

Hate Crime Statistics and Incidence in Virginia



An Advisory Memorandum of the
Virginia Advisory Committee to the
U.S. Commission on Civil Rights

November 2020

Advisory Committees to the U.S. Commission on Civil Rights

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Acknowledgments

The Virginia Advisory Committee (Committee) thanks each of the speakers who presented to the Committee during their public meetings on this topic, and shared their personal stories and experiences. The Committee is also grateful to members of the public who spoke during the selected periods of public comment, and those who shared their testimony in writing. The Committee acknowledges the work of the 2015-2019 appointees of the Committee, who organized and heard the original testimony: K. Shiek Pal, Bruce N. Cameron, Sarah T. Combs, Vellie S. Dietrich-Hall, Claire G. Gastanaga, Patrick A. O'Reilly, Lorraine F. Waddill, Robert G. Bracknell, Angela C. Ciccolo, Edmund D. Cooke Jr., Toa Q. Do, Terrie E. Griffin, and Ryung Suh.

All Committee members participated in an initial review and summary of the testimony provided. This report was drafted and edited by a working group of Committee members, chaired by Danny Vargas. Jason Brennan served as lead author, with additional editing contributions from Ann Haney, Angela Ciccolo, and Brenda Abdelall.

**Virginia Advisory Committee to the
U.S. Commission on Civil Rights**

The Virginia Advisory Committee to the U.S. Commission on Civil Rights submits this advisory memorandum regarding hate crime statistics and incidence in the state. The Committee submits this memorandum as part of its responsibility to study and report on civil rights issues in Virginia. The contents of this memorandum are primarily based on testimony the Committee heard during public meetings the Committee held on Wednesday, May 16, 2018 via teleconference, and in-person on March 29, 2019 in Washington, D.C. The Committee also includes related testimony submitted in writing during the relevant period of public comment.

This memorandum presents an overview of the testimony received, identifies primary findings as they emerged from this testimony, and offers recommendations for addressing areas of related civil rights concerns. This report is intended to focus specifically on civil rights concerns regarding hate crime incidents in Virginia. While other important topics may have surfaced throughout the Committee's inquiry, those matters that are outside the scope of this specific civil rights mandate are left for another discussion.

**Virginia Advisory Committee to the
U.S. Commission on Civil Rights**

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Advisory Memorandum

To: The U.S. Commission on Civil Rights

From: The Virginia Advisory Committee to the U.S. Commission on Civil Rights

Date: September 2020

Subject: Hate Crime Statistics and Incidence in Virginia

In response to the August 11 and 12, 2017, Unite the Right Rally in Charlottesville, VA, and to news reports that hate crimes were increasing,¹ the Virginia Advisory Committee (hereafter Committee) convened two public meetings asking for expert testimony on bias incidents and hate crimes in the commonwealth and across the country. The meetings sought to identify the best practices used in defining, identifying, reporting, prosecuting, and preventing hate crimes in Virginia. The Committee solicited the expert opinions of academics, law enforcement officials, community representatives, and civil rights advocates. The Committee specifically sought to understand:

- A. whether there has been a statistically significant increase in hate crimes and anti-bias incidents in Virginia at the state or regional levels,
- B. the nature and types of hate crimes/anti-bias incidents and the affected/targeted groups,
- C. any challenges or barriers that may prevent law enforcement from addressing hate crimes, including whether Virginia hate crime-related laws should be modified, and
- D. best practices that law enforcement and communities should consider implementing in order to reduce the number of hate crimes and anti-bias incidents, and to accurately tabulate the statistics on such crimes.

This report summarizes the Committee's findings, and includes:

- 1. An account of why hate crimes is of special interest to the Committee and US Civil Rights Commission (hereafter Commission),
- 2. A brief overview of the expert testimony the Committee heard in 2018 and 2019,
- 3. An analysis of the problem of defining the concept of hate crimes and targeted groups,
- 4. An analysis of the problems of data collection and hate crime measurement,
- 5. An analysis of whether hate crimes are increasing,
- 6. A summary of expert testimony on other problems with data collection and measuring hate crimes, and
- 7. summary of expert recommendations for best practices.

¹ For instance, this news report claims that hate crimes increased from 137 in 2016 to 202 in 2017:
<https://www.wtkr.com/2019/04/30/hate-crimes-in-virginia-jump-almost-by-half/>

1. Background

Virginia was the center of national attention in August 2017, when white nationalist Richard Spencer's Unite the Right Rally in Charlottesville resulted in street fighting between alt-right white nationalists and counter-protesters. White supremacist James Fields, Jr., rammed his car into a crowd of counter-protestors, killing one person and injuring nineteen more. Virginia Attorney General Mark Herring further claimed that there was a rise in hate crimes in Virginia, and launched the No Hate VA campaign to raise awareness of and combat this trend.²

According to the FBI and Virginia Attorney General Mark Herring, hate crimes are defined as “crimes committed against a person or property motivated in whole or in part by an offender’s bias against a race, religion, disability, sexual orientation, gender, or gender identity.”³ Thus, establishing that a hate crime has been committed imposes a significant evidentiary burden. One must not only establish that a crime has been committed, but also must prove that the perpetrator committed the crime *because of* bias.⁴ (See § 3 below.)

Hate crimes affect the broader community in ways other crimes do not. Democracies are committed to equality and inclusivity. Hate crimes both demonstrate and result from ongoing divisions and prejudices among the public. Hate crimes threaten to reduce inclusion, create mutual animosity and distrust, and impede the proper functioning of democratic government.

2. Overview of Testimony

The Committee sought testimony from a range of stakeholders, including members of federal and state law enforcement, academic researchers at Virginian and other universities, and representatives from various NGOs working on racial or identity issues. The Committee sought a diverse range of perspectives and methods, including testimony on theoretical, qualitative, and quantitative matters. Panelists were chosen to testify based upon their professional experience, academic research, subject matter expertise, and firsthand knowledge of the topics at hand.

Experts included the regional director of the Anti-Defamation League; a statistician from the Bureau of Justice Statistics at the US Department of Justice; the Commonwealth Attorney for Charlottesville; a policy analyst at the Arab American Institute; a sociologist from Virginia Commonwealth University; the executive director of the Charlottesville Branch of Organizing Virginia; the head of outreach for the All Dulles Area Muslim Society; a law professor from Indiana University; a criminal justice professor from California State University at San Bernardino; a law professor from Georgetown University; the National Program Manager for Muslim, Arab, South Asian, Sikh and Hindu communities, at the US Department of Justice Community Relations Service; and the Dean of Criminal Justice at Northeastern University.

An attached addendum provides a thematic summary of each experts’ testimony. The Committee has not attempted to fact-check or verify these experts’ claims. Without discounting any testimony heard,

² <https://www.oag.state.va.us/programs-initiatives/no-hate-va>

³ <https://www.fbi.gov/investigate/civil-rights/hate-crimes>; <https://www.oag.state.va.us/programs-initiatives/no-hate-va>

⁴ See e.g. The Matthew Shepard and James Byrd Jr. Hate Crimes Prevention Act of 2009, 18 U.S.C § 249 (a)(1) & (a)(2); Damage to Religious Property, Church Arson Prevention Act, 18 U.S.C. § 247; VA. CODE ANN. § 52-8.5(C).

we focus in this memorandum on testimony most directly relevant to our own stated goals of inquiry, listed as A-D above in the introduction. Some experts directly addressed our questions—such as whether there are measurable changes in hate crimes—while others testified about their organizations’ activities or provided anecdotal analysis.

3. Obstacle and Issues in Defining Hate Crimes

Hate crimes are defined by a combination of action and motive. To qualify as a hate crime, an action must be a crime, independently defined. In addition, it has a *mens rea* or intent component: the crime must be substantively or primarily motivated by animus or bias against the victim’s indelible ethnic, racial, sexual, gender, or other legally-defined identity. According to the FBI, a hate crime can be explained generally as “...a traditional offense like murder, arson, or vandalism with an added element of bias.”⁵ Federal hate crimes can be defined broadly as a “criminal offense against a person or property motivated in whole or in part by an offender’s bias against a race, religion, disability, sexual orientation, ethnicity, gender, or gender identity.”⁶ Specifically, federal hate crimes are defined by statute as offenses where a perpetrator willfully causes bodily injury or through use of fire or a dangerous weapon or explosive device, willfully causes or attempts to cause bodily injury to any person because of the victim’s actual or perceived race, ethnicity, national origin, religion, gender, gender identity, sexual orientation, or disability status.⁷ Federal law also prohibits bias-based crimes against religious property or interference with the right to practice one’s religion.⁸ Additional prohibited actions under federal statute is the use of force or threats of force to interfere with activities such as education, public accommodation, access to housing because of bias-based motivation.⁹

The Commonwealth of Virginia similarly defines hate crimes.¹⁰ The Commonwealth defines a Hate Crime as follows:

"Hate crime" means (i) a criminal act committed against a person or his property with the specific intent of instilling fear or intimidation in the individual against whom the act is perpetrated because of race, religion, gender, disability, gender identity, sexual orientation, or ethnic or national origin or that is committed for the purpose of restraining that person from exercising his rights under the Constitution or laws of the Commonwealth or of the United States; (ii) any illegal act directed against any persons or their property because of those persons' race, religion, gender, disability, gender identity, sexual orientation, or ethnic or national origin; and (iii) all other incidents, as determined by law-enforcement authorities, intended to intimidate or harass any individual or

⁵ What We Investigate; Hate Crimes,” Federal Bureau of Investigation, accessed November 9, 2020, <https://www.fbi.gov/investigate/civil-rights/hate-crimes>;

⁶ *Ibid.*

⁷ The Matthew Shepard and James Byrd Jr. Hate Crimes Prevention Act of 2009, 18 U.S.C § 249 (a)(1) & (a)(2).

⁸ 18 U.S.C. § 247 (Damage to Religious Property and Obstruction of Persons in the Free Exercise of Religious Beliefs).

⁹ *Id.* at § 245(b)(2) (Federally Protected Activities); 42 U.S.C. § 3631 (Fair Housing Act’s criminal prohibition against interference with a housing right because of bias).

¹⁰ “No Hate VA,” Commonwealth of Virginia, accessed November 9, 2020, <https://www.oag.state.va.us/programs-initiatives/no-hate-va>; VA. CODE ANN. § 52-8.5(C).

group because of race, religion, gender, disability, gender identity, sexual orientation, or ethnic or national origin.¹¹

Virginia has only a few specific hate crime laws that it lists under Title 9, Chapter 9, Article 5 as “Activities Tending to Cause Violence.” They include wearing a mask in public¹², burning a cross¹³, burning an object¹⁴, displaying a noose¹⁵, and placing swastikas on certain properties.¹⁶ Physical assault, battery, murder, and other violent offenses, as well as various property crimes, can also be prosecuted as hate crimes if prosecutors can demonstrate the attacks were sufficiently motivated by racial or other demographic animus. Additionally, some states do not have stand-alone hate crime statutes, instead, hate crimes can be factors that a judge consider in the sentencing phase.¹⁷ Accordingly, statistics from differing states, districts, or jurisdictions are sometimes incommensurable.¹⁸

A crime does not qualify as a hate crime merely because the perpetrator can be shown to have substantial bias, or even to subscribe to a hateful ideology. To illustrate, if a neo-Nazi were to assault a Jewish person, that would not automatically qualify as a hate crime. Instead, one must show that the attacker was specifically and substantially motivated to perform the attack out of demographic animus.¹⁹

4. Obstacles and Issues in Measuring or Reporting Hate Crimes

Because of differing definitions of hate crimes among states, differing burdens of proof or evidence, differences in reporting rates, and other factors, it is often difficult or impossible to make proper cross-state comparisons regarding hate crime incidence.²⁰

Reporting and categorization of hate crimes is inconsistent across areas, even within a single state.²¹ Prosecutors often decline to prosecute hate crimes because it is difficult to prove beyond a reasonable doubt that perpetrators were motivated by demographic animus. Attempting to prosecute a hate crime may cost prosecutor a conviction of a lesser, easier-to-prove crime.²² Many suspected hate crimes are never prosecuted as such. Accordingly, relying on official numbers of convicted hate crimes likely *understates* the hate crime incidence.

