



Transactional Records Access Clearinghouse
Syracuse University

June 09, 2005

The Honorable Alberto R. Gonzales
The Attorney General of the United States
Department of Justice
9th and Pennsylvania Avenue NW
Washington, D.C. 20530

Almost five months ago, on January 26, we wrote you a letter challenging your statement to Senator Leahy regarding a civil rights study by the Transactional Records Access Clearinghouse (TRAC).

The study, published on November 21 on our web site at <http://trac.syr.edu>, cited data from the Administrative Office of the United States Courts (AOUSC) and the Executive Office for U.S. Attorneys (EOUSA) showing that civil rights enforcement had declined during the first term of President Bush. In addition, the TRAC study noted that even while such *prosecutions* were sliding the annual number of civil rights *complaints* the Justice Department said it was receiving had remained constant.

In your response to Senator Leahy's written question about the basic findings of the TRAC study you said it was your understanding that the Justice Department had previously issued a statement "demonstrating that its [TRAC's] figures are inaccurate."

While it is indeed true that the Civil Rights Division, in the person of Deputy Assistant Attorney General Wan Kim, had issued a statement and made a number of additional comments to the media and directly to TRAC challenging our study, Mr. Kim's basic allegation that TRAC's numbers were inaccurate had no credibility on its face because the figures cited in the study were not generated by TRAC but *came directly from the courts (AOUSC) and the Justice Department itself (EOUSA).*

Nevertheless, because of TRAC's strong belief that accurate data are essential to representative democracy, we launched a detailed study to determine what facts, if any, lay behind Mr. Kim's various assertions.

We divided the work of our study into two broad activities. First, under the provisions of the Freedom of Information Act, we initiated an effort to obtain the names and many other details about every person listed in the records of the Civil Rights Division who was charged with civil rights violations from FY 1999 to 2003. This effort was largely successful. With this

information we were able to compare each case listed in the division's files with the individual cases found in the separate record systems of (1) the courts and (2) the prosecutors. Second, again under the FOIA, we sought information from the division about the sources for its regular publication of tables showing the number of complaints the department receives each year about civil rights violations. This effort also was successful.

Chronology

Before turning to our findings, we thought that setting out a brief chronology would be useful.

November 21 -- TRAC's first civil rights report is published.

November 22 -- Civil Right Division statement challenging various aspects of the TRAC study is released to the media.

November 23 -- TRAC files FOIA request to the division for the expedited production of details about every case and information on the sources for the department statement about the number of civil rights complaints it had received.

November 30 -- Mr. Kim appears on NPR's Tavis Smiley public affairs program, repeating statements made on November 22.

November 30 -- Mr. Kim emails TRAC, requesting that we post a statement on our web site noting that the Justice Department disagrees with the source data used by TRAC and believes the enforcement statistics are faulty.

November 30 -- TRAC replies to Mr. Kim, asking him to confirm that he wants us to quote him as saying that the Justice Department believes the data compiled by the courts and the Justice Department itself "are faulty." Mr Kim does not respond.

January 12 -- Attorney General Gonzales submits his brief response to Senator Leahy.

January 24 -- Nelson Hermilla, chief of the Freedom of Information/Privacy Branch provides partial enforcement data in response to TRAC's FOIA requests. (Additional information provided in February and March.)

April 8 -- Responding to additional requests, Mr. Hermilla provides information about the problematic sources of the civil rights complaints .

The Study

As already suggested, the Justice Department last November voiced two basic objections to TRAC's report. One concerned civil rights complaints, the other civil rights enforcement.

In regard to the civil rights complaints, Mr. Kim said that TRAC had "erroneously stated" that the numbers had remained constant. In fact, he continued, "the number of complaints dropped from 12,000 in 1999 to around 9,500 in 2002." According to information from the division, however, Mr Kim's statements appear to be false.

The information about unchanging number of complaints cited by TRAC -- about 12,000 a year -- was based on statistics provided to Congress each year in the annual budget submission of the Civil Rights Division itself. And, as of mid-April, the 12,000-a- year complaint number was still being cited on the division's web site.

Surprisingly, however, despite the long standing statements to Congress and the public regarding the unchanging number of complaints, and Mr. Kim's very recent claim that in 2002 they had dropped to around 9,500, a series of TRAC requests under the FOIA has determined that the Justice Department *has in fact never devised a way to collect this information.*

The admission came in a detailed three-page letter from Nelson D. Hermilla, chief of the Freedom of information/Privacy Acts Branch of the Civil Rights Division, responding to TRAC's request for a breakdown of civil rights complaints coming to the government according to their source.

