever. And because of that, I stand behind every decision this Division has made since I arrived nearly two years ago.

I know there are individual issues, individual cases, about which the distinguished members of this Committee will have questions. I look forward to addressing them. But let me say something at the outset: 99 percent of what we do, 99 percent of the hard work done by the lawyers in my Division, is never discussed—never heralded or criticized, in the press, here, or anywhere else—simply because it is not controversial. Yet all of that work is precisely the kind of vigilant civil rights enforcement that the American people and this Committee expect of us.

Let me briefly summarize just some of it, to give it a fraction of the credit due to the hard working attorneys in the Division. The lawyers in the Civil Rights Division are doing more—and more aggressive—civil rights law enforcement today than ever before.

- Since the beginning of this administration, our attorneys have opened investigations of 37 nursing homes, mental health facilities, and jails for violating the constitutional rights of their patients or inmates. That number is a 194 percent increase over the previous two year period. In fiscal 2002 alone we pressed 173 cases in 33 states.
- We have charged, convicted, or secured sentences for 92 human traffickers in 21 cases for trafficking victims into the United States—a brutal crime marked by kidnaping, intimidation, assault, forced prostitution and forced labor. That is a 300 percent increase over the prior two-year period, and we have twice

as many currently pending investigations now than we had pending in January of 2001.

- We have also targeted employment discrimination, by opening 65 new investigations in 2002—14 more than in 2001 and 48 more than in 2000.
- We are also targeting disability discrimination by more than doubling the number of formal settlement agreements reached under the ADA, compared with the last two years of the prior administration.
- Since January of 2001, we've received more submissions under Section 5 of the Voting Rights Act (VRA) than ever before, and we've never missed a deadline. And we have been vigilant in preserving the minority voting rights the VRA was intended to protect: we have lodged significantly more objections to voting changes submitted to us under the Act than were lodged in 1999–2000. And we have litigated or opened five vote dilution cases in the last year alone—on behalf of Hispanic, Black and Native American voters.

These highlights are just a sampling.

Finally, I would like to report on our efforts in an area that has been on the minds of many both in government and the general public over the last two years, and that is the treatment in this country, in the wake of September 11, 2001, and the war in Iraq, of Arab, Muslim, Sikh, South Asian, and other Americans who may appear to be of Middle Eastern origin. Since September 13, 2001, my Division has tracked and targeted what we have been calling “backlash” crimes. Working with the 56 FBI field offices, the 94 US Attorneys Offices, and state and local authorities, we have investigated nearly 500 incidents since September 11, ranging from the attempted firebombing of a mosque to outright murder. Through coordinated efforts among federal and state authorities, approximately 90 prosecutions have been initiated by federal, state and local prosecutors.

These efforts have borne fruit. Of the 13 federal prosecutions initiated to date, we have achieved convictions of 15 defendants in 12 of those 13 cases.

- Most recently we secured pleas in a Florida case in which a defendant was stockpiling weapons and explosives to launch an assault on a local Islamic community center. That individual pleaded guilty to conspiracy, attempting to damage religious property, and possession of unregistered firearms. We hope to secure a substantial prison term.
- In another recent case, a member of the Jewish Defense League (JDL) was successfully prosecuted for his role in a conspiracy to bomb a mosque and the field office of one of your colleagues—Congressman Issa. Earl Leslie Krugel pled guilty on February 4, 2003, to charges of conspiring to violate civil rights, conspiring to harm a federal official, and bomb making activities. Using an informant within the JDL, the FBI monitored several discussions among Krugel and others in which they discussed destroying mosques and other Arab-American institutions. Sentencing has not yet occurred, but Krugel faces a mandatory minimum of 10 years in prison on weapons-related charges.

These prosecution efforts have proceeded in tandem with sustained outreach efforts to communities affected by these crimes. There is much anxiety in our Arab-American communities about these backlash incidents and the overall war on terrorism, and we consider it a priority to reach out to these citizens, allay fears, and dispel the chronic rumors and misinformation surrounding our anti-terrorism efforts. I have personally spoken out—over 30 times—in closed door sessions, in mosques, in town hall meetings across America against violence and threats aimed at vulnerable people and affected communities. My senior staff has added to this total, as have numerous other representatives from the Department. Overall we have covered more than 250 public gatherings over the last two years to discuss publicly the concerns of Americans of Middle Eastern origin.

The Civil Rights Division also coordinates these activities with other Department of Justice components including the Community Relations Service (CRS). It is worth noting that CRS initiated an extensive national outreach program, meeting over 250 times with national and local Arab-American, Muslim-American, Sikh-American, and South-Asian American leaders throughout the country; and deployed conflict resolution specialists to more than fifty communities to alleviate racial tensions and address acts of violence against such groups. The Division is proud to fight such backlash crimes alongside other professionals within the Department, such as CRS.

CONCLUSION

Chairman Chabot, Ranking Minority Member Nadler, I've been litigating cases for the better part of two decades, both as a prosecutor and as a private lawyer. I can tell you that the quality and quantity of civil rights enforcement work coming from the Civil Rights Division, during the almost two years I have been there, is exceptional by any reasonable measure, and lately, with these efforts has come vindication.