¹¹ VA. CODE ANN. § 52-8.5(C).

¹² VA. CODE ANN. § 18.2-422.

¹³ VA. CODE ANN. § 18.2-423.

¹⁴ VA. CODE ANN. § 18.2-423.01.

¹⁵ VA. CODE ANN. § 18.2-423.2.

¹⁶ VA. CODE ANN. § 18.2-423.1; Platania Testimony, 2019 Transcript, Pg. 6, lines 7-12.

¹⁷ See, e.g., “State and Federal Hate Crime Laws in Ohio: Ethnic Intimidation, Enhancements & Elevated Penalties,” Friedman & Nemecek, LLC, accessed November 9, 2020, <https://www.iannfriedman.com/blog/2019/june/state-and-federal-hate-crime-laws-in-ohio-ethnic/>; See e.g. OHIO REV. CODE ANN § 2927.12, which provides for enhanced penalties for certain crimes if a defendant chooses a victim “by reason of the race, color, religion, or national origin of another person or group of persons.”

¹⁸ Oudekerk Testimony, 2019 Transcript, Pg. 32, lines 5-15.

¹⁹ Platania Testimony, 2019 Transcript, Pg. 6, lines 16-24.

²⁰ Oudekerk Testimony, 2019 Transcript, Pg. 32, lines 5-15.

²¹ Hate crime laws vary widely across jurisdictions and some jurisdictions do not require data collection on hate crimes. “Hate Crimes, Laws and Policies,” Department of Justice, accessed November 10, 2020, <https://www.justice.gov/hatecrimes/laws-and-policies>.

²² Platania Testimony, 2019 Transcript, Pg. 6, lines 16-24.

Other counting methods introduce other problems. For instance, Barbara Oudekerk, a statistician for the Bureau of Justice Statistics at the US Department of Justice, testified that victims are free to report to police that they believe themselves to be victims of hate crimes. The percentage of victims who report this belief (as a percentage of the total number of hate crimes the Bureau of Justice Statistics independently records) has been increasing in recent years, which may indicate greater awareness of hate crimes and hate crime laws, public belief that hate crimes are increasing, or increasingly willingness to report crimes as such.²³ The evidentiary burden for victims to report suspected hate crimes is much lower than the burden prosecutors face in convicting perpetrators.²⁴

Oudekerk testified that according to the National Crime Victimization Survey (NCVS), between 2013 and 2017, there was an annual average of 204,600 hate crimes.²⁵ Oudekerk testimony implied that between 2009 and 2017, the overall incidence of hate crimes has decreased.²⁶ (See Fig. 1 below in §5.) In the most recent years, approximately half of these crimes were reported to the police.²⁷ Of these, 22% of victims told the police it was a hate crime.²⁸ Approximately 15,200 of these crimes were also identified by the police as a hate crime.²⁹

Experts largely agreed that there are no good and uniform cross-district statistics and, further, that official numbers depend heavily on who is counting hate crimes. Victims, social scientific researchers, prosecutors, government statisticians, and others face different burdens of proof, may be using different definitions, and may have different dispositions to classify specific incidents as hate crimes. Accordingly, while examining trends within a particular set of data is often useful, cross comparisons between sets of data are often not.³⁰ Further, it is difficult to say what the true incidence of hate crimes is anywhere within the US, because of these measurement and definitional problems.

5. Findings: Are Hate Crimes Increasing in Virginia?

The Committee wanted to ascertain whether there has been a statistically significant increase in hate crimes nation-wide and specifically in Virginia.³¹ A majority of statistics presented reflected hate crimes at the national level; hate crime data specific to Virginia was limited, though is cited where available.

²³ Oudekerk Testimony, 2019 Transcript, Pg. 6, lines 21-22.

²⁴ Oudekerk Testimony, 2019 Transcript, Pg. 10, lines 27-29.

²⁵ Oudekerk Testimony, 2019 Transcript, Pg. 10, line 38

²⁶ Oudekerk Testimony, 2019 Transcript, p. 10, lines 21-22, page 11, lines 17-29 and 27-29. Committee's calculations.

²⁷ Oudekerk Testimony, 2019 Transcript, Pg. 10, line 39

²⁸ Oudekerk Testimony, 2019 Transcript, Pg. 10, line 41

²⁹ Oudekerk Testimony, 2019 Transcript, Pg. 11, line 3

³⁰ Oudekerk Testimony, 2019 Transcript, Pg. 32, lines 5-15.

³¹ Regarding the concept of "statistically significant", in the most generic sense, an analyst examining yearly changes in a reported statistic would want to know whether these changes are likely to be real changes or rather result from counting errors and chance fluctuations. In a more precise sense, a correlation between two factors (for instance, between population density and crime victimization rates) is said to be statistically significant when the observed relationship is unlikely to result from chance. In the social and natural sciences, a threshold of " $p < .05$ "—which means that the observed correlation has a less than 1 in 20 chance of being a coincidence—is commonly used.

While many of the experts attested to raw statistical changes and offered hypotheses about causes behind these changes, none specifically addressed the statistical significance of these numbers.³² Some analysts testified to number changes that are too dramatic to be mere counting errors, but then, as noted above, some such changes could result from changes in data collection methods, reporting rates, random fluctuations, or definitional changes.

With these caveats, we nevertheless note the following reports from different experts:

Doron Ezickson, Anti-Defamation League: The ADL's recent Audit of Anti-Semitic Incidents in the United States documented a 57% increase in the number of anti-Semitic incidents reported in 2017, compared to 2016. That increase is the largest one-year increase in the 40 years that ADL has conducted this audit. With respect to hate crimes, specifically in 2017 the FBI documented a 17% increase in hate crimes nationally, the third successive year of increase, and with a 58% increase in Virginia.³³

Barbara Oudekerk, Bureau of Justice Statistics: Hate crimes decreased from nearly 300,000 in 2009 to under 200,000 in 2017. (See Figs. 1 and 2 below. Fig. 1 is taken from Oudekerk's presentation to the Committee, while Fig. 2 is taken from her offices official public reports and includes some of the data from which she drew.)

Liz Coston, Virginia Commonwealth University: Attests that "the number of hate crime incidents reported by the FBI have been on the rise since 2014" but does not provide numbers for hate crimes in Virginia.³⁴

Brian Levin, Cal State, San Bernardino: Attests that hate crimes rose 12 percent in 38 cities and counties across the United States from 2016 to 2017, with many cities reporting increases yearly for four years.³⁵ In the ten largest cities in the U.S., hate crimes rose 12.5 percent and were the highest seen in a decade.³⁶ However, New York City and Chicago's numbers are down.³⁷

Mary McCord, Georgetown University: Attests an "alarming" increase in hate crimes between 2016 and 2017 but does not provide numbers.³⁸

The expert's testimony is seemingly inconsistent. This results in part from using different databases, such as the FBI or BJS's numbers, or because they report changes over different time intervals.

Expert Barbara Oudekerk of the Bureau of Justice Statistics offered the following graph, Figure 1, on her March 29, 2019 testimony to the Committee.³⁹

³² For instance, neither the phrase "statistically significance" nor variations of it not appear in the 2019 expert testimony transcript. Some experts talk of "significant" changes but are not speaking in the technical sense here.

³³ Ezickson Testimony, 2019 Transcript, Pg. 36, lines 30-41.

³⁴ Coston Testimony, 2019 Transcript, p. 34, lines 3-4.

³⁵ Levin, Testimony, 2018 Transcript, Pg. 1, lines 39-4; Levin Testimony, 2018 Transcript, Pg. 2, lines 4-5.

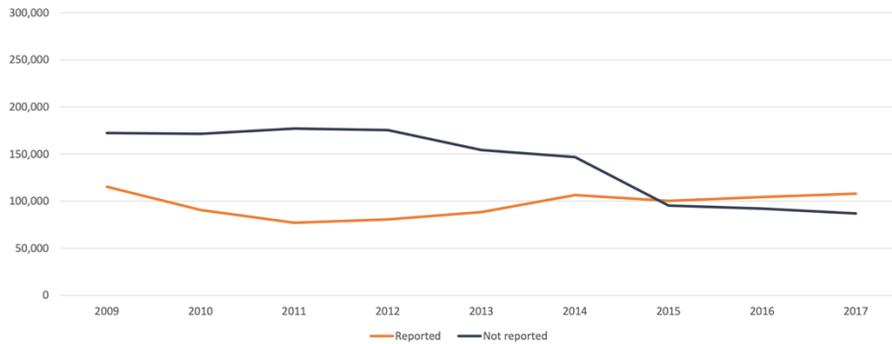
³⁶ Levin Testimony, 2018 Transcript, Pg. 2, lines 5-7.

³⁷ Levin Testimony, 2018 Transcript, Pg. 2, lines 1-4.

³⁸ McCord Testimony, 2019 Transcript, Pg. 22, lines 4-12.

³⁹ <https://www.bjs.gov/content/pub/pdf/hcs1317pp.pdf>.

Figure 3. Number of hate crime victimizations reported and not reported to police, 2009-2017



Note. Hate crime includes incidents confirmed by police as bias-motivated and incidents perceived by victims to be bias-motivated because the offender used hate language or left behind hate symbols. Estimates based on 3-year rolling averages. See appendix table 3 for estimates and standard errors.
 Source: Bureau of Justice Statistics, National Crime Victimization Survey, 2009-2017.



Fig. 1.

In addition, the BJS published the following data table (Fig 2) regarding total hate crime victimizations in the US. However, this data ends at 2015 and updated table is not available as of September 15, 2020.⁴⁰

⁴⁰ <https://www.bjs.gov/content/pub/pdf/hcv0415.pdf>.

TABLE 1
Hate crime victimizations, 2004–2015

Year	Total		Violent crime			Property crime		
	Number	Percent	Number	Rate ^a	Percent	Number	Rate ^b	Percent
2004*	281,670	1.0%	220,060	0.9	3.1%	61,610	0.5	0.3%
2005	223,060	0.9	198,400	0.8	2.9	21,740 †	0.2 †	0.1 †
2006	230,490	0.8	211,730	0.9	2.8	15,830 †	0.1 †	0.1 †
2007	263,440	1.0	236,860	1.0	3.1	24,640 ‡	0.2 ‡	0.1 ‡
2008	266,640	1.1	241,800	1.0	3.7	22,890 †	0.2 †	0.1 ‡
2009	284,620	1.2	267,170	1.1	4.4	17,450 !†	0.1 !†	0.1 !†
2010	273,100	1.3	255,810	1.0	4.8	17,290 †	0.1 †	0.1 †
2011	218,010	1.0	195,880	0.8	3.6	22,130 †	0.2 †	0.1 ‡
2012	293,790	1.2	263,540	1.0	4.2	30,250	0.2 ‡	0.2
2013	272,420	1.1	242,190	0.9	3.7	30,230	0.2 ‡	0.2
2014	215,010	1.0	194,310	0.7	3.4	19,000 †	0.1 †	0.1 ‡
2015	207,880	1.0	192,020	0.7	3.7	14,160 !†	0.1 !†	0.1 !†

Fig. 2.

