



STATEMENT OF KRISTEN CLARKE, PRESIDENT AND EXECUTIVE DIRECTOR

LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW

**U.S. HOUSE COMMITTEE ON THE JUDICIARY
HEARING ON "HATE CRIMES AND THE RISE OF WHITE NATIONALISM"
APRIL 9, 2019**

Chairman Nadler, Ranking Member Collins, and Members of the Committee, my name is Kristen Clarke, and I am the President and Executive Director of the Lawyers' Committee for Civil Rights Under Law ("Lawyers' Committee"). Thank you for the opportunity to testify today about hate crimes and the rise of white nationalism.

The Lawyers' Committee is a national civil rights and racial justice organization created at the request of President John F. Kennedy in 1963. President Kennedy sought to enlist the private bar's leadership and resources in combatting discrimination and the resulting inequalities in courtrooms across America. Today we have the largest pro bono network in the country and are on the front lines of the fight for racial justice.

At the Lawyers' Committee, we believe it is important to acknowledge that hate crimes are not new, and white nationalism is white supremacy.

White supremacy has been a persistent threat to the democratic ideals that our country has strived for since its founding. African Americans in particular have experienced generations of racial terror, from the moment that the first slaves were brought to our shores 400 years ago through the post-Reconstruction Era, and from Jim Crow through the Civil Rights Movement. For generations, African Americans have experienced hate-based violence at alarming rates and are among the most frequent victims of hate crimes.ⁱ Indeed, since the Federal Bureau of Investigation began publishing data on hate crimes in 1995, anti-Black hate crimes have consistently been a plurality in the data.ⁱⁱ

In today's national climate, which often fosters discrimination and emboldens hate, not only have we seen an increase in reported hate crimes, but also white supremacist movements that have continued to proliferate and now use new tools on the internet to mobilize and spread their message of hate.ⁱⁱⁱ For many, the violence that erupted in Charlottesville in 2017 was a wake-up call that demonstrated that racial violence continues to stand as a threat to our democracy and presents a danger to vulnerable communities.^{iv}

White supremacist activity increased around the 2008 Census projection that racial and ethnic minorities will make up a majority of the U.S. population by 2042.^v Last year, we saw a 20-year record high number of active hate groups.^{vi}

The white supremacist movement has sought to re-brand itself and become more palatable to broader audiences. Instead of hiding behind masks, they hide behind computer screens. Instead of “white supremacy,” they say “white nationalism.” But the actions of online white supremacists are new in form but not substance. By directing hateful threats, intimidation, and harassment online at African Americans, Latinos, immigrants, Muslims, Jews, and other historically marginalized communities, they follow the same script as generations of white supremacists that assaulted civil rights activists at lunch counters, defaced houses of worship, and berated children on their way to school.

We know better.

At the Lawyers’ Committee, we use all the tools in our arsenal to hold perpetrators of hate accountable and to combat the increase in white supremacy.

We successfully disrupted online platforms that spread hate and violence against minorities, including Stormfront.org and AltRight.com.^{viii}

We advocated for Facebook to abandon its ill-conceived policy under which they permitted “white nationalist” and “white separatist” content on its platform while banning “white supremacist content” only.^{ix} Our experience makes clear that white nationalism and white separatism *are* all forms of white supremacy and that these categories are indistinguishable. Under Facebook’s new policy, all such content will be prohibited. The hard work lies ahead as we now focus on ensuring that Facebook fully and fairly implements its new policy.

Through the newly-formed Change the Terms Coalition, we have called for online platforms such as Facebook, Google, Twitter, PayPal, Microsoft, Apple, and Amazon to review their policies and ensure that they are not places where hateful activities can fester.^x

And we have successfully represented individuals who have been targeted for hate by filing litigation against white supremacists and using the courts to vindicate the rights of impacted individuals.^{xi}

As the Lawyers’ Committee continues to utilize our pro bono network and skillful, aggressive lawyering strategies to ensure we are moving towards a society that is true to its democratic values, we call on all communities to help tear down the structures that fuel and facilitate violent white supremacy in our country.

As we work to confront hate, we are faced with challenges from the federal government and Administration. Indeed, the Trump Administration—whether intentionally or not—has sent a clear message to the communities most vulnerable to hate crimes that their civil rights are in jeopardy and not worthy of protection. Efforts to combat the increase in hate crimes must be understood in the context of the policy decisions and other actions taken by the Trump Administration which promote the dehumanization of people in our communities, and contribute to a climate of fear and hate.

The Trump Administration has reversed important progress made to protect the most vulnerable among us.

The Administration has nominated individuals to federal courts who bring track records that raise grave concerns regarding their ability to fairly interpret and apply federal civil rights law and ensure equal justice under law.^{xii} Alleged statements describing African and Caribbean nations as “sh*thole countries” has contributed to a culture of hate and animus towards historically marginalized groups. By abandoning full enforcement of our federal civil rights laws, this Justice Department has also sent a dangerous message that the rights of vulnerable communities simply do not matter.