Last November, because of the leadership of Attorney General Ashcroft and the efforts of our Voting Rights Section and U.S. Attorney's Offices across the country, we had the most trouble-free nationwide election in recent memory.

In February, we convicted Ernest Henry Avants, a former KKK member, in federal court in Mississippi, for killing an elderly African-American farm worker in 1966. Avants, with two others, lured Ben Chester White into a forest, shot him multiple times, and threw his body off a bridge. All because the man was black. Unfortunately for Avants, that forest was federal land, and federal prosecutors in my Division finally were able to bring justice where it long had been denied.

Also in February, in Hawaii, after a three month trial, we won a jury verdict in the largest human trafficking prosecution ever attempted, on behalf of 250 victims from China and Vietnam who were enslaved in a garment factory on American Samoa.

In March, we won a federal injunction barring a Massachusetts public school from suppressing religious speech by its students.

On March 31, the United States Supreme Court validated, in all respects, the Division's handling of the Mississippi congressional redistricting submission.

In April, working with the U.S. Attorney's Office in Boston, we won a hard fought case to require stadium-style movie theaters to comply with the wheelchair accessibility requirements of the ADA.

But even with these victories, we can always do more, and I am committed to doing more. I am reminded almost every day that ordinary citizens look to this Division for help—for vindication—be it for a racially-motivated murder 40 years ago, or for equal voting rights today.

I hope that today's hearing will help our effort. Thank you for permitting me the opportunity to appear before you, and I look forward to answering your questions.

Mr. CHABOT. The Members will now have 5 minutes to ask questions, and I recognize myself for that purpose. And I thank you for being here this afternoon.

I would like to start by raising a couple of issues related to the Justice Department's patterns and practices investigation, as I mentioned before, and the ensuing agreement in Cincinnati. As you know, many in Cincinnati have become disillusioned by the agreement and the mandates being required of the police. Much of this comes from what we are witnessing on the streets every day. This year, Cincinnati is on a pace to have over 80 murders, more killings than at any time in our city's history. This follows 64 homicides in 2002, and that was a 15-year high, surpassing the 63 people killed the year before in 2001, and that was the year that the riots unfortunately occurred in our community. All of this has occurred during a period in which the city's population has declined.

These murders are becoming increasing brazen. Earlier this month, a shootout took place on Fountain Square, the symbolic heart of the city. It occurred on a Friday night when the square was crowded and a neighboring restaurant was bustling with activity, and one man was killed in the shooting. Fortunately, no one else was injured although many innocent bystanders were forced to run for cover to avoid flying bullets.

The violence has also reached into almost every neighborhood in our city. In mid-April, two individuals started shooting at each other from opposite sides of Harrison Avenue. And that is in one of the city's busiest arteries. This occurred in the residential neighborhood where I happened to have lived and raised my family. I

lived there for over 40 years myself. This is unheard of, this type of thing.

Despite the best efforts of our local police, we have witnessed a breakdown in law and order during the past 2 years. Not coincidentally there is growing sentiment that the agreement with the Justice Department may be contributing to this dangerous situation. Yet despite these dangerous trends and the concerns in the community, it appears that DOJ is seeking to put additional restrictions and mandates on the police.

Over the past 2 months, I have had several discussions with Cincinnati police leaders who are very concerned over these mandates. One specific concern the police have relates to some of the changes in the canine policy, which they feel will put the police and the dogs at unnecessary risk.

But of greater concern has been the DOJ's proposed implementation of the "hard hands" reporting policy, which I am told is being interpreted so broadly as to require a use-of-force investigation for every instance of physical contact between officers and citizens, including incidents as minor as grabbing the arm of an disorderly suspect. My understanding is that it can take as long as 2 hours to compile the necessary information and complete the paperwork to meet these requirements, and it requires the involvement of a supervisor. That is 2 hours that those officers are removed from their jobs protecting the streets of Cincinnati to instead fill out paperwork.

At a time when the murder rate in Cincinnati is at a record-breaking high, it is imperative that the police are allowed to do their jobs and not be unnecessarily burdened. The people rely on our police force to have a presence in our city and to ensure the citizens' safety.

And I have a couple of questions related to this. First, could you explain the dramatic rise of the murder rate in Cincinnati over the past 2 years, and do you think that the Department of Justice's implementation of a patterns and practices investigation could have contributed to that increase?

Mr. BOYD. Thank you for the question, Mr. Chairman, and thank you for giving me an opportunity to talk about Cincinnati because I think it is a case that America has looked to.

As the Chair knows, law enforcement folks have a tough job. And our police officers, especially those who are assigned to the urban centers of America, have an especially tough job to do. We ask a lot of them. The challenges are great. And by and large, the overall preponderance of officers do an excellent job of effectively policing our cities in other areas of America, and very often they do it quite heroically and often far from the public limelight. So I want to recognize that. I think it is important for us to understand that.

Having said that, one of the great things we asked them to do is to do an effective job of policing, in making America and Americans and visitors to America safe, but doing it within the rules. The Attorney General said on many occasions when it comes to effectively policing and making America safe, we are to think outside the box and do everything we can to make that a reality, but we can never think outside the law or the Constitution and that is true for all of America's law enforcement officers.