The FBI maintains its own database of hated crimes, drawing on mostly voluntary reports from local enforcement agencies. Because this database relies on voluntary reporting, the number of reported incidents is far lower than the numbers given by the BJS, and the numbers may be less reliable. The following chart (Fig 3.) records the FBI statistics from 2007 to 2018.

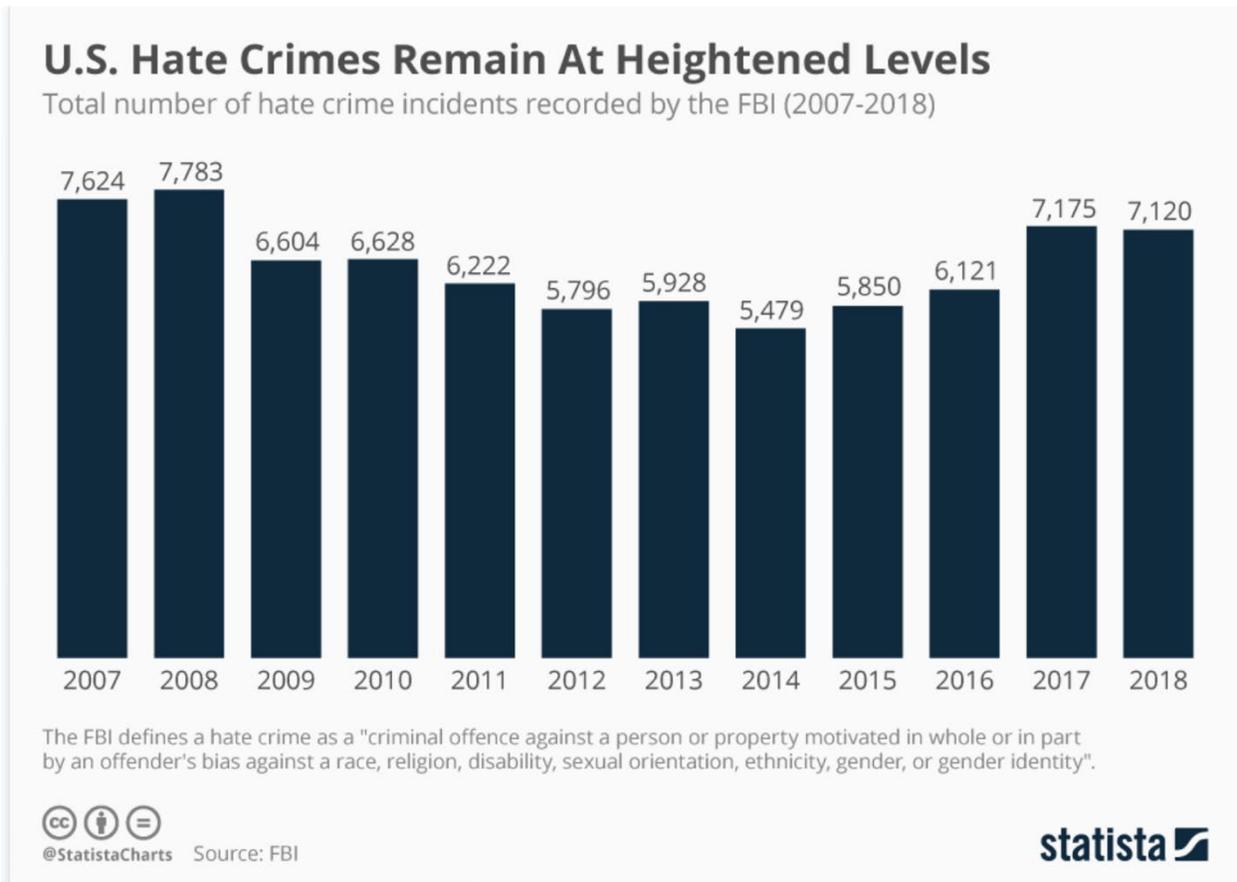


Fig. 3.⁴¹

6. Other Obstacles and Barriers to Better Law Enforcement and Prosecution of Hate Crimes

Here, we summarize remaining expert testimony on the obstacles and barriers law enforcement faces in identify and prosecuting hate crimes.

- Many victims do not report hate crimes to police because they believe doing so will not help⁴² or the crime was not important enough to report.⁴³
- Law enforcement might not understand why victims do not report crimes.⁴⁴
- Victims do not report crimes if they lack trust in the police or the criminal justice process⁴⁵, or if they fear harassment from authorities.⁴⁶

⁴¹ Source: <https://www.statista.com/chart/16100/total-number-of-hate-crime-incidents-recorded-by-the-fbi/>. Numbers are taken from the FBI's public database at <https://ucr.fbi.gov/hate-crime>. Fact-checked by Committee member Jason Brennan on Sep. 10, 2020.

⁴² Oedekerck Testimony, 2019 Transcript, page 17, lines 6-7.

⁴³ Oudekerck Testimony, 2019 Transcript, page 11, lines 10-11.

⁴⁴ Ezickson Testimony, 2019 Transcript, Pg. 37, lines 30-32.

⁴⁵ Ezickson Testimony, 2019 Transcript, Pg. 37, lines 3-5.

⁴⁶ Coston Testimony, 2019 Transcript, Pg. 34, lines 31-33.

- Participation in the FBI’s Uniform Crime Reporting System is generally voluntarily and so there is imperfect participation. (Some states require local districts to report certain crimes.)
- Identification of perpetrators of hate crimes is challenging because the perpetrator and victim have no prior relationship.⁴⁷
- A majority of police departments lack a standardized method for identifying, investigating and responding to hate crimes. This may cause hate crimes to be underrecognized and unreported.⁴⁸
- In some states, certain groups are not covered by protections against hate crimes.⁴⁹
- Police departments often lack experts in hate crimes within their departments. Their officers do not remember how to report or classify hate crimes because they encounter such crimes infrequently.⁵⁰
- Offenses that have hate as a motivation are often charged as regular felony offenses.⁵¹ This makes convictions easier because the prosecutors need not prove racial, ethnic, or religious animus, which is difficult to do.⁵²
- In Virginia, certain definitions of hate crime and certain hate crime statutes predates the federal Hate Crime Statistics Act and has its own definition of hate crime.⁵³ The definition and range of criminal conduct covered by the Virginia code’s reporting requirement⁵⁴ is broader than the Virginia Criminal code’s hate crime penalty enhancement.⁵⁵
- Law enforcement officials are often biased. They often harass and mistreat minorities and others on the basis of their indelible identities.⁵⁶ Hate crime enforcement relies upon officers and officials who often share the demographic animus which hate crime legislation is meant to police.

7. Recommendations for Best Practices

This is a summary of recommended best practices from the testifying experts, as well as from the Committee’s own analysis of their testimony.

- There should be uniform data collection methods and definitions across states and districts.
 - Standardize the reporting of hate crimes among police departments to produce more uniform identification, investigation and responses to hate crimes.⁵⁷
- Virginia should convene a statewide hate crime taskforce to ensure hate crime laws are effectively enforced, that crimes are accurately reported, that law enforcement and communities are sufficiently trained, and to maintain public awareness of hate crimes.⁵⁸

⁴⁷ Bell Testimony, 2018 Transcript, Pg. 16, lines 17-21.

⁴⁸ Bell Testimony, 2018 Transcript, Pg. 15, lines 15-16 and 18-22.

⁴⁹ McDevitt testimony, p. 8, paragraph 1.

⁵⁰ McDevitt testimony, p. 19, paragraph 5.

⁵¹ Platania Testimony, 2019 Transcript, Pg. 6, lines 24-27.

⁵² Platania Testimony, 2019 Transcript, Pg. 6, lines 33-35.

⁵³ VA. CODE ANN. § 52-8.5

⁵⁴ See generally Va. Code Ann. § 18.2-57, 18.2-121, 18.2-422– 18.2-423.2.

⁵⁵ Wiggins Testimony, 2019 Transcript, Pg. 13, lines 35-49.

⁵⁶ Johns Testimony, 2019 Transcript, Pg. 41, line 43 and Pg. 42, lines 1-3.

⁵⁷ Bell Testimony, 2018 Transcript, Pg. 15, lines 15-16.

⁵⁸ Ezickson Testimony, 2019 Transcript, Pg. 38, lines 1-8.

- The task force should consider whether diversity awareness education would benefit persons convicted of hate crimes in Virginia. If so, a curriculum should be developed.⁵⁹
- Create and fund special investigation units in police departments specifically trained to investigate hate crimes.⁶⁰
- Audit states or jurisdictions that have little to no reports of hate crimes to determine whether there is underreporting.⁶¹
- Every police department should have an expert in hate crimes.^{62, 63}
- Encourage policies officers to have outreach at the local level to build trust with communities so that individuals have better trust in the system.⁶⁴
- Encourage police departments to use social media to track hate crimes.⁶⁵
- Conduct a comprehensive review of the relationship between state-level laws and their legal framework, and the federal standards and guidelines.⁶⁶
- Consider requiring states and local governments that receive federal grants to collect information on hate crimes policies and programs in place.⁶⁷

8. Addenda

Attached are transcripts of the 2018 and 2019 expert testimony to the Committee, as well as the Committee's own thematic summary of this testimony.

⁵⁹ Ezickson Testimony, 2019 Transcript, Pg. 38, lines 9-11.

⁶⁰ Bell Testimony, 2018 Transcript, Pg. 16, 8-10, 35-36 and Pg 17, lines 1-3

⁶¹ Levin Testimony, 2018 Transcript, Pg. 19, lines 30-37 & pg. 20, lines 1-2.

⁶² Levin Testimony, 2018 Transcript, Pg. 10, lines 15-21.

⁶³ McDevitt testimony, p. 9, paragraph 8.

⁶⁴ McDevitt testimony, p. 8 paragraph 2-p. 9 paragraph 7.

⁶⁵ McDevitt testimony, p. 13, paragraphs 8-9.

⁶⁶ Wiggins Testimony, 2019 Transcript, Pg. 18, lines 16-20.

⁶⁷ Wiggins Testimony, 2019 Transcript, Pg. 18, lines 33-37.

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Kathy: Today is Thursday, May 15th, 2018, 12 PM Eastern Standard. Welcome to a planning meeting of the Virginia Advisory Committee of the US Commission on Civil Rights. This call is being recorded on the call or staff of the commission and members of the Virginia Advisory Committee. Also, there may be members of the public on the call in a listen-only capacity for the duration of the meeting. It is now my pleasure to turn the meeting over to Ivy Davis.

Ivy Davis: Good afternoon, everyone. We have a limited amount of time. So I'm just going to go through and say which members are on the call: Ruth Cameron, Sarah Combs, Claire Gastañaga, Terry Griffin, Ryung Suh, Lorraine Waddill, Angela Ciccolo, and Pat O'Reilly. Is there anyone I've missed? With that, I will turn it over to the chair, Shiek Pal.

Shiek Pal: Good afternoon. I welcome the members of the Virginia Advisory Committee to the US Commission on Civil Rights and any interested members of the public who may be on the call. On behalf of the committee, I extend my deepest appreciation to the experts who are with us today and who will be providing us with a national perspective on hate crimes. Joining us today are Professor Brian Levin, Director of the Center for the Study of Hate and Extremism at California State University in San Bernardino, California, Dean Jack McDevitt, Director of the Institute on Race and Justice at Northeastern University in Boston, Massachusetts. Hopefully, we'll be joined in progress by Professor Janine Bowell of the Indiana University School of Law in Bloomington, Indiana.