Under the Trump Administration, the FBI created the “Black Identity Extremists” or “BIE” designation which criminalized Black activists and groups seeking to hold police accountable for unconstitutional policing practices.^{xiii} While we should all oppose terrorism in any form, the FBI’s Domestic Terrorism Analysis Unit’s decision to use the color of someone’s skin as a means of identifying terrorists harkens back to the worst of times for the Bureau. As the names suggests, the unifying feature of this manufactured threat appears to be the color of a person’s skin. At such a critical moment when the FBI should be redoubling its efforts to combat violence inspired by white supremacists, our concern is that the Bureau may end up targeting those seeking to defend the rights of racial minorities, not those who are actually engaged in terrorism. Such a move is a throwback to the 1960s when the FBI led by J. Edgar Hoover demonized civil rights leaders daring to fight for equal justice, including the Rev. Martin Luther King, Jr.

Today, we know that newly emboldened white supremacists and other bigots are targeting communities of color. The FBI should redouble its efforts to fight this extremism. By diverting resources in order to target African Americans, the FBI is going down a dangerous path that threatens the civil rights and privacy rights of racial minorities, in addition to the public safety of all Americans.

Whether reversing course in important civil rights cases, or withdrawing important policy directives that helped encourage reform, the Administration has sent a clear message to the communities most vulnerable to hate crimes that their civil rights are in jeopardy.

As we face these challenges, we call on Members of Congress to encourage the use of existing laws to investigate and prosecute acts of hate violence to the full extent of the law and oppose efforts^{xiv} to create new legislation that risks the further criminalization of communities of color.

Furthermore, as white supremacists have increasingly moved online, Congress must address the interference with a person’s ability to engage in the digital public square. Congress has addressed this challenge before, and ended segregation with the enactment of public accommodations laws. Similar tools can help respond to today’s threat. Consistent with the First Amendment, Congress should extend public accommodations protections to businesses that provide goods and services online. This action would make it clear that interference with equal participation in the digital public square is no more acceptable than discrimination in brick and mortar commerce.^{xv}

The companies that create and profit from online platforms where white supremacy is prevalent, also have a responsibility to address this crisis. We call on all online platforms to fully and fairly enforce their terms of service, and terminate purveyors of hate who violate those terms by promoting and inciting violence. We urge greater transparency by the tech sector regarding the prevalence of hateful activities on their platforms and the actions taken to address them so that the public can make informed decisions about whether to use these platforms or abandon them.

Hate occurs on a day-to-day basis in communities across the country. It requires not only the action of the federal government, but also the action of state and local government.

State and local law enforcement agencies play a critical role in addressing hate crimes. The Lawyers' Committee collaborated with the International Association of Chiefs of Police to launch an Advisory Committee on Enhancing the Response to Hate Crimes.^{xvi} This Advisory Committee convened leaders in law enforcement, civil rights, and academia, for a series of comprehensive discussions examining promising practices for response to hate crimes, as well as how the practices shape community-police relations. This collaborative effort culminated in the release of the "Action Agenda for Community Organizations and Law Enforcement to Enhance the Response to Hate Crimes" which outlines five critical issues, promising practices and case studies. Critical issues include: increasing community and law enforcement collaboration; enhancing training and education about hate crimes for law enforcement, prosecutors and community members; strengthening data collection, reporting and analysis; improving hate incident and crime management policies and responses for law enforcement; and early and ongoing communication between prosecutors and law enforcement.

Beyond strengthening these critical areas, just as the Department of Defense should address the infiltration of white supremacists in the military^{xvii}, so too must law enforcement agencies at the local, state, and federal levels.^{xviii}

The United States is facing a crisis. It demands that we remain vigilant and committed to the values of an inclusive democratic society. The Lawyers' Committee is committed to continuing to fight for racial justice and the full recognition of civil rights for all.

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ⁱ Janell Ross, *In every tally of hate crimes, blacks are the most frequent victims*, NBC NEWS (Nov. 21, 2018, 2:11 PM), <https://www.nbcnews.com/news/nbcblk/every-tally-hate-crimes-blacks-are-most-frequent-victims-n938541>.

ⁱⁱ FED. BUREAU OF INVESTIGATION, HATE CRIME (1995-2017), *available at* <https://ucr.fbi.gov/hate-crime>.

ⁱⁱⁱ John Eligon, *Hate Crimes Increase for the Third Consecutive Year, F.B.I. reports.*, New York Times (Nov. 13, 2018), <https://www.nytimes.com/2018/11/13/us/hate-crimes-fbi-2017.html>.