Let me say this specifically about what you described as an elevation in the violent crime situation in Cincinnati over the course of the last couple of years.

Mr. CHABOT. I hate to interrupt you, but I ask unanimous consent for an additional 3 minutes. But my principal question—

Mr. WATT. Mr. Chairman, I don't want to object, but I am wondering if we could do the first round and then go back because some of us have to leave. And if the people who are early on—I am not objecting.

Mr. CHABOT. I will try to keep it within 3 minutes, but let me ask you if you could restrain it. Do you think there could be a relationship between the agreement and the increase in the crime rate and homicides specifically?

Mr. BOYD. I don't think there is, Mr. Chairman. Or let me say this: There shouldn't be.

And let me also say this about the agreement, because you were concerned that the Department of Justice had been insisting on things that were much broader than what was agreed to in the memorandum of agreement between the Justice Department and the city. Let me say this very clearly. What we have called upon the city to do is what is clearly and I think inarguably required for it to do under the explicit terms of the MOA. We enter into those MOAs based on substantial findings that we make, and we did that in this case.

Now, there are some concerns at the implementation stage that some of the things that the city agreed to that we talked about in great detail in negotiations are more burdensome than they thought. And what we have said in every one of these instances is we don't think these are unduly burdensome requirements. Some of them, including the "hard hands" reporting policy that you talked about, are done in other cities and we haven't received complaints about it.

But the agreement provides for a process for seeking modification. If you want a modification, you have to ask. And if they ask, we will consider it in a timely and prompt and fair way. And in fact, on that issue of "hard hands" reporting, my deputies met yesterday with the city, along with the monitor, Saul Green, and that issue was easily resolved. So we think the agreement—everything in the agreement—is clear.

What we have insisted the city to do is to live up to its word as set forth in the agreement. And where there are instances of disagreement or where the city thinks there needs to be a modification, there is a process for doing that, and we will be fair in our consideration of that process.

But as I sit here today, I am happy to report that my understanding is that all of the outstanding issues are resolved on use of force, on reporting, canine policy, and the rest. As I sit here, my understanding is that there is no disagreement between any of the parties with respect to what the agreement requires.

Mr. CHABOT. I think I have 1 minute left, and let me make sure I specifically hear you. Relative to the "hard hands" policy, you met with them and you were willing to discuss some alternatives to that. And I think one of the problems was this, to go right to the agreement: the term "hard hands" means using physical pressure

to force a person against an object or the ground, or the use of physical strength or skill that causes pain or leaves a mark. And my understanding is they were being told that virtually any contact with the hands would require additional reporting. And their big concern is when you are filling out paperwork, you are not out on the street protecting the public. And I think what we want to be sensitive to and concerned about is that we have the police on the streets as much as possible, keeping the public safe, not just filling out paperwork.

Mr. BOYD. Mr. Chairman, I can take 30 seconds. Certainly, we understand that. However, there were issues with respect to the use of force in Cincinnati. That provision didn't make its way into the agreement because it was boilerplate. It was there because it was carefully calibrated to respond to specific aspects of the investigation, a very careful and thorough investigation we did there.

I am happy to say, one of the things we asked the city during the negotiations: Do you want to have a sliding scale with respect to the extent of investigation depending on the modicum of force that was used? In other words, you don't necessarily have to use the 2-hour process for an officer pushing somebody. You don't have to do the same level of investigation you would do with the use of deadly force. And that was rejected during the negotiation. The city said no. We are fine with the 2-hour process that we use and we will use it across the board.

Now, in the implementation stage—and I should tell you that the city responded to their requirements to provide revised policies that reflected the policies set forth in the MOA—the city was supposed to have done that by last July. And as of April of this year, they still hadn't done it. So part of it is all of these things can be taken care of at the table with cooperation and communication, but what you can't do is agree to something that is specifically an agreement—it is very clearly set forth in the agreement—not do it, and complain about it without raising a request for a modification.

When that was done here, because the city thought that this was too burdensome, we entertained the modification. We met at today's meeting, and I understand that there is full agreement between the parties with respect to what the MOA requires and what the city will do forthwith.

Mr. CHABOT. Not to cut you off, but my time has expired, and it is my understanding that the minority side would like to recognize Mr. Watt. So he is recognized for 5 minutes.

Mr. WATT. I thank the Ranking Member for deferring to me in the interest of my being able to catch a flight.

Mr. Boyd, are you familiar with the voting rights section 203 complaint filed by Texas State Representative Raymond?

Mr. BOYD. Yes. I believe it was filed and then withdrawn.

Mr. WATT. The question is, did you or any person in the Civil Rights Division or any other person in the Department of Justice speak directly with Congressman DeLay or any member of his staff about this complaint?

Mr. BOYD. As far as I know, Representative Watt, absolutely not.

Mr. WATT. What is your Department's policy about section 203 complaints with Members of Congress?

Mr. BOYD. When we receive a complaint and we are investigating a particular complaint, we try very hard not to have discussions with anyone except folks who have material information to provide with respect to the complaint.

Mr. WATT. It is possible that a Member of Congress could have material information?

Mr. BOYD. And we would want to hear from them.