Our committee will be continuing its hate crimes review at an in-person public meeting to be held in August. At that meeting, the committee will focus on Virginia's specific data and policies. We have a lot of ground to cover in a short amount of time. By agreement, each of our speakers will have up to 15 minutes to make an opening statement. Because of our limited time, please understand that I will need to interrupt you if you go beyond the allotted time. When all of your opening statements have concluded, you'll be asked to respond to any questions that our members may have. Let me stress that if you wish to respond to a question posed to a fellow presenter, please let me know. I'll introduce you. The committee is looking forward to your statements and will benefit greatly from your collective knowledge and responses. With that, I'd like to introduce Professor Levin for your opening statement.

Brian Levin: Thank you, members of the committee, for this opportunity to address you today about our latest research. I would also though be remiss if I didn't send a special congratulations to my dear friend, Jack McDevitt, who has been just a mentor to so many of us in this field. Jack, thank you so much. I'm going to talk about a few interrelated yet separate things. The first is our latest data, which is just out. What it shows is in the ten largest cities in the United States, hate crimes officially reported to police, this data is derived from the local police agencies, rose 12% in 38 cities and counties that we surveyed for 2017. The top ten, they rose a mere identical 12.5%.

However, there were some notable declines. New York City which hit a moping year-high in 2016 was down slightly. Chicago was down 14% to around 61 which is in a range that they've been in in the last few years. So Chicago has been elevated as well. But in any event, the major cities did report a fourth consecutive annual increase. In addition, we saw for the largest cities, the ten largest cities rather, the highest total in over a decade and the first time in sometime that we've seen them aggregate over 1,000. To put this in perspective, FBI showings for at least the first half of the year showed a nearly 1% decrease in violent crime and about a 3% increase in property crime.

The city with the highest number of hate crimes were New York at 339, down 2%. Los Angeles at 254, up 10.8%. Phoenix, 230, up 33%, and Washington DC, 179, up to 67%. Boston, where my dear friend Jack is from, had 140, and that was down from about 143 in the year before. We also saw some notable examples of low reporting which is generally consistent with some issue related to policies, procedure, resources, and victim services. It was striking. Miami had none. Honolulu had one. Anaheim, California had one. There were other cities that also did not register a significant number of hate crimes. So I think there were two things. We've seen a rise. But the rise was not across the board.

Of the 38 jurisdictions that we looked at, somewhat over half, I think about 54% give or take reported increases. The other thing that I think is noteworthy is a breakdown in reporting as illustrated by some of the cities that I just referenced. There were about 90 cities of over 1,000 that reported zero hate crimes in 2016. That's out of 307 cities of 100,000 or more. To break down by locality, and this is why I like doing this, there are national trends to be sure, but there are also local and regional trends which are important as well. In our report, we found that these did vary somewhat by the demographics and individual characteristics of each city.

So for instance, New York City which is home to about one in six American Jews, by far the highest number of hate crimes. And again, another increase for antisemitic, there were 150. To put that in perspective, that number is more than the total hate crimes of all but about four cities in the United States. Los Angeles, the most targeted group were gays. Chicago, African-American and Jews were tied. Houston, they just listed religion. Philadelphia was race. Phoenix was anti-Black as was San Antonio.

Bottom line is the most common type of hate-biased categories that we saw in order were basically anti-Black, antisemitic, anti-gay, and anti-Latino, but there were wide variations. A lot of this I think revolves around demographic dynamics. We looked up estimates of Metropolitan areas that have for instance, larger gay populations. To be sure, certain cities for instance like Seattle had anti-LGBTQ as their number one group for instance. So there is some variation. But within the cities, the top three or I'm sorry, some combinations, African-Americans, Jews, and gays constituted the top two positions of all but one of

the ten largest cities. The one that didn't was San Antonio which is a bit of an outlier because it reported just a handful of hate crimes to begin with.

The next thing I'd like to talk about was something also that we found very interesting. Most of the cities were tracking for increases in 2017. But the election period of 2016 saw an explosion of hate crimes across the country except for certain jurisdictions in the mid-west, like Chicago. But in these places, we saw big, big increase. So in Boston, November 2016 was the worst month in two years that we had data for, for instance. LA had a significant increase. We could go on. But bottom line is the fourth quarter of 2016 saw a 26% increase, 25.9% according to FBI over the previous fourth quarter.

So a lot of the cities that were edging for increases, some of them, like New York and Chicago which we're tracking for increases for instance, ended up with decreases, in New York in particular, because the increase the previous year was so high. November was the worst month in about nine years. That fourth quarter was I think the worst one since 2008. That November was the worst November since we had systematic record-keeping nationally since '92. Although Jack did a beautiful did in '90, and there was some data in '91, we generally in our sense, use '92 as the beginning.

So that was something that we found interesting. We also found in looking at other data, previously, we manually tried to sift through a whole variety of different data sets to see if we could find anti-Muslim hate crimes after the San Bernardino terrorist attack of December 2nd, 2015. Then five days later, the Muslim ban announcement which was rolled out on Twitter, on the internet and then with a speech on the evening of December 7th, 2015 in Rockville, South Carolina. We found significant increases above already elevated numbers after President Trump's, then Candidate Trump's Muslim ban announcement.

The FBI data now confirms that spike. So that was something. Conversely when President Bush spoke six days after 9/11 at the Islamic Center of Washington DC, hate crime dropped the next day by 2/3 and continued to drop. So it appears that political speech correlates to fluctuations at least in immediate ones with regard to hate crime. We also have seen a hate crime spike from catalytic events like terrorist attacks. Here's the interesting thing that came up at the last part of our research.

Last week, the House Permanent Select Committee on Intelligence released over 3,500 Facebook ads that were placed by the indicted Russian internet research agency. This is hot off the presses. USA Today found a spike in racially divisive Facebook ad placements in the run up to the election. They tripled. There was a lag by one month of an increase, a significant explosion of hate crimes in the November election period. Now, because I have Jack on, I have to make sure I put these data limitations in there.

We are not saying that this Russian ad placement caused this increase. There were certainly many factors. But I think it is something that must be examined, that there are three possibilities as me being a former cop. One, coincidence, I highly doubt that. Two, that the Russians' interference caused this. We just simply don't have data to confirm that. But I think the third possibility is the most likely. That is they were paying close attention to what divisions were taking place and what kinds of placements got particular traction. I think that's what happened. I think at least as far as my speculation on this is that they were paying close attention to various factors.

Like someone who saw the web reports saying that humidity would be at record lows then spread accelerants on the straw field next to the freeway. But in any event, that's where we were for 2017. 2018, we have a handful of jurisdictions all except Washington DC are significantly down. We are forecasting an increase for hate crime nationally when the FBI comes out with their data later this year. We are also forecasting a decrease but only for the first half of 2018 because of A, the limited number of jurisdictions that we have. B, the fact that we are in a very divided and conflictual time.

I also want to indicate one thing since this is Virginia. Post-Charlottesville, we saw a real fragmentation and disintegration of the alt-right's ability to work together. We don't really have the time to go into all that right now. But I think that's significant. Nevertheless, the negative stereotypes which label certain groups as legitimate targets for aggression are still out there, particularly anti-Muslim sentiment for instance. Nevertheless, we also learned that hate crimes can increase even when negative sentiment doesn't.

Jews for instance in the social surveys, for instance like Pew, are very highly regarded. Yet nevertheless, there have been an increase in hate crimes. In particular, we have a whole variety of incidents that don't rise to criminality which are occurring in public spaces and online. It appears, at least from the research of my friends over at ADL that a lot of these antisemitic directed attacks come from a relatively small number of people. So bottom line, we now not only have to deal with fluctuations of hate crime based on factors like demographics, serial offenders, crime changes, and a myriad more.

We also are dealing with a systematic stealth warfare that is taking place by foreigners to further inflame and so discord. Those words are basically coming right out of the indictment that was put together this past February by the United States Department of Justice. I greatly appreciate the opportunity to address you today and I'm certainly willing to take any questions that you may have. I look forward to hearing my dear friend, Jack McDevitt's presentation now.

Shiek Pal:

Thank you very much. We will save questions for the end. Without further ado, Dean McDevitt, the mic is yours.

Jack McDevitt: Thanks very much. Thanks, Brian. It was great to hear you speak. Your work is so important because you're doing more timely collection of data than anyone else in the country, so I appreciate that. I'm going to talk a little bit about some of the background research, and just go over it fairly quickly. Then in the question and answer, I'd be happy to respond. My background is I've been working on this issue since the 1980s. I was part of the original team that collected, designed and collected the original data collection for the FBI. I've spoken in hundreds of settings around there and trained lots of police officers and written quite a bit about it. So I think that one thing is we have developed, Jack Levin and myself, have developed the typology of offenders that people have found useful.

We did that based on data from the Boston Police Department. What we are able to do is find that there really were different kinds of motivations for hate crime offenders. That typology has been used across the world now. It's taught in the FBI Academy. It's taught in academies around the country. It's been taught in over 69 countries as one way. I don't know that it's perfect but it does serve some function. One of the things that it does is it helps law enforcement try identify how they might solve hate crime.

I'll come back to that in a minute. So we identified four different categories of hate crime offenders. Let me stop for a second and say I would rather use the term bias crime but that force is left to bond. There are a number crimes committed by individuals across the United States that involve hate and are not the kind of incidents that we're talking about here. But because of so much legislation and data collection and stuff is using the term hate crime, sort of that's the crime category, but for what it's worth.

So we identified four categories of bias crime offenders. Thrill offenders, defensive offenders, retaliatory offenders, mission offenders. I can provide data on this to the commission. Thrill offenders are young people generally in a group. What they're doing is they're looking to have fun. They think it's fun to go beat somebody up because they're perceived to be gay or they beat somebody up because they're perceived to be a Muslim.

So they travel in groups. They don't have a strong commitment to bias. They're sort of reacting as Brian said, to the culture all around. Our second group is defensive. These are people who are protecting their turf. Their turf could be their neighborhood or it could be their workplace or it could be their school and saying these are people who take offense when a person from a different ethnic or racial group moves into their neighborhood or comes to their workplace or attends their university or high school. They see themselves as defending something that's theirs. The third kind is retaliatory. These are people who feel that they are coming after someone who's done something to them. There's been a series of incidents. Something will happen. Then a group of people will say, "Okay. Well, this has happened to someone from our groups so we're going

to go back and get somebody from their group." That is one set of folks that are involved in this.

The final group is called mission. They're on a mission to change the world. These are the most dangerous but also the least common of the offender groups. These are the people that you read about. Brian helps to track which is people who are involved in organized hate activity. So it could be members of skinhead groups. It could be members of White supremacist groups, Christian identity groups, a whole variety of groups out there. They use the internet as a basis to consolidate power, to direct things. They're involved in some of the most dangerous incidents out there. Fortunately, they're the most rare. But they've adopted a policy of what's called legalist resistance which is they try not to get their fingers dirty after some work that was done by someone who probably lost, and then was able to sue and close a couple of these groups.

They will spread their message of hate but try to have people who are not members of their organization act on it. That way, they can't be sued. So they go ahead and hold meetings. There are some tapes that the FBI has of them saying things like, "We don't advocate violence." Then after that's been said, then they promptly advocate violence for the next 90 minutes. Hopefully, someone in the audience will act on it. So those are the categories. The reason that I think it's been adopted by so many agencies, with law enforcement agencies, prosecutorial agencies, and social service agencies is it's going to help you to tell how do I solve this one.