^{iv} Heidi Beirich, *The Year in Hate: Rage Against Change*, Southern Poverty Law Center (Feb. 20, 2019), <https://www.splcenter.org/fighting-hate/intelligence-report/2019/year-hate-rage-against-change>.

^v Sabrina Tavernise, *Why the Announcement of a Looming White Minority Makes Demographers Nervous*, THE NEW YORK TIMES (Nov. 22, 2018) <https://www.nytimes.com/2018/11/22/us/white-americans-minority-population.html>.

^{vi} Liam Stack, *Over 1,000 Hate Groups Are Now Active in United States, Civil Rights Group Says*, THE NEW YORK TIMES (Feb. 20, 2019) <https://www.nytimes.com/2019/02/20/us/hate-groups-rise.html>.

^{vii} Press Release, Lawyers' Committee for Civil Rights Under Law, Lawyers' Committee for Civil Rights Under Law Takes Action Leading to Shutdown of Stormfront.com (Aug. 28, 2017) *available at* <https://lawyerscommittee.org/lawyers-committee-civil-rights-law-takes-action-leading-shut-stormfront-com/>

^{viii} Press Release, Lawyers' Committee for Civil Rights Under Law, Altright.com shutdown by Lawyers' Committee for Civil Rights Under Law (May 3, 2018) *available at* <https://lawyerscommittee.org/altright-com-hate-site-shut-down-by-lawyers-committee-for-civil-rights-under-law/>.

^{ix} Press Release, Lawyers' Committee for Civil Rights Under Law, Lawyers Committee for Civil Rights Under Law Sends Letter Demanding Facebook Revise Policies Empowering White Supremacists and White Nationalists (Sept. 20, 2018) *available at* <https://lawyerscommittee.org/lawyers-committee-for-civil-rights-under-law-sends-letter-demanding-facebook-revise-policies-empowering-white-supremacists-and-white-nationalists/>.

^x Change the Terms, www.changetheterms.org.

^{xi} Press Release, Lawyers' Committee for Civil Rights Under Law, Landmark Settlement Between Hate Incident Perpetrator and Survivor Announced in *Dumpson V. Ade* (Dec. 18, 2018) available at <https://lawyerscommittee.org/landmark-settlement-between-hate-incident-perpetrator-and-survivor-announced-in-dumpson-v-ade/>.

^{xii} The Leadership Conference on Civil and Human Rights, Trump Administration Civil and Human Rights Rollback available at <https://civilrights.org/trump-rollbacks/>.

^{xiii} FED. BUREAU OF INVESTIGATION, BLACK IDENTITY EXTREMISTS LIKELY MOTIVATED TO TARGET LAW ENFORCEMENT OFFICERS (AUG. 3, 2017), available at <https://www.documentcloud.org/documents/4067711-BIE-Redacted.html>.

^{xiv} A proposal has been made to add a separate charge of "Domestic Terrorism" to the U.S. Code. Current federal law provides a means for investigating and prosecuting acts of violence. Our concern is that a separate charge of domestic terrorism might be used to encourage federal law enforcement authorities to target those groups who stand up for the rights of black and brown people. The FBI's invention of the "black identity extremist" category heightens these most basic concerns. Instead of focusing efforts on establishing a separate charge for domestic terrorism, Members should work to strengthen existing hate crime laws, incentivize reporting around hate crimes and push for data collection around domestic terrorism investigations. If Congress does act on this proposal, it should include in the legislative history a directive to the Department of Justice to develop enforcement guidelines to ensure that investigations and prosecutions are directed at true violent individuals and organizations, not persons who are advocates for minorities and other marginalized individuals.

^{xv} Kristen Clarke and David Brody, *It's time for an online Civil Rights Act*, The Hill (Aug. 3, 2018, 3:30PM), <https://thehill.com/opinion/civil-rights/400310-its-time-for-an-online-civil-rights-act>.

^{xvi} Press Release, Lawyers' Committee for Civil Rights Under Law, Police Chiefs and Civil Rights Organization Join to Address Hate crimes (Aug 23, 2017) Available at <https://lawyerscommittee.org/police-chiefs-leading-civil-rights-organization-join-address-hate-crimes/>.

^{xvii} Juliette Kayyem, *The Military has a white power problem*, Washington Post (March 8, 2019), https://www.washingtonpost.com/opinions/the-military-has-a-white-power-problem/2019/03/08/e5ba3f92-41a7-11e9-922c-64d6b7840b82_story.html?noredirect=on&utm_term=.02b48bf3866c.

^{xviii} FED. BUREAU OF INVESTIGATION, WHITE SUPREMACIST INFILTRATION OF LAW ENFORCEMENT (Oct. 17, 2006), available at <https://www.documentcloud.org/documents/3439212-FBI-White-Supremacist-Infiltration-of-Law.html>