Mr. WATT. Do you know if Mr. DeLay had any material information for anybody in the Department on this complaint?

Mr. BOYD. I do not know that he did, but I certainly know that my Division, as far as I know, didn't have any contact with him whatsoever, directly or indirectly.

Mr. WATT. There was some notion that your Department would have the capacity to turn this complaint around in 2 or 3 days. I understand that the staffing level in the voting rights section has been reduced; is that correct or is that incorrect?

Mr. BOYD. I don't know that it has been. I know that certainly at some point in the near term, Congressman, it would make sense to start to think about reallocating some of those resources because, as you know, there isn't as big a demand for human capital in the voting section.

Mr. WATT. I understand. I am trying to find out if you have reduced it already, and how you would have, in light of that, been able to respond so quickly to the complaint.

Mr. BOYD. To my knowledge, we have not reduced our resources. The voting section staffing has not been reduced. And there is no resource issue that I know of that would have affected our capacity to investigate promptly and make a decision promptly on a 203 complaint.

Mr. WATT. What is the Civil Rights Division's role, if any, in what is going on in Texas?

Mr. BOYD. To my knowledge, at this point we have no role. If there were a redistricting plan submitted, Texas is certainly a covered jurisdiction, at that point we would do a section 5 preclearance review. But certainly with nothing having been submitted to us, as far as I know, we have no role. As far as I know, there isn't any complaint that is pending before us that would give us jurisdiction in any other way under the Voting Rights Act.

Mr. WATT. A little over year ago, I guess it was in May of last year in testimony before the Senate Judiciary Committee when you were talking about racial profiling, you told the Committee that the Attorney General, quote, "The Attorney General has been very clear in saying not only is it wrong but it is unconstitutional, and he has tasked Deputy Attorney General Thompson with the responsibility of reviewing and studying the issue in the context of Federal law enforcement with an eye toward us providing some useful guidance about the ultimate elimination of racial profiling."

I am just wondering where that guidance is a year later so we can get on with this.

Mr. BOYD. Let me answer the question this way. We have been diligently and steadfastly—when I say "we," I mean my office and the Deputy Attorney General's office—doing precisely what I said I would do. And certainly it is my hope and aspiration and, I even

daresay, my expectation that we will be heard from in the near term with respect to both the report and guidance.

Mr. WATT. In May 2004, I won't have to ask this question again.

Mr. BOYD. If you have to ask that question in May 2004, I will feel very badly about it and be enormously disappointed.

Mr. CHABOT. The gentleman's time has expired. The gentleman from Iowa is recognized for 5 minutes.

Mr. KING. Thank you, Mr. Chairman, and I thank you for holding this important and timely hearing.

Mr. Boyd, I appreciate your testimony and your responses to our collective inquiries. I would just start right off about how you have gone through a list of some of the things that you have been doing with regard to civil rights. And I would say in this fashion, have you investigated or taken any action against anyone in America who was a target by a—by a minority? In other words, when it works the other way? Is any of that going on?

Mr. BOYD. I can't think of a specific case in which we have done that, but I would imagine in the several hundred cases that we have done, there may well be one of those cases.

Mr. NADLER. Would the gentleman yield? There was a conviction in Federal court yesterday in New York City on such a case.

Mr. BOYD. The answer would be yes. It would be the Nelson case. There was a second verdict returned in the U.S. District Court in the Eastern District of New York finding Mr. Nelson, an African American young man, guilty of a section 245 violation, guilty of violating the civil rights of a young Jewish student who was killed during a disturbance, now about 3 or 4 years ago.

Mr. NADLER. Twelve years ago.

Mr. KING. I thank the gentleman from New York for that information. And it is somewhat of an old case, but I think it does illustrate that they are extremely rare. And I think often we don't focus on the balance of this, which is why I asked the question.

And with the discussion on profiling and racial profiling with regard to police work, would you define the difference between good police work and racial profiling and what types of profiling are permissible under the guidelines that you are operating under?

Mr. BOYD. I don't want to get ahead of myself, but let me say this. I would offer this kind of broad outline. It seems to me that in the context of routine law enforcement, things like traffic stops, motor vehicle contacts between police and citizens, that the use of race would be inappropriate, with some exceptions. One of the clearest exceptions would be a situation where there is a suspect-specific description that may include race among other descriptive elements. In the context of ongoing investigations of criminal or terrorist enterprises where there is very good, trustworthy, reliable information that the enterprise—that the criminal enterprise or the terrorist enterprise—is of a particular ethnic or racially religious character; that is, its membership, its known membership, the use of race may be appropriate in that instance. But in the overwhelming number of circumstances where there is routine law enforcement, the use of race absent some specific, trustworthy information about a suspect would be generally inappropriate. In other words, it would be inappropriate to use race as a proxy for enhanced criminality.

It is a different situation when there is specific information of a racial or ethnic character that is part of a description. But generally, to stereotype, to use race as a proxy to assume that someone may be more or less likely to commit a crime, would be inappropriate.

Mr. KING. And that analysis would apply as well to our security, particularly the airline security?