So for example, if you're talking about a crime that's committed for thrills and the victim tells you some of the characteristics like the kids, there was a group of kids. They came out of nowhere. I've never been seen them before. They used this store. I was coming out of a gay bar and they attacked me, the chances are that those kids who are involved are going to do some bragging because they think it's fun the next day in their high school or college.

If you go to those schools, you're going to hear from kids through things like teachers or SROs who's rumored to have been involved in the incident. By the same token, if it's a defensive hate crime, a family moves into a neighborhood and there were rocks thrown through their windows, it seems logical but police don't think this way sometimes, it's going to be somebody in the neighborhood who did it. Somebody didn't drive from two towns away to throw rocks through this family's window. It's generally someone who is standing on their front stoop, you can see the other person's home. One of the things that this typology allows police to do is to focus their investigation in one way or another.

The other thing that I wanted to talk about is we're now in a process, Jack Levin and myself, of trying to identify some data to see if these categories are still the same. We created them in the 1990s. It still rings through in law enforcement but we think that some of them may have shifted in at least in the proportion. When we did our original study, about two-thirds of the hate crimes were

committed by thrill offenders. A third of the hate crimes were committed by defensive and retaliatory offenders. Less than 4% were committed by mission offenders.

We think that that has changed, that we have an increase in people who are defensive, who see themselves as protecting their country, their whatever, and maybe a decrease in some of the thrill. Unfortunately, an increase in the organized hate groups. We can talk more about how that works and how they get together and all of that because there is some good data on that. The other thing I wanted to talk about briefly is that Brian did a nice job of laying out where the trends are in hate crimes, at least in large cities in the United States.

One of the things is that hate crimes are different by the level of violence involved. I want to offer a caution and also give you some information. The two top groups that are most likely to involve a physical assault with injury are the LGBTQ community and the anti-Muslim hate crimes. Those victim groups are most likely to be beaten and have serious physical injury. On the other hand, antisemitic hate crimes have been ... Are notoriously using property. Part of that is that we can't tell who's Jewish walking down the street but we know that they go to their synagogue or they bury their dead in their cemetery. We can attack all Jews by attacking the synagogue or the cemetery.

There is some differences across the level of violence. The cautionary note I'd say is that as Brian indicated, we have a couple incidents in different cities that are assigned to move this way. For some reason, hate crimes have never used guns as a frequent weapon. They use rocks. They use sticks. They use bats. But they don't use guns. We're starting to see a little bit in certain places of an increase of guns being used. If that's switch is over, we see a qualitatively different hate crime outlook in the United States. If all you had to do is drive by a park where kids are playing basketball or a synagogue or a mosque and fire a gun into it, knowing that most of the people in there are going to belong to that group, I think the whole dynamic of this changes.

For years since we collected data, we haven't seen guns be used very often. Now in certain cities, we're starting to see an increase. I find it very frightening. So I was going to talk a little bit about we've done a lot of work on reporting. Brian did a really good job of showing you where there are bad reporting, where there is good reporting, where reporting is being done well. Reporting is important. I would say that from the commission's point of view, reporting is important because we got to help the victims.

Brian and I like data. We love the data. We want the data to be highest quality. But in the end of the day, it has to be about helping victims. If victims don't come forward and tell somebody about what happened to them, we can't help them. So it's really important that while we talk about reporting in terms of data, it's really about how we can get victims assistance as they come forward and tell us about the crimes there.

Some of the big reasons, the Bureau of Justice Statics did the nice job of understanding why people don't report. Some of the big reasons are that they feel like no one cares, that they think the police are biased. If they go and tell, then the police are going to either ignore it or they're going to revictimize them. Then there's another complication which Brian referred to briefly is that there's no ... That groups aren't covered, all groups aren't covered in all states. So some states will cover areas like Brian is working with homelessness. Other people are working with mental illness. That won't be a category in one state but will be a category in another. So the states don't report it. So it gets complicated. That's part of the process.

I'm going to wrap things up here by saying that increase reporting, the one thing we know is that outreach is the key. That if people have a relationship with even a single police officer or a prosecutor, they'll come forward and they'll tell people. But if they don't have a relationship with anyone, then they're very unlikely to do that. That only falls on the police. So I was interviewing a police chief one time. We were talking about it. He said, "Wow. I don't even know if I have any mosque in my town." He turned to his deputy and said, "Do we have any mosque?" The deputy said two. I thought if you don't even know you have them, you certainly don't have a relationship with them.

In DC, we had a case where there was a tremendous liaison to the LGBT community in the police department. That person was transferred. They got promoted, great. But then the new person didn't do any outreach activities. The community started suffering and increase in hate crimes and not reporting it. There is some real things you can do from a policy perspective. Let me stop there, leave more time for questions. I hope that was helpful.

Shiek Pal: That was great. Thank you very much. Before we transition to the questions, I'd like to ask the operator whether anyone else has joined the call?

Ivy Davis: Kathy?

Shiek Pal: Has she dropped off?

Ivy Davis: Apparently.

Kathy: I'm so sorry, just Corine Sanders.

Ivy Davis: Okay. Has anyone else joined the call, Kathy?

Kathy: Yes, Corine Sanders.

Ivy Davis: Okay. Thank you. That's the NRO staff person.

Shiek Pal: Okay.

Sarah Combs: Excuse me. Just for a second, for clarification. When she opens up her initial statement, she said Thursday May 18th. Does anybody pick that up instead of Wednesday the 16th?

Ivy Davis: We'll clarify that vary. We'll clarify that, okay? Thank you. Just a reminder that when you do speak, please identify yourself for the recording. Okay, Shiek.

Shiek Pal: Okay. We're going to transition into the Q&A portion of the call. Given that unfortunately, Professor Howell is not able to join us, we actually have a little bit more time. Members, you'll have five minutes for your question and answer. At the end of that, if we still have time left, we'll do a second round. To get the ball rolling, I will ask the first question. Then after that, I will go alphabetically down the list of our members who are present. Again, keep in mind that the time allotment includes both the question and the answer. So the best use of the time is to actually ask the question. We will have opportunities later to make statements, so this is probably not the best use of that time.

Having said that, my question goes to both of our presenters. First of all, thank you again for your excellent statements. My question is this. What recommendations would you recommend that this committee make the commission to ensure that hate crimes in Virginia are accurately reported and that there is effective prevention and enforcement? I know, Dean McDevitt, you touched a little bit on how to increase reporting, so if you could just elaborate more on that. But that question is actually for both of you. Thank you.

Jack McDevitt: Sure. Brian, do you want to take it first or do you want me to?

Brian Levin: You go first, Jack.

Jack McDevitt: Okay. We know that there's a lot of things you can do to increase reporting. As I said, you start with outreach and relationship building at the local level. It then has to be that at the police department level, you really need a two-tier response model. What I mean by that is hate crimes are rare events. Thank God, but they are rare. So the idea that every police officer is going to know what questions to ask to see whether an incident is a hate crime has been proven time and time again to not be effective.

So you need a trained expert in every police department. It doesn't mean they have to be dedicated to hate crimes full-time. But hate crime is one of their areas expertise. Then the responding officers and the rescuers department are told that if there is any indication of bias, refer it to the expert. The expert will do the investigation. That model is the most effective model.

Than what we have to do is, Brian hinted at this, for places that aren't doing a good job, we need to call them out. The ADL does a pretty good job of doing this, but if you have a major city or a city that has a pretty homogenous population and they're reporting zero hate crimes or one hate crime, then we

need to say them, "You have to be doing something wrong." Victims aren't coming forward. We need to do a better job. So that will be my steps on reporting.

Brian Levin:

Thank you Jack. My answer would be very similar. In fact, I would refer you to two places. One would be the end of our current report which actually lists the recommendations federally from a consortium of about 85 different organizations. So I think that would be a good place to look as well, although that's geared more towards federal. I would also encourage you, interestingly enough, because like Jack's study, this has stood the test of time.

One of the things I did decades ago was to go to different cities and look at best practices. This became a journal article in the 1992, '93, it's like full '92, '93 Stanford Law on Policy Review called Bias Crime, a Theoretical and Practical Overview. It goes over all these best practices, summarizing quite quickly, these include exactly what Jack said. Let me start with just a few pivotal things.

One is what Jack was talking about, a biased liaison officer. This is something that we have in policing generally. There's someone who's tasked with a particular type of crime. Now, as the data would indicate, some places don't generate enough hate crime to maybe task someone to that full-time. But still to have someone who is the point person in that department, who also then acts as a spoke, not only with regard to the higher echelons of the department, but other government agencies as well as NGOs and advocacy groups.

Model policies and procedure is really important, as well as a message from the top. Billy Johnston who is a beloved icon in our world who headed up the Boston Community Disorders unit which is their hate crime unit for sometime told me that it's really important to have these things. Also, as Jack said, having officers go out in the community so they're known entities and being able to use these other intermediate entities as conduits to get reports in and having an attitude that says, "We rather you report even if you're not sure if something is a crime or even a hate crime than not doing it."

Also, I think it's important to track non-criminal data. This is an important development. Jack and I are very much ensconced in the hate crime area. But what I think is that in certain areas, we're seeing hate incidents appear to increase more than hate crimes. Of course, because that data is much more a morph, it's an old page. It's hard to make period to period comparisons.

But nevertheless, Orange County, California for instance, in 2016, reported about a 40% increase in hate crimes. The Human Relations Commission though reported an over 70% increase in hate incidents. So I think it's important not necessarily for the police department to track this but for human relations agencies. Now, I think it's important that we fund human relations commissions throughout the state and throughout the country with community relations service.

Lastly, I think that a message from the top is very important and some kind of sustained infrastructure. Previous, and I'm going to close it with this, previously, we had all 94 US attorney's offices have like hate crime task forces. They'd meet regularly with community people. Whoever is going to be spearheading that, whoever's going to be quarterbacking it can vary. But nevertheless, someone of high regard in that region who let's say quarterly gets together and meets with not only stakeholders but also other government agencies, etc. Additionally-

Shiek Pal: Okay.

Brian Levin: I'm sorry. You have prefer-

Shiek Pal: I'm afraid my time's expired on this question. But thank you very much. That was great. Let me recognize Bruce Cameron.

Bruce Cameron: Yes. I have a-

Shiek Pal: Bruce, do you have a question?

Bruce Cameron: I do. I have two questions for Professor Levin. You started out by saying that in 2017, in the ten largest cities, there was approximately a 20% rise in hate crimes. What was the percentage of increase in the prior years? Do you know for example say, the prior four or five years?

Brian Levin: Absolutely. That is in our report. The prior years, and let me give them to you. I'm going to give you, if it's okay, for all the 38 cities, is that okay? Do you want the top ten? It's up to you?

Bruce Cameron: Well, let's start with the top ten if you've got that because that's the number that you used, the 12%.

Brian Levin: Yeah, sure. Absolutely. In 2014, there were 812 hate crimes in the top ten cities. That was an 18.7% increase over the previous year. In 2015, we had 912 hate crimes. That was a 12.3% increase over the previous years. In 2016, we had 923, a 1.2% increase. In 2017, we saw 1,038, just shy of a 12.5% increase. That being said, we're expecting at least for the first half of 2018 to see declines. The problem is we can't predict what's going to happen during a conflictual election season. So we're not doing full-year forecast for 2018.

Bruce Cameron: All right. It seems to me that there's a huge variation. You're telling me it went from almost 19% in 2014 to 1.2% in 2016. That seems to me that there's something else going on other than the incidents of hate crimes. It sounds like that has to do more with the reporting.

