

Confronting White Supremacy (Part I): The Consequences of Inaction
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Testimony of Roy L. Austin, Jr.¹
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As someone who has spent years prosecuting hate crimes, supervising those who prosecute hate crimes, and working on policy at the highest levels to improve hate crime prevention and reporting, I believe that I have the experience to speak on today's topic.

Disappointingly, we do not have the slightest idea how many hate crimes there are in America. And we have never known. The numbers currently kept by the FBI are largely useless. While a small handful of states and law enforcement agencies seem to take the collection of hate crime numbers seriously, the majority of states and vast majority of law enforcement agencies either do not bother to report or do not bother to report accurate numbers. The best inference that can be drawn from the current data is that in the environment created by the current presidential administration, things have gotten worse/hate crimes have increased.

What is particularly shocking about this is that law enforcement agencies regularly speak about the importance of using data to perform better and keep the country safer. Increasingly, law enforcement agencies want to use artificial intelligence to engage in what they call predictive policing. But artificial intelligence with bad data is nothing more than junk science – also described as garbage in, garbage out. If we as a country were serious about using science and data to stop crime and particularly hate crimes. We would fix our data tomorrow. It's not that hard.

The importance of collecting good data could hardly be overstated. While every crime is significant, the harm can be exponential when the subject targeted the victim based on his or her actual or perceived race, ethnicity, religion, national origin, gender, sexual orientation, gender identity or disability. The pain or fear from hate crime reaches a broader community; the act is anathema to who we are as a nation built on diversity. While we and every Black church in America mourned the murder of nine Black people in Emanuel AME in Charleston, S.C., the congregation of every Black church asked whether they might be next. While we and every Synagogue in America mourned the murder of eleven Jewish people at the Tree of Life Synagogue in Pittsburgh, P.A., the parishioners of every synagogue in America asked whether they might be next. And sadly, the parishioners of the Chabad of Poway Synagogue in San Diego, C.A. know that the fear is justified.

Basically, the Federal Government seems happy to get whatever it gets from jurisdictions and put those numbers out publicly. But what do these numbers mean? What policy decisions can be made based on these numbers? What enforcement decisions can be made based on these numbers? Sadly, the answers to all of these questions is close to "nothing" or "none."

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My criticism of the numbers is not meant to criticize the individuals who work for the FBI's Criminal Justice Information Services Division (CJIS). As someone who worked with this team both when I was at the Department of Justice and the White House, I know it to be a team of smart and hard-working individuals who care deeply about their work collecting crime data. This team is willing to provide individualized training to any agency that needs help reporting hate crime numbers—but few take them up on this offer. The problems are structural. The team is under-resourced for work this important and where there are no incentives for providing this data, their task is largely impossible. This problem would be relatively easy to fix – make federal government funding contingent on providing accurate hate crime data. But, where we do not even mandate that law enforcement agencies provide general crime statistics, it will require serious leadership to move the ball in this direction on hate crime statistics.

What exacerbates the problem is the fact that the federal government does not even publish its own hate crimes numbers. The FBI works on hate crimes cases around the country with the Civil Rights Division and U.S. Attorney's Offices and none of those DOJ components regularly publishes in an easily accessible location any data about those cases. How can the federal government expect state and local law enforcement to publish data when it does not do so itself?

It only requires a quick look at the FBI Hate Crimes statistics to realize how unhelpful they are. The first thing one might notice is that the most up to date statistics are from 2017. We are now almost halfway through 2019 and we still do not have national statistics for 2018. Second, there are approximately 18,000 law enforcement agencies in the United States and around 2,000 agencies did not respond to the FBI request for hate crime information – and they suffered no consequences for not doing so. From the 16,149 agencies that at least responded, there were only 7,175 reported hate crime incidents – Of course this is more than 1,000 more than there were in 2016, which had almost 300 more than there were in 2015.

Of the reported incidents in 2017, California reported 1,094 incidents; New York reported 552; but Alabama reported just 9 incidents; and Mississippi reported just 1 incident. (UCR Table 12). For unclear reasons, the State of Hawaii does not participate at all. What also stands out are the number of large and good sized cities that report that they did not have a single hate crime in 2017 (Table 14): Mobile, AL; Tempe, AZ; Chula Vista, CA; Glendale, CA; Miami, FL; St. Petersburg, FL; Savannah-Chatham Metropolitan, GA; Cedar Rapids, IA; Des Moines, IA; Overland Park, KS; Baton Rouge, LA; Springfield, MO; Las Vegas, NV; Newark, NJ; Winston-Salem, NC; Oklahoma City, OK; Tulsa, OK; Columbia, SC; Brownsville, TX; Corpus Christi, TX; Garland, TX; Grand Prairie, TX; Irving, TX; Provo, UT; Roanoke, VA; and Cheyenne, WY.

How else do I know that these numbers are laughable bad. The same Department of Justice that publishes the Uniform Crime Report (UCR) also publishes the National Crime Victimization Survey (NCVS). According to the NCVS there were over 200,000 hate crimes in 2017. Of those, the victims said that they reported over 100,000 to the police and of those, in more than 15,000 victimizations, the victim said that the police acknowledged that it was a hate crime. How do we get from 200,000 to 7,175 – only through intentional irresponsibility.

Here are some suggestions for how the federal government could improve the current system:

1. Stop vilifying Muslims, LGBTQ individuals and immigrants and stop calling white supremacists fine people. This should be obvious, but sadly it needs to be said.
2. Treat all hate crimes the same – It should not matter who the perpetrator is or who the victim is. If a crime is motivated in whole or in part by an offender’s bias against a race, religion, disability, sexual orientation, ethnicity, gender, or gender identity, it is a hate crime and call it one.
3. Stop using bad data to make law enforcement policy and decisions – Until our data is better, do not rely on that data or lack of data to infringe on people’s First Amendment rights. We do not need new legislation to help us prosecute hate crimes. Until proven otherwise, we have the laws we need.
4. Encourage people to report – The government could sponsor a public service campaign to encourage victims and witnesses to report hate crimes.
5. Instruct students in school about hate crimes and teach kids how yesterday’s hate-filled vandalism or Facebook rant, becomes today’s cross burning, becomes tomorrow’s murder.
6. Make reporting mandatory – Congress should pass a law that makes law enforcement agencies that fail to provide accurate hate crimes’ data ineligible for federal law enforcement grants and equipment from the Department of Justice or any other federal agency.
7. Audit reports – The FBI should have a team that audits the reports provided by law enforcement agencies to ensure accuracy.
8. Publish the data quarterly – The FBI’s hate crime statistics are collected quarterly. If the FBI actually published quarterly, it would not only provide data in a more timely fashion, but it would give more transparency to the effort. By publishing quarterly, individuals who are aware of hate crimes would be better equipped to force their jurisdiction to correct mistakes.
9. Work with affinity groups to encourage reporting – Hate crime collection can be challenging because it requires work with communities who are often distrustful of law enforcement because of bad prior experiences or lack of language access. Affinity groups may be better positioned to collect the information and report it to law enforcement even in situations where the victim does not want to participate in a prosecution.
10. Get federal agencies to report – The FBI, Civil Rights Division and the U.S. Attorneys’ Offices should be required to report at least quarterly and those reports should be prominently displayed.
11. Better reports – Considering all of the improvements in how data can be displayed, the FBI’s UCR website is woefully outdated. The data should be displayed in a way that is easily navigable with maps and charts to help make the information more digestible.

We cannot fully understand hate crimes without good data. We will also not be able to determine what works and does not work to end hate crimes if we do not improve the data. There is no good reason not to address this problem immediately.