Mr. BOYD. In the national security context—and I want to be careful because I don't want to jump ahead of ourselves—we will be speaking with some clarity about this, as I said, in the relatively near term. Where national security is involved, the Constitution, it seems to me, would be the limit with respect to what is appropriate for law enforcement to do.

Mr. KING. In the broad outline in the statement, profiling is wrong and unconstitutional; that was brought out in a remark here by one of my colleagues, I will just point out a little vignette that sticks in my mind. And that is, as I watch a young Arab male walk through the security of the airport while a 75-year-old lady is taking her shoes off and she is going through the searching process, and I wonder how many times that multiplies itself over and over again, while we slow down and spend billions of dollars trying to reach some kind of a utopian version of—I will say—nonracist, non-biased perfection. Would you comment on that, please?

Mr. BOYD. I will say that this Congressman—I have heard that sentiment myself, given that I fly often several times a week. I have probably been through as many airports as anyone and taken off my shoes and belt as often as anyone. Let me say that I think the TSA, I think our Transportation Security folks are doing a very good and effective job under very difficult circumstances. I think the parameters that they are using to figure out, to make some thoughtful assessments, some fair and thoughtful assessments about what passengers should get additional scrutiny and under what circumstances is working well, and I would be reticent to really complain about it.

Mr. KING. I am out of time. Mr. Chairman will we have a second round?

Mr. CHABOT. We are not planning on it. The gentleman is granted an additional minute if he wants to make another point.

Mr. KING. I have far too many to make.

Mr. CHABOT. Gentleman from New York, Mr. Nadler, is recognized for 5 minutes.

Mr. NADLER. Thank you. I have a number of questions—are we going to have a second round? Well, let me ask you first, in terms of the voting rights coverage of the Department, last year the State courts in Mississippi adopted a reapportionment case submitted for section 5 preclearance, and the Department had 60 days.

You mentioned that you always meet your deadlines. The Department waited 58 days and then asked questions, this after the Ranking Member of this Committee and I had both sent a letter asking the Department to do this quickly because time was fleeting. The Department wasted or spent 58 days, asked questions, and tolled the clock. It then became impossible to meet the deadline and the Federal district court took the reapportionment plan that had been decreed by the State court and threw it out the win-

dow, since it hadn't been precleared in time, and adopted its own plan, which had a much smaller percentage of minorities in the district at issue, and it was a great disadvantage to the Democrats—which some people suspect may have been the motivation of your Department in the first place.

My questions are twofold, and please answer quickly because I have more questions.

Did you ever issue a decision saying that the plan adopted by the State court was okay or not, or was that mooted by the fact that you wasted enough time so the Federal court took it out of your hands?

And second, why—what evidence can you give that this was not politically motivated in order to kill a more Democratically oriented redistricting than the Federal court was likely and in fact did subsequently? Why shouldn't we be suspicious of the Department's motivation? Did you ever approve or disapprove the State plan?

Mr. BOYD. We did not. As the Congressman I think knows, that plan was struck down as unconstitutional. That case was argued before the Supreme Court. The Supreme Court upheld—

Mr. NADLER. It was not struck down as unconstitutional. It was said that it hadn't been precleared in time and therefore the Federal court had the right to come in with its own. The Supreme Court did not rule on the constitutionality of the lower court.

Mr. BOYD. If I can be clear, Congressman, the three-judge Federal court in Mississippi declared the plan that was sent to us for section 5 preclearance unconstitutional under article 1, section 4, of the Constitution. And it made its ruling nunc pro tunc, which means it was constitutional—excuse me, it was unconstitutional when conceived, unconstitutional when entered by the chancery court.

Mr. NADLER. Correct me if I am wrong, my recollection is it was thrown out because it hadn't received timely preclearance.

Mr. BOYD. That is not correct.

Mr. NADLER. What were the constitutional grounds—

Mr. BOYD. That it violated article 1, section 4, which says the legislatures of the several States are responsible for redistricting in the first instance, and not anyone else.

Mr. NADLER. And therefore the Federal courts can redistrict but the State courts can't?

Mr. BOYD. The Federal courts can when there is a defect in something that the legislature does. So it is a power that the Constitution in article 1—

Mr. NADLER. So State courts anywhere can no longer redistrict.

Mr. BOYD. No. No. The State courts can pass on the propriety of what the legislature does.

Mr. NADLER. If the legislature fails to act, the State courts cannot draw their own plan anymore?

Mr. BOYD. All I can tell you is what the three-judge panel said in that case.

Mr. NADLER. All right. Let me change the subject.

Today's New York Times has an editorial saying in part, for a year and a half, the United States has held hundreds of people captured during the war in Afghanistan as prisoners at Guantanamo Bay, without access to family, lawyers, or any semblance of due

process. That does not alter the fact that the detentions insult some of our most cherished ideals and harm our national interests.

The Department of Defense has held 600 prisoners, some as young as 13. They have been declared unlawful combatants in order to deny them the protection of the Geneva Convention. They have been incarcerated at a naval base in Cuba to put them beyond the reach of the law. A Federal court of appeals, I think it was, said that the American courts have no jurisdiction because this is, after all, in Cuba.