Brian Levin: Well, it may sound like that but we don't have data on that except in 2015, the Bureau of Justice Statistics did in fact say that they saw in their victimization surveys an increase in victim reporting. But I don't think you can explain a way

this increase is just on reporting. By the way, there are other structural factors as well. For instance, we saw big increases in places like San Jose in Philadelphia last year. But those cities also implemented new policies and procedures.

So sometimes we will get reporting of that. Sometimes there will be policy changes in individual cities. But when we track like dozens and dozens of cities and we see certain kinds of trends, across that whole cohort, I don't think we can just say it's a change in the policy in a particular city. But I do think that increase reporting may very well play a factor in some of this. But I don't think you can explain away for instance, what we saw in that explosion in November, which is the worst November ever, just simply because of reporting.

Bruce Cameron: My second area of question has to do with religion as a category of hate crime. You indicated, you mentioned religion. But you also mentioned that the top three are African-American, Jews, and gays. Do you make a distinction between hate crimes directed toward religion and hate crimes directed toward Jews?

Brian Levin: Absolutely. Absolutely.

Bruce Cameron: And why is that?

Brian Levin: I'm sorry, I don't understand the question.

Bruce Cameron: Well, I don't understand why hate crimes directed toward people who are Jewish would be distinguished toward hate crimes toward religion, but I don't know about the reporting. I guess maybe the better question is this, what's the basis for you distinguishing between hate crimes directed toward religion and hate crimes directed toward Jews?

Brian Levin: Well, one of the subcategory of a larger category. Certain cities did not break down into subcategories, but here we had broad categories like religion. But most of the major ones like New York, and Chicago, and Los Angeles do break it down by those subcategories. So I process the information that's given me. If it's not broken down, we can't then say, well, that's just going to be we're going to put that in the Jewish category. But let me just speak more broadly and that is we've seen something fairly consistent. This is really interesting.

Hate crimes against Jews bottomed around 2014 according to the FBI, then they went up. Hate crimes against Muslims almost doubled from 2014 to 2016 but what I think is really interesting is the proportion of Muslims as hate crime victims hit a record in 2016 of 5% and anti-Muslim assault which Jack was referring to, actually hit a record in 2016 more so than what we saw in 2001. But Jews are about 11% of hate crimes nationally. They're about 2.1% of the population. Muslims are about 5%. They're about 1% of the population.

Shiek Pal: Sorry, I need to-

- Brian Levin: I'm sorry. Just one quick thing, and for only a handful of time since we've been collecting data, religion hate crimes have surpassed 20% in 2016.
- Shiek Pal: Thank you. So slight change in the schedule. Apparently Professor Bowell is now available to join us. Is she on?
- Ivy Davis: She's trying to join the call, Shieks. So perhaps the operator can tell us when she's joined the call.
- Shiek Pal: Okay. So in the interest of time, why don't ... Sorry?
- Ivy Davis: I said it may take a minute for her to get into the call, the delay.
- Shiek Pal: Okay. In that case, why don't we go ahead and let's do Angela's question. Then hopefully, by the time Angela's question is done, Professor Bowell will be lined up. We'll then do a 15-minute statement from Professor Bowell. Having said that, Angela?
- Angela Ciccolo: Yes, thank you. Thank you very much. I want to thank the presenters for the excellent information on our call today. I was really interested in your comments about the spike of the activity, in hate crime activity as it correlated to Facebook posts. In this age where there is a cyber element to some of the bullying and abuse incidents we're seeing, I wondered if the presenters have any recommendations for our committee on how we might consider social media as it relates to the topic of hate crimes and tracking those incidents. Thank you.
- Jack McDevitt: Sure. I'll start. This is Jack McDevitt. What I would say is that we've seen an increase in the capacity of law enforcement agencies to use social media to monitor this kind of behavior. They're using it to monitor gangs, they're using it to monitor other kinds of social groups. This would be a place where paying attention to hate sites and paying attention to bullying sites, sites where people are being bullied electronically based on the characteristics that they have would be something that both schools for the bullying and police departments have the capacity. They didn't use to, but they're now developing enough strengths.
- Unfortunately, it's coming out of their work in human trafficking and sex trafficking. But they're at least developing the strength to be able to get on the internet, know what things are, track them. I would encourage agencies to be paying attention to that as a new source of recruitment for people to be involved in and also a source of victimization from bullying right on up.
- Brian Levin: My response would be two things. One, look at particular events in the town. For instance, Anaheim, there was a Klan rally. There was a lot of build up going into that Klan rally. Similar, there was basically a limited civil disorder in Sacramento, but police were able to monitor at least the run-up. There's a lot of

information about events. The other thing I would say is researchers for instance in Los Angeles, are looking to see if social media activity correlates to actual increases in hate crime at the local level. We haven't seen the results on that yet.

Kathy: Ms. Bowell has joined the-

Angela Ciccolo: Thank you very much.

Shiek Pal: Great. Thank you. So Professor Bowell has now joined us.

Ivy Davis: Yes.

Shiek Pal: So what we're going to do is we're going to switch back to her. Professor Bowell you've got 15 minutes for a statement.

Janine Bowell: Wonderful. Thanks so much. Apologies for the delay. All right. I want to first talk about what hate crimes, what category into which hate crimes fall. I mentioned that I'd speak about the problem of hate crimes as low offense level crimes. By suggesting that they're low-level crimes, I'll use the term low-level several times. But I want you to understand that these are crimes. You've heard about this that are extremely traumatizing for victims, despite the fact that they fall into a low-offense level as part of the criminal law.

First, the vast majority of hate crimes are not serious offenses. Meaning they are not murders. They don't involve, they are unlikely to involve guns. Someone is unlikely to be dead. The way in which law enforcement officers treat these crimes is very important with respect to issues of offense. That's why it's important to think about their offense level. You should know that with respect to police departments, the research shows that the vast majority of low-level crimes, low-offense level crimes are not investigated in the slightest, meaning no victim gets a call. No perpetrator is sought at all. They're completely filed away.

To say that the vast majority of hate crimes are low-level crimes means that they will not be investigated and not addressed of course. I've said that hate crimes and I said this frequently in recent works, hate crimes need to be part of legislation so that they will be investigated, so that victims will receive some sort of services, so that perpetrators will be caught and know that they may not, they should not be repeating these crimes. My research has shown that there is a high level of repeat for hate crime, for hate crimes.

It may not be sort of repetition by the same offender, in some cases, it is. But there's lots of repeated hate crime. So when I last cataloged hate crimes, and these are hate crimes directed at individuals moving to White neighborhoods between 1990 and 2010, each individual target of hate crime had had several incidents directed at them before they elected to report it to a police or have

some sort of legal intervention. In order to ... What prompted the legal intervention was the fact that the crimes grew more serious.

For instance, they might first have some sort of vandalism, then a low-level assault. Then the individual might have a cross burned on their lawn. It's only at that last incident that they would end up calling the police. So there's a problem in part with issues of reporting. Occasionally, individuals don't know that these incidents are actually hate crimes. These are actually criminal incidents. That's just because individuals are unclear about what the criminal law looks like in this context.

Second, I'll move onto what police departments do in addressing hate crimes. There's several different approaches that the police department take to addressing hate crimes. Again, you may see this in the data. That's why the data shows that large numbers, I believe it's around 80% of police departments in the United States report that not a single hate crime occurred in their jurisdiction. That's in part because police departments have very different approaches to identifying, investigating, and responding to hate crimes.

I will describe each of the different categories of ways in which departments respond. I'll do it with respect to size, meaning what do the vast majority of departments in the country do. So the first, the vast majority of departments in the country have no particular approach to dealing with hate crimes. Police departments are divided into geographic districts. So when a hate crime occurs in that particular district, if it is noticed or recognized, and in the vast majority of cases, it is not.

But if it is recognized, the detectives who are assigned to investigate everything in the geographic district will largely not investigate it. They will say, "All right. This is a low-level crime. I'm going to treat it like I treat the rest of low-level crime. This is just a vandalism." So a hate crime would be treated just like a vandalism. So your garage defaced with slurs is just a vandalism. So this is how the vast majority of hate crimes is treated in this country, assigned, if it even gets assigned to a district, a detective in the district, it just not dealt with at all.

A second approach that happens in fewer numbers of police departments, a hate crime will be assigned to some sort of special investigations unit, meaning an investigation unit that deals with particular types of crime. Not hate crime, I'll talk about hate crime units which are the rarest approach to dealing with hate crimes. These are detectives who may investigate not homicide, but other sorts of crimes. They can do computer crimes or other sort of crimes. They're called special investigations. Those detectives investigate all of the hate crimes and the other categories that fall into this, their jurisdiction. So they may follow up.

The data on how well these specialized detectives do is not especially good because hate crimes are not all of their purview. They do other sorts of specialized crimes. One of the studies that I've read in this context suggest that

they may be using speech incorrectly, their first amendment protections that may be implicated when detective investigate hate crimes. Detectives in this context may be not respecting the first amendment appropriately. At the other end of the spectrum, detectives who are investigating using generalized special investigations sort of units may be dismissing hate crimes, in part because they don't have the experience in this context to recognize patterns and recognize when they should be following up and the precise ways in which to follow up.

I'm going to move now to the single best way of protecting victims in this context, victims who have been targeted by hate crime. Unfortunately, this is the rarest type of police department approach. These are hate crime units. These are specialized department-wide units focused entirely on the investigation of hate crime. These units are responsible for investigating all of the hate crimes that occur in a particular type or in a city. So they develop, they are able to develop expertise around hate crimes. They are able to attend specialized trainings and are able to focus on appropriate procedures for dealing with hate crime.

Hate crimes are actually harder to investigate than other sorts of crimes. In other sorts of crimes, perpetrators and victims are known to each other, maybe known to each other, are likely to be known to each other. This is not the case frequently in the context of hate crimes. So they are simply harder to investigate on that front, on identifying perpetrators. They are harder to investigate in the context of identifying bias motivation. There are as I noted, specific legal issues, first amendment-related issues. There are also issues involving identifying bias motivation. Is it bias motivation or is it something else? Is there a conflict between the perpetrator and the victim that actually led the individual to commit the crime?

I studied a specialized hate crime unit. I found that the detectives there were able through investigating lots and lots of hate crimes to develop a way of separating crimes work that were not bias-motivated from crimes that were bias-motivated. They did it in a way that adequately identified bias motivation, provided services to victims, and also protected the first amendment. They were able to separate non-bias motivated crimes from the bias-motivated crimes and provide the specialized support you need to offer to prosecutors who end up prosecuting these types of crimes.

Hate crime units provide the most comprehensive support for victims of bias-motivated crimes. They are however, expensive. They cost money. You need a dedicated unit that only focuses on hate crimes. The best units have detectives, are specialized detectives units. They have detectives of different ethnicities. The unit that I studied was quite large in a large city, was quite large, and had detectives that were Asian-American, African-American, Latino, and of course White in the unit.

Shiek Pal: Professor Powell, you have one minute.

Janine Bowell: All of these detectives were able to adequately support victims. Finally, best practices, best practices to adequately support hate crime units victims involve hate crime units, right, the creation of hate crime units. Borrowing that, the police chief needs to support, adequately support the investigation of hate crime, providing training to any detectives who are responsible for investigating hate crime and recognize that having hate crime in the city is a good thing rather than a bad thing. I'll stop there.

Shiek Pal: Great. Thank you. In the interest of time, we're going to jump right back into questions. We left off with Sarah Combs. Sarah, do you have a question?