After discussions with the criminal and information technology staffs of the division, Hermilla wrote in his April 8 letter to TRAC, "it is apparent that there currently is no way to obtain either an exact number of complaints that the Criminal Section declined to investigate nor to obtain a complete breakdown by type of complaint from the data base because, e.g., citizen calls are not tracked in the Inter-Active Case Management System (ICM)."

Hermilla added that "any manual tallies on complaint calls might include four or many more calls on the same factual circumstances (or 'matter') by different individuals and the tallies may include repeat callers and writers. As yet, the computer has no way of identifying whether or not a person is complaining about the same incident or event that the same person has written in numerous times about the same matter; therefore, the Division counts all letters and calls as a complaint received."

The second part of TRAC's study focused on the department's objections to the decline in civil rights enforcement that was documented in data from the courts and the prosecutors. What may have made the department unusually sensitive to the publication of information about the decline was the statement last summer by President Bush that "my administration and its Justice Department has vigorously enforced the civil rights laws."

The first step in the study was TRAC's November 23 request to the Civil Rights Division, under the Freedom of Information Act, for the names, docket numbers and other detailed information about every civil rights prosecution contained in the division's records in the FY 1999/FY 2003 period. Two months later, on January 24, some of this case-by-case information was provided TRAC. Once obtained, the data from the division could be compared with that collected by the actual prosecutors, the EOUSA, and the judges, the AOUSC.

The detailed comparison of the information available in the three systems showed that both the annual number civil rights cases and the year-by-year changes recorded by the data bases operated by the prosecutors and the judges were quite similar. The information about the cases in the system of the Civil Rights Division, however, was different.

This anomaly prompted TRAC to examine the individual cases that were listed in the record systems for different years. The comparison appears to show that in the 1999/2003 years period the Civil Rights Division record system gradually improved its ability to pick up information about individual civil rights cases that were being brought around the United States.

Thus, in the past the Division missed quite a few civil rights cases and as a result they didn't get recorded in the Civil Division counts though they appeared in both the U.S. Courts and Executive Office of U.S. Attorneys numbers. As time went on the Civil Rights Division record systems improved and fewer cases were missed. This led to the division reporting an increase, but this was only an artifact of improved recording. Thus, despite the apparent increase in cases being recorded by the Civil Rights Division, the case-by-case information drawn from the separate systems of the courts and the prosecutors showed a real decline in the cases that actually were filed in court against different kinds of civil rights violators.

Conclusion

Because the Justice Department is the court of last resort in the enforcement of the nation's civil rights laws, accurately tracking its successes and shortcomings in this area is extremely important. And because our study has found strong evidence that this goal is not now being achieved we would be delighted to meet with you or members of your staff to discuss ways the department could reduce the apparent problems. We are further encouraged by your recent statement to Senator Leahy that you are committed "to vigorously enforcing the criminal civil rights statutes."

Sincerely



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cc:

Senator Patrick Leahy
Assistant Attorney General R. Alexander Acosta
Deputy Assistant Attorney Wan Kim
Nelson D. Hermilla
Wade Henderson, Civil Rights Leadership Conference
Lee Daniels, Urban League

Enclosures:

Initial Press Statement

JUSTICE DEPT. STATEMENT

The statistics by TRAC are incorrect. TRAC claims the Civil Rights Division prosecuted 84 defendants last year compared to 159 in 1999. Both figures are inaccurate. The Civil Rights Division prosecuted 151 defendants last fiscal year, compared to 138 in 1999. Every year since 1999 the Civil Rights Division exceeded TRAC's figure (84): 191 in FY 2000; 125 in FY2002, and 123 in FY2003. The Civil Rights Division has kept a record of these numbers for years. The Division has tracked its cases internally - by investigation and prosecution - to account for workflow, and to report accurately to Congress.

TRAC erroneously states that the number of complaints has remained constant even as the prosecutions have gone down. As noted in the number above, prosecutions have remained at a high level as the number of complaints dropped from 12,000 in 1999 to around 9,500 in FY2002.

It merits separate mention that the Bush Administration has charged more color-of-law cases, that is it has prosecuted more police officers and other state officials for criminal civil rights offenses, than did the prior administration. From 2001 through 2003, the Department charged 146 such cases, compared to 115 over the prior three years. And in 2004, the Department brought 45 such cases, more than during 1998 (39), 1999 (36) or 2000 (40).

This Administration believes in and has vigorously enforced the criminal civil rights laws.