So the Administration seems to have put these people in a place where the Federal courts have no jurisdiction, they have no access to lawyers, they have no rights whatsoever, no habeas corpus. Presumably they can take them out and shoot them, and no court could say otherwise because the American courts have no jurisdiction.

When is the Administration—what do you say about this clear denial of our traditions of civil liberties, and when is the Administration going to either fish or cut bait, charge these people with a crime or release them?

Mr. CHABOT. The gentleman's time has expired. But I think in fairness, I gave myself 3 minutes, so I am going to give the gentleman an additional 3 minutes.

Mr. BOYD. My answer is that they are combatants. And the history of the rules of war, international law, domestic law, is that foreign combatants are not entitled—

Mr. NADLER. History is they should be declared prisoners of war or given due process. Never heard of this "combatants" until this Administration.

Mr. BOYD. They are combatants. They can be detained during the pendency of the conflict. They do not have access to the courts of the country detaining them. There is not, as far as I know, any civilization or society in our history—

Mr. NADLER. Excuse me. What you are saying applies to prisoners of war. The Administration is saying they are not prisoners of war.

Mr. BOYD. Unlawful combatants don't get treated better than prisoners of war.

Mr. NADLER. Doesn't international law require an individual hearing?

Mr. BOYD. I am not an expert on international law, but I can tell you this: they are being kept completely consistent, as I understand it, with the mandates and requirements—

Mr. NADLER. How do we know that the Administration is telling the truth when it says that, since no one else can inspect them, since the courts can't hear evidence of that?

Mr. BOYD. As far as I know, and again I am probably not the best person to direct these questions to, but as I understand it, there have been a number of inspections of the conditions of the confinement of the unlawful combatants.

Mr. NADLER. By whom?

Mr. BOYD. By a number of nongovernmental organizations.

Mr. NADLER. By the International Red Cross.

Mr. BOYD. I am not the person to ask, Congressman.

Mr. NADLER. Let me change the subject.

Mr. CHABOT. Will the gentleman yield for just one moment? A bipartisan group of Members of Congress went down to Camp X-Ray, including myself and a number of Democrats, and we are not experts in this as well, but we did look at the conditions. There were some concerns about that, and none of us had any great concern.

Mr. NADLER. Reclaiming my time. What bothers me about this is this whole doctrine of unlawful combatants is a brand new doctrine and we have never heard of it until this Administration. And as far as I can tell under this law, they can take them out and shoot them, and no court would have jurisdiction to object.

Mr. BOYD. That would violate clear international law.

Mr. NADLER. As does everything else about this. I have an additional question.

Mr. BOYD. There are principles regarding unlawful combatants. And all of these people being detained, as I understand it, fits.

Mr. NADLER. I have to ask you the other question. With respect to the Administration in this country is holding people in detention without trial, denying access to attorneys, inventing the doctrine of unlawful combatants, the Administration has made a claim—forget the people in Afghanistan. But with respect to one person picked up in the United States, an American citizen, the Administration claim which it has advanced in a court of law is that the President, on his own say-so—realistically on the say-so of some bureaucrat below him, because obviously he doesn't investigate the case—but the President on his own say-so can declare any American citizen an unlawful combatant; that the courts have no jurisdiction to question the President's determination; that an unlawful combatant has no right to habeas corpus, no rights whatsoever, and presumably he can be held in jail forever incommunicado based on that.

Seems to me that that is a claim that no one in an English-speaking jurisdiction has made since before Magna Carta and rebelled against George III, not the current President, but against George III for claims much less deleterious to the civil rights than that.

Mr. CHABOT. Gentleman's time has expired but the gentleman has an opportunity to answer.

Mr. BOYD. The Padilla case and the Hamdi case, the Padilla case in the Southern District of New York, the Hamdi case in the Fourth Circuit, have both been resolved by those courts. And the Fourth Circuit has said, upon a designation of someone as a combatant, supported by certain modicum of evidence, which the court reviewed in camera, is sufficient for the detention you referred to.

In the Padilla case, the court did an in-camera review of the evidence supporting the certification of Mr. Padilla as an unlawful combatant and found it sufficient for his detention and also gave Mr. Padilla counsel to assist him in challenging the bona fides of that certification.

So that is what actually happened. I heard what you said, Congressman, but that is what happened.

Mr. CHABOT. The gentleman is given 1 additional minute.

Mr. NADLER. I will be very brief.

Pursuing that point, the court in New York in the Padilla case—I am not concerned with the Hamdi, since he wasn't captured in

the United States—in the Padilla case, the court said that someone could be declared an unlawful combatant on some evidence which is much less than probable cause.

Is it the Administration's view that the writ of habeas corpus and that our liberties can be thrown away forever on some evidence? In other words, a jilted girlfriend tells the FBI agent that you are an unlawful combatant, and in camera that is some evidence, and you have no right to an attorney and you could be held in jail forever because of that?

Mr. BOYD. Congressman, I am not the person responsible for articulating the Administration's or the United States' position with respect to that issue. But let me just say this. One of the great things about America is that at the end of the day the courts decide, and that is what happened in the Padilla case and that is what happened in the Hamdi case, and both courts found the certification, in both of those cases, the unlawful combatant certification, and the supporting evidence was sufficient to allow the detentions to go forward.