Sarah Combs: Yes. I just have one. I suppose any of the speakers could handle this one. I'm wondering that with the increase in hate crimes committed by people in the public, whether there is a parallel rise in the use of excessive force by police officers? I guess unarmed African-Americans. I'm thinking about the incident of the officer who choked a Black man at a Waffle House in North Carolina last week. So I guess I'm thinking that since our police officers are coming from our level talk relations, that if there is kind of a rise in hate incidents among the population if there is also this kind of behavior in the police departments on the rise.

Shiek Pal: Can any of our presenters respond to that question?

Jack McDevitt: Sorry. This is Jack McDevitt. I was on mute. Two things, there's been some kind of decent research at Harvard and by Jeff Alfred on the use of force by police officers and being particularly targeting African-American or Latino males. What we've seen is, what that research shows is an increase in use of force against African-American and Latinos but not a significant increase in fatalities. So that while those fatalities are the things that drive public policy, and we're all most concerned with, we don't see a statistical increase in fatalities but we do see it in overall use of force targeting African-Americans, Latino males, if that's helpful. Yes, you're right. Police officers carry the same biases as everybody else in the population does, conscious and unconscious.

Shiek Pal: Thank you. Claire Gastañaga.

Claire G: Hi. This is Claire Gastañaga. Jack, during your presentation, you said at one point that you could talk a little bit more about how hate groups organize and how they get together. I wondered if you might be willing to do that for me at this point.

Jack McDevitt: Of course, sure. The thing that's changed about hate groups is that in the 80s and 90s, when Brian and I started this, you had to find somebody who shared your biases. It was hard to find. So you could get recruited into skinhead groups or whatever. Today, it's a clique. It's many many websites that you could pick any group you want that you think you have ill feelings towards. You could find a website that's going to show other people who share your biases.

Out of those gatherings, those electronic gatherings, we're seeing groups form. We're seeing groups set dates to get together. We're seeing groups coalesce. But it's coming out of that, that cyberspace. It is a place where they still have this idea that some people are going to say things and not directly advocate violence, and hope that other people will. The offender, like Timothy McBay in Oklahoma City, they see themselves as heroes. They think everybody shares their bias, but they're the ones who act on it. So it's a very difficult thing. But it is something that Brian's group, the Southern Poverty Law Center, a variety, ADL are all doing a much better job of tracking that activity online.

Claire G: As a followup, this is Claire Gastañaga again. Would you say that there are or there are not significant distinctions between the radicalization process whether it's rips in the blood or F13 or the alt-right or other extremist groups, do they all have common threads and modalities that go across all the kinds of groups that are getting together?

Jack McDevitt: Yes, they do. They're looking at people in marginalized groups. They're not looking at people who are very successful as the members they're trying to recruit. They recruit them with the same kind of messages that your life is a mess because of something some other groups are doing. So you do see it. I mean, there's obviously subtle distinctions. Gangs are terf-based. They recruit, they're more than online. But if you're talking about radicalized individuals, then members of some of the organized hate groups you find in very similar patterns.

Brian Levin: Yes. We're seeing people who are self-radicalizing. We look at folks like Dylann Roof and others. One of the things that I think is really scary today is that we now have the most reversed threat matrix with regard to extremists. These extremists are much more likely to show up in the data relating to serious crimes like hate homicide. They're much more represented with that.

Just lastly, also people are mixing ideologies along with mixing ideologies with personal and social frustrations. So they may act out violently but their models may be mixed or not readily apparent because they're dining from a buffet of hatred on the internet, some of which are working in the Socratic than hooping.

Shiek Pal: Thank you. A quick question before we move to our next member. In the interest of time, would our presenters have an extra five or ten minutes to stay on? I want to make sure everybody gets their question in and we're running a little over. So if you have five or ten minutes, I appreciate if you could stay on. Does that work?

Janine Bowell: Absolutely.

Jack McDevitt: Fine with me.

Brian Levin: Sure. Yep.

Shiek Pal: Excellent. Thank you. Terrie Griffin, your question.

Terrie Griffin: Hi. I'd like to first thank the presenters for the information they've provided us today. My question goes to you, dean, I think I understood you to say the development of the typology of offenders or bias crime offenders was developed in what, 1990s. 1990s? Is that even correct?

Jack McDevitt: Yes, 1990s.

Terrie Griffin: Well, if that, and coupled with the fact that I believe what Janine said, over 80% of police department have not reported as hate crime. Is there no adoption of the typology within the police departments across the country so that they might know how to categorize crimes when they occur? That's my first question.

Jack McDevitt: Sure. Again, this is Jack McDevitt. I think that the unfortunate thing, and Janine's done a lot of work on this is that people are exposed to the typology in the police academy. Then they don't come across those crimes very often. They are low level of seriousness. So the fact is that that's one of the things that gets forgotten. Unless you do what we had talked about as the two-tier approach, what Janine talked about as having a specialized unit, a specialized officer who's trained, then it gets reinforced in the officers that yeah, this is something, this is one I should be asking. You ask, "Has anything happened to you that was unusual like you got a call in the middle of the night?" Because as Janine said, these things escalate. They start by harassing you and then they go up higher. So it's important that police department have this infrastructure that supports this.

Janine Bowell: And again-

Terrie Griffin: Thank you. My second que ... I'm sorry. Go ahead.

Janine Bowell: I was just going to say, there is no incentive to provide additional training or specialization to law enforcement officers if they're just going to have the regular officer who's a detective investigate all sort of the hate crimes that occur in their geographic area.

Terrie Griffin: Right. That was going to be my second question.

Brian Levin: Brian Levin here. I'm sorry, just one quick thing. Here in California, we found about half a dozen counties, in mostly northern California that hadn't reported a hate crime for years. Associated Press did a study, found that there were about 16 or 17 states, 25% of agencies didn't report a hate crime for at least half a dozen years. What we ended up asking the legislature to do was to do an audit where they took about a third of the third agencies and ask them whether they had policies, procedures, what were they doing, that kind of thing. Then they had deep dives with about maybe a half dozen or less where they actually are

going to have site visits. That might be something for various states to consider as well.

Terrie Griffin: Okay. My second question has to do with that very thing in terms of training. How might we offer that as a recommendation in Virginia to include it not just within the academy, the initial training in the academy, but as an ongoing opportunity for additional education. Is that something that we could suggest? I guess the reporting would drive that. If there's not a significant report, I would say they probably would not be the need for investing in additional training.

Janine Bowell: If you could communicate the message that having hate crime reports in your particular jurisdiction is not a bad thing, it's actually a good thing, it shows that you are investigating crime that needs to be investigated, that might go away to pushing police departments to care about this sort of crime. Police departments can care about this sort of crime irrespective of whether there is even a law.

For instance, I was in a university town in a state without hate crime legislation. Indiana does not have hate crime legislation. But the local police chief cares about having hate crimes reported. He cares about the report, right. He wants to capture as much activity as is happening in the particular, in the town. So he's communicated in a variety of ways that listen, we want you to report hate crimes to us. There are other things that law enforcement can do to support hate crime victims that doesn't necessarily require prosecution under a hate crime law.

Shiek Pal: Thank you. Pat O'Reilly. Pat?

Pat O'Reilly: Yes.

Shiek Pal: Do you have a question?

Pat O'Reilly: Just a little clarification here. You caught me in the middle of a mouthful. I heard the term significant used repeatedly when we're talking about increases. Is that term being used statistical way or is it being used in, it's just the normal use of the word?

Brian Levin: Brian Levin.

Shiek Pal: I think that's probably you, Brian.

Brian Levin: What I like to do and I highly encourage you to read our reports. The numbers and percentages are all there. They're broken down for about seven or eight years. You can look at these individual trends as well as looking at who gets attacked and what proportion. Hate crimes tend to occur, at least reported hate crimes in relatively small numbers. So that's something that's important.

But we're also seeing large cities. I think it's important to point this out. Cities like Houston and Dallas, which are reporting under 20 hate crimes. Orlando, five. Miami, zero. So I encourage you to look at the reports and look at the reports and the tables in there. They are very data-rich. That way, you won't have to rely necessarily on a particular descriptor and whether or not it's vernacular or a term of margin. The data is all there.

Pat O'Reilly: I understand that. I think this is highlighting the problem that I hear everyone saying. The reporting of quote, "hate crimes" is pretty shotty. Is that what I'm hearing?

Brian Levin: It varies by jurisdiction. Not in Eugena, Oregon, not in New York City, not in Boston, not in Seattle.

Pat O'Reilly: Okay. But it's still a small number, correct?

Brian Levin: Small relative to what?

Pat O'Reilly: Well, for example, in the State of Virginia, that's less than a percent of all the crimes committed.

Brian Levin: Right. But the Bureau of Justice Statistics, and there may be people who have difficulties with their victimization surveys, but they estimate that 3.7% of all violent crimes are hate crimes. We know that there is massive under reporting. They estimated about 208,00 hate crimes in their 2015 report during a year when we only saw reported hate crimes to the FBI, be a tad over 5,800. But what I would also encourage you, and Jack wrote about this, not all crimes are the same with regard to a community impact.

The supreme court piece I wrote for Wisconsin versus Mitchell, the hate crime case, we showed and the supreme court acknowledges that, that unlike certain other types of crimes, there is a risk of a cycle of retaliatory violence. In addition, people will change their behaviors who are secondary victims. There's people who weren't the direct victims, they'll change their behaviors based on the fact that someone is targeting an African-American family in a particular community. So when we look at numbers, we look at reported versus non-reported. We also look at victimization surveys. We also look at the impact of crime as well. That's something the supreme court said in Cocher is an important factor with regard to punishment.

Pat O'Reilly: Okay. I think that covers what I need to know.

Shiek Pal: Thank you.

Brian Levin: One last point. We could only find in the last couple of years a little over two dozen confirmed or suspected examples of false reports. However, when they get publicized, it goes all over. But we only found just in the last couple of years,

a little over two dozen when we had well over 10,000 hate crimes reported to the FBI Uniform Crime Reporting Program.

Shiek Pal: Thanks, Professor. Ryung Suh.

Ryung Suh: Hi. Well, first of all, thank you to the presenters. My question actually just relates to more of an anecdotal observation that I've made within my own university studying. There has been say kind of a increase in perceived racial tension amongst some of our students and a definite increase in the number of hate speech that's been scribbled on walls and bathroom stalls, and things of that nature, especially over the past 18 months or so. In the research that you all do, do any of the data kind of provide insight into trends inside academic institutions or school settings over the past few years?

Jack McDevitt: This is Jack McDevitt. I'll start. I think everybody could speak to this. But yes, the third most frequent place where a hate crime occurs in the United States is in a school setting. That includes high schools and universities. The university data that's been put out has seen a dramatic increase in hate crimes associated with the immigrant rhetoric, associated with the elections. As you know, in your campuses, like on ours, we do programming with faculty members to tell them how they can deal with students in class who are now feeling threatened in ways that they weren't threatened before.

The character and the culture on college campuses has changed. We've seen a increase in anti or hate-motivated behavior from certain groups on campuses. Unfortunately, it should be a place where we don't see that but it's playing itself out on our campuses across the country.

Brian Levin: Brian Levin here. Several data showed again that similar increase that I talked about in the fall of 2016. So that's something Jack aptly spoke about the proportion of schools being targeted. Another thing that I think is important to point out when we're talking about at least universities, is that many hate groups are targeting universities not only to have incendiary and racist speakers come in but also a group like Identity Evropa which showed up at Charlottesville is going around the country and putting flyers on various campuses including in Virginia and here in California.