Mr. NADLER. The standard was some evidence instead of probable cause.

Mr. BOYD. The court decided, not the Administration, on its own. The executive branch—what we do gets reviewed by an independent judiciary. That is one of the brilliant features of our constitutional democracy.

Mr. CHABOT. The gentleman's time has expired. The gentleman from Michigan, Mr. Conyers, you are recognized for 5 minutes.

Mr. CONYERS. Thank you, Mr. Chairman. Before I begin, could we review the determination of the Chair that we are going to end after my discussion?

Mr. CHABOT. Yes, it is.

Mr. CONYERS. I said can we review it.

Mr. CHABOT. Can we review? I know a number of Members, including myself, have flights after this Committee hearing. We will certainly give the gentleman leeway if you need additional time.

Mr. CONYERS. Well, here is the problem. Everybody is flying out, but this hearing was scheduled from 3 o'clock to 5 o'clock and it is a few minutes after 4. I can't presume that the Chair was going to leave—

Mr. CHABOT. What request is the gentleman making? If you have questions, we will give you leeway.

Mr. CONYERS. Just a moment, sir. What I am leading up to is that every Member of the panel has asked if there would be a second round. And the hearing is supposed to go from 3 o'clock to 5 o'clock, as you have indicated. And it is about 5 minutes after 4. Do you get it?

Mr. CHABOT. If the gentleman wants to have a second round, we can go ahead and consider it.

Mr. CONYERS. That is what I want you to consider because everybody here has already asked.

Mr. CHABOT. If the gentleman would like to have a second round, and other Members, I have no problem with that. Ask your questions.

Mr. CONYERS. Just a moment. I wanted to get the agreement before we started, sir. And you have agreed to it, so I want to thank you very much.

Mr. CHABOT. Any Members that would like to ask an additional 5 minutes for a second round, we will give them that option. The gentleman's 5 minutes starts now.

Mr. CONYERS. Thanks Mr. Chairman. I appreciate your courtesy.

Now I want to welcome our leader in the Civil Rights Division. I am glad you are here. This is one of the most important parts of the Department of Justice, and the staff tells me that we have no problems with the authorization request in terms of resources in connection with positions and amounts of money; is that correct? Do we agree with the authorization, the positions, and the authorization amounts?

Mr. NADLER. I thank the gentleman for yielding.

I think we have said that—I think we have said that we think there should be an increase in the budget to provide for more enforcement, but there is a disagreement with the Administration on that obviously.

[4:05 p.m.]

Mr. CONYERS. Okay. Well, I just wanted to get it on the record, because that is what this is, is an authorization, oversight authorization hearing. So I didn't want to express my happiness if the Ranking Member, who has been following this with great concern, wants to make that point, I appreciate it.

Now, the two pieces of business—well, let us start with page 5 of your testimony—actually, starts at page 4. And, finally, I would like to report on the treatment in this country of Americans who may appear to be of Middle East origin. My Division has tracked and targeted what we have been calling backlash crimes. Could we discuss that term, "backlash crimes," for just a moment?

Mr. BOYD. Sure.

Mr. CONYERS. How do you come about that term?

Mr. BOYD. We came about that term, Congressman, as a way of characterizing essentially threats of violence or acts of violence against people who are Arab or Muslim or Middle Eastern, or who appear to be, appear to be perpetrators of those crimes to be Middle Eastern or Arab or Muslim. And we refer to it as a backlash because it is what occurred in the aftermath of the events of September 11th and, happily on a much smaller scale, during the run-up to the conflict in Iraq.

So it is a way of characterizing the acts of those people who are kind of what I usually call the opportunistic haters or bigots who think that the events of September 11th or the conflict in Iraq is an excuse to act on their bigotry. So that is where the term "backlash" comes from. It is a response to something else that happened, a quite unlawful and inappropriate and immoral one, but a perceived response to something that happened.

Mr. CONYERS. I appreciate that very much. And I detect your concern about this matter.

Would you, like your predecessors, all of whom I have known, and the one Attorney General, would you consider coming to the part of my district that, as you know, has more people of Middle East descent than anyplace else in the United States, where we

could discuss this matter and that you could make it clear that this is how you feel about it, and that we could make sure you are also aware of the dimension of the problem? Is that a possibility?

Mr. BOYD. Congressman, I would delight in the opportunity to come back to your district. You may recall that I was there in November of 2001 during Ramadan. I actually did a town meeting at the Dearborn Public Library, I think in the immediate aftermath of the announcement of the 5,000 interviews. So I had the real pleasure and opportunity to do some learning and some sharing with a whole lot of members of the community to which you refer. And in fact, I think at that meeting, I think it ran almost 4 hours, I promised to come back at some point. So I would be happy to come back.

Mr. CHABOT. The gentleman's time has expired.

The gentleman from New York has a unanimous consent request to make, and then we will go into a second round and recognize the gentleman for 5 more minutes.

Mr. NADLER. Thank you, Mr. Chairman. I ask unanimous consent that all Members have 5 legislative days to submit additional questions in writing to the witness for written response.

Mr. CHABOT. Without objection.

Mr. NADLER. Thank you, Mr. Chairman.

Mr. CHABOT. Okay. We will go into a second round. I have discussed it with the other Members who at this point have no other questions. And so we will recognize the gentleman from Michigan for 5 minutes in the second round.

Mr. CONYERS. Thank you, Mr. Chairman.

Mr. BOYD. So, yes is the answer. Absolutely.

Mr. CONYERS. I am delighted. You make me happier than I thought I would be at this hearing. And I see some of your staff out there, and we would be happy to have them join with you, and you know my staff up here.

Mr. BOYD. Quite well, Congressman. Quite well.

Mr. CONYERS. And I look forward to, after this hearing, or as soon as we can next week, that we reach a date. I would like to accompany you out there and be with you. I think it would be very important for people to understand the kind of an Assistant Attorney General of Civil Rights that goes out and meets with the people and shares what is happening here. This is, even with all our cameras—and I don't even see one here—is an inside-the-Beltway proposition. But when you get out there, it is very reassuring to people who are some concerned and would like to have this person-to-person contact with you. And I am so proud of the fact that you have been out there already.

Mr. BOYD. Thank you, Congressman.

I don't want to speechify on your time, but the outreach piece of our backlash initiative efforts has been as significant as our law enforcement piece. The law enforcement piece has been, you know, the over 500 hate crimes that we investigated. But that doesn't even begin to include the number of employment discrimination, housing discrimination, public accommodation discrimination cases that we have handled in that area.

But it has also been a concerted part of our effort to get out into vulnerable communities, not just in your community but in Seattle

and Houston and elsewhere, where there are frightened people. It is our job to get out there and make them less frightened.

Mr. CONYERS. Well, I want to thank you again.

And, Mr. Chairman, I want to applaud you for giving us this time to make these kinds of explorations. And I thank you very much.

Mr. CHABOT. The gentleman's time has expired.

Mr. Boyd, we just want to thank you very much for coming and giving your testimony and answering our questions this afternoon.

And if there is no further business to come before this Committee, we are adjourned.

[Whereupon, at 4:13 p.m., the Subcommittee was adjourned.]

A P P E N D I X

MATERIAL SUBMITTED FOR THE HEARING RECORD

CIVIL RIGHTS DIVISION FY2004 PROPOSED BUDGET
SUBMITTED BY CHAIRMAN CHABOT

May 2, 2003

Civil Rights Division Historical Funding Levels

FY04: The budget request is a current services budget of 753 positions and \$109.7 million. This includes no program increases. However, it includes \$164,000 in cost savings which will be realized through improved business practices.

CRT is using technology to employ "best practices" in the use of its HR personnel and processes. CRT has implemented a web-based staffing pattern that has streamlined personnel reporting capabilities to all personnel staff desktops. Additionally, the Department has expanded its use of the AVUE Technologies (Digital System, by implementing a new automated staffing and recruitment module. The module, when fully implemented will allow applicants to apply for jobs on-line; ranks and creates a referral list; and electronically notifies applicants on the status of job vacancies and their applications.

FY03: Although, the enacted budget was for 753 positions and \$105.1 million, the across-the-board recission of \$683k reduced the budget to \$104.4 million. The enacted budget maintains the Division at the current services.

FY02: The enacted budget of 753 positions and \$100.6 million included program increases of 22 positions and \$1.8 million for the enforcement of the Criminal Section's trafficking in persons (12 positions) and Special Litigation Section's CRIPA program (10 positions). CRT was required to absorb a \$95,000 recission.

FY01: The enacted budget of 731 positions and \$92 million included program increases of 30 positions and \$2.8 million primarily to support increased efforts in the Criminal, Disabilities Rights, Voting, and Special Litigation Sections.

April 16, 2003

Civil Rights Division
Historical Track of Resources
 (Salaries and Expenses, Dollars in Thousands)

Comparison Decision Unit:	2001 Actual		2002 Actual		2003 Enacted		2004 Request		
	Perm. Pos.	WY Amount	Perm. Pos.	WY Amount	Perm. Pos.	WY Amount	Perm. Pos.	WY Amount	
Federal Appellate.....	29	3,741	29	4,110	29	28	29	28	4,512
Civil Rights Prosecution.....	89	10,160	101	11,654	101	101	101	101	13,271
Special Litigation.....	63	7,500	73	8,920	73	70	73	70	10,126
Voting	105	12,158	105	13,242	105	109	105	109	14,233
Employment Litigation.....	62	6,804	62	7,515	62	61	62	61	8,119
Coordination and review.....	22	3,319	22	3,725	22	21	22	21	4,171
Housing and Civil Enforcement.....	100	13,295	100	13,963	100	95	100	95	14,708
Educational Opportunities.....	36	4,025	36	4,398	36	37	36	37	4,839
Disability Rights.....	99	14,506	99	15,590	99	97	99	97	16,183
Office of Special Counsel.....	32	6,373	32	6,773	32	33	32	33	7,172
Management and Administration.....	94	9,811	94	10,644	94	103	94	103	12,356
Total.....	731	678	91,692	753	717	100,534	753	755	105,099
							753	755	105,099

Note: FY 2002 M&A includes \$95K rescission and lapse of \$13K.
 FY 2002 excludes \$68.3K rescission.