So they're trying to incite these kind of things on campus. Also remember too their issues with regard to conflict when controversial speakers come to campus as well. In California, we saw in the 2016 to 2017 season about a doubling of violent public demonstrations. Many of them involve college settings.

Janine Bowell: We saw it in Indiana. Identity Evropa came to Bloomington, Indiana, postered ethnic studies, faculty doors and ethnic studies, also in the law school, posters all over the wall and as a way of recruiting, bragged about it on their Facebook. So for instance, my door was postered, was flyered. A picture of my door appeared on their webpage bragging about having done this on the Superbowl.

- Brian Levin: We've seen an explosion of this. Over the last couple of years, we've seen an explosion of this.
- Ryung Suh: Just a quick followup question then, so I think the approach that our faculty and leadership has taken as to have some townhalls, have some leadership pronouncements condemning the actions, supporting some diversity initiatives, things of that nature. Is there any research to suggest that that changes or that those are effective interventions or that it changes the behavior of students?
- Jack McDevitt: Sure. I'll start. Yes, students feel that their opinions, their biases are shared by other people, by other students. When they're marginalized to say this isn't what we're going to tolerate. The second is that if it's a violent act or a threatening act, that's there's implications from the judicial system within the university so the cross is going to be high to those things. This is not a high-gains thing. This is not a student who is robbing somebody because they have a drug habit.
- This is a student who is getting kicks out of the fact that they're harassing the LGBT group on campus or the anti-Muslim, the Muslim group on campus. I do think that universities have to program against it. They also have to react to incidents in a way that's forceful and denounces it.
- Brian Levin: Many of the leaders that are out there today have experience with universities and they like to target them. So Matt Heimbach who was with the Traditionalist Workers Party got his start with a White-oriented group at Townson State. Nathan Domigo, similarly his involvement with Identity Evropa was when he was at Cal State. Many of this approach have a younger demographic. They're using both the internet but also colleges as a place to stir things up because they know that they can. This flyering, oftentimes by outsiders is being done.
- What we have to remember is that sometimes the perpetrator is someone who comes from the outside. Oftentimes not, but we're seeing more and more at least with regard to the non-criminal stuff, outsiders coming onto campuses.
- Shiek Pal: Thank you, professor. Our last member. Lorraine, do you have a question?
- Lorraine W: Thank you. I guess this is directed to Jack. You talked about reporting was important because you need to help the victims. Outreach was the key. You mentioned the police and human relations commissions and legislation. Do you see a role for NGOs or private organizations, for outreach or does it mainly have to come from government?
- Jack McDevitt: No. If you think of the Anti-Defamation League, they've been the group that's been as consistent in national group on this issue for a long long time. They are wonderful. I do think that NGOs are sometimes more in the better places. The problem with NGOs, and this is something that the ADL has done a good job

with is they can't be just for them. It can't be the Cambodian group is looking for protecting just Cambodians.

They got to understand that the haters don't specialize. They generalize to everybody who's different. Their efforts are less effective if they're just focusing on their particular clientele. That's what happens far too often. I did have want to have a one quick suggestion from the prior conversation that might be something you might want to recommend.

A couple of states have done this. It really works well and it speaks to both what Brian and Janine have said is if you had a state policy that recommended the designation of a hate crime officer in every police department, that works really well. It calls for training as part of that. It does the two-tier approach as part of that. You can also bring those groups together regionally every couple of months where all the officers do and come together, and they share trends, and see where there is organized hate activity in their town.

That's one thing that can stir a whole lot of positive activity. It doesn't cost the police department anything. All they're doing is designating that Officer Smith is going to be our hate crime liaison. That's published on a website.

Janine Bowell: Two quick comments in response to what you just said, Jack. I agree entirely that having a single officer is better than sending it to officers who are not specialized at all. But that officer has to be supported as much as you possibly can provide support for that particular officer.

Jack McDevitt: Absolutely.

Janine Bowell: The officer needs to know that the function that they have in the department is valued. If he or she is overrun with hate crimes, then they will receive support. Second, on the NGO area, NGOs provide a really valuable, have a really valuable role in supporting individuals who are victimized by hate crime. So if the Cambodian community and the African-American community, there are very few African-American organizations focused on hate crime by the way, if these NGOs act together in coalition, they can get things like legislation passed. I know that happened in New York State. I know that they are working together here in Indiana to hopefully get some sort of legislation passed. That is a valuable role that NGOs can play in the context of hate crime that I've seen them play.

Brian Levin: Brian Levin here. I think NGOs are very important but they vary with regard to their experience with hate crime. But they can be very important to spheric crimes that would otherwise go unreported to either government agencies or law enforcement. Again, couple of things, the better the relationship with the community, the better the reporting is going to end up being as well.

Shiek Pal: Okay. Well, thank you. That concludes everybody's, all the members' questions. To the members of the advisory committee, Ivy and I will follow up with you on

procedures on how to collect any written followup questions that you may have for our presenters. Then we'll sort of organize that together. I would like to take a minute to thank all of our presenters. This has been enormously helpful. I greatly appreciate your taking the time not only to pull together your materials for seeing us but then also taking the time to engage with us on the Q&A. Professor Bowell, you missed the part at the beginning where I asked if each of the presenters would be amenable to addressing any followup questions in writing that we didn't have the chance to get to on the call. So hopefully, you'd be open to that.

Janine Bowell: Happy to do that.

Shiek Pal: Will place instrument-

Janine Bowell: Happy to do that.

Shiek Pal: Excellent. Thank you very much. Once again, thank you to all of our presenters. Thank you to our committee members. This has been enormously helpful. I appreciate everyone's time. Thanks very much.

Jack McDevitt: Thank you all.

Janine Bowell: Thank you.

Brian Levin: Thank you.

Kathy: That concludes today's meeting. Thank you for your participation. You may now disconnect.

Ivy Davis: Thank you.

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4 Committee Chair: Good morning and welcome to you all. My name is Shiek Pal and I am the
5 Chairman of the Virginia Advisory Committee to the U.S. Commission on Civil
6 Rights. This meeting will come to order. Members of the Committee are here on
7 the dais and also attending the meeting via conference call.

8 I also welcome interested members of the public who are with us in this
9 meeting room and also may be listening to these proceedings by phone. At the
10 conclusion of today's two panel presentations, which should end at
11 approximately 1:30 pm, audience members, including those joining by phone,
12 will be invited to make brief comments up to five minutes about hate crimes.
13 Please know that I will interrupt speakers that exceed the allotted time or
14 whose focus is not specifically hate crimes.

15 Those of you in the meeting room are asked to please sign-up to speak at the
16 entry desk just outside of this hearing room; those joining by phone who wish to
17 speak will be asked by the operator to indicate their interest by pressing * 1 on
18 your phones at the conclusion of Panel 2. In addition, the record will remain
19 open for 30 days after this briefing for anyone who wants to submit written
20 comments. Written comments must be received by April 29, 2019. The
21 comments may be mailed to the Eastern Regional Office-USCCR, 1331
22 Pennsylvania Ave., NW, Suite 1150, Washington, DC 20425 or emailed to:
23 ero@usCCR.gov.

24 In addition, the record will remain open for 30 days after this briefing for
25 anyone who wants to submit written comments. Written comments must be
26 received by April 29, 2019. Comments may be mailed to the Eastern Regional
27 Office USDCR 1331 Pennsylvania Avenue Northwest, Suite 1150, Washington DC
28 20425 or emailed to ERO@USCCR.Gov. Panelists and audience members can
29 also tweet about the meeting using #USCCRBriefing and the Twitter handle,
30 @USCCRGov.

31 Also, present today are staff of the U.S. Commission on Civil Rights. When I
32 introduce them I ask that they raise their hands to be recognized. With us today
33 are Ivy Davis, Director of the Eastern Regional Office and the designated Federal
34 Official assigned to the Virginia Committee and Program Assistants Carolyn Allen
35 from Chicago, Illinois and Corrine Sanders from Kansas City, Missouri.

36 I now ask my Committee colleagues to introduce themselves by stating their
37 names and the Virginia city of residence.

38 Lorraine Waddill: Hello, I'm Lorraine Waddill from Richmond.

39 Edmund Cooke: Good morning. Edmund Cooke. Alexandria.

- 1 [Terry Griffin:](#) Good morning. Terry Griffin, Richmond, Virginia.
- 2 [Claire Gastañaga:](#) Good morning. Clair Gastañaga, Richmond, Virginia.
- 3 [Toa Do:](#) Good morning. Toa Do from Fairfax, Virginia.
- 4 [Committee Chair:](#) Now, I'd like to introduce the Committee members who are joining by phone.
5 Let me start with Robert Bracknell. [Instead, Vellie Deitrich-Hall spoke.]
- 6 [Vellie Dietrich-Hall:](#) Hello. Good morning. This is Vellie Dietrich-Hall from Cullen, Virginia.
- 7 [Committee Chair:](#) Thank you. Bruce Cameron.
- 8 [Bruce Cameron:](#) Bruce Cameron from Chesapeake, Virginia.
- 9 [Committee Chair:](#) Sara Combs.
- 10 [Sara Combs:](#) Sara Combs from Abingdon, Virginia.
- 11 [Committee Chair:](#) Is Patrick Riley with us? Ryung Suh.
- 12 [Ryung Suh:](#) Good morning. This is Ryung Suh from Vienna, Virginia.
- 13 [Committee Chair:](#) [I'll try for Mr. Bracknell one more time. \[No response.\]](#)
- 14 The U.S. Commission on Civil Rights is an independent bipartisan agency
15 established by Congress to study and collect information concerning legal
16 developments involving discrimination or denial of equal protection of the law
17 under the U.S. Constitution due to race, color, religion, sex, age, handicap, or
18 national origin or in the administration of justice. Congress also directed the
19 Commission to establish advisory committees in each of the states and in the
20 District of Columbia. 51 federal advisory committees are authorized to inform
21 the Commission about civil rights issues in their states consistent with the
22 Commission's jurisdiction.
- 23 The purpose of today's briefing is to gather information about hate crimes in
24 Virginia. I know that I speak for all Committee members by extending my
25 deepest appreciation to each of today's speakers. We are so fortunate that you
26 have agreed to share your expertise with us on this most important and timely
27 topic.
- 28 We have a lot to cover in a short amount of time, so, let me review the ground
29 rules for the briefing. This is a public meeting open to the media and the general
30 public. The meeting is being recorded and a transcript will be produced. In
31 addition to our introductory speaker, there will also be two panels, each with
32 four experts. Panelist have been advised that they will each have approximately

1 seven minutes to make their opening statements. Panelists, due to our time
2 constraints, please understand that I may have to cut you off if you exceed that
3 time. As with members of the audience, you may also submit additional written
4 comments by April 29th. After the presenters on each panel conclude their
5 opening statements, you will be asked to respond to members' questions. The
6 members will each be given five minutes to ask one question and one follow up.
7 To ensure a rich discussion of these issues, let me note that if you wish to
8 respond to a question posed to a fellow panelist, please just let me know and I
9 will accommodate you.

10 Lastly, but importantly, we want to ensure that our invited guests do not
11 defame or degrade any person or organization. The individual or group that
12 feels defamed or degraded by statements made in this hearing, may provide a
13 written response today during the open comment period or may file a written
14 statement for inclusion in the record. I urge all persons making statements
15 today to be judicious and courteous.

16 Again, the Virginia Advisory Committee appreciates the willingness of all today's
17 speakers to share their views and experiences with the Committee.

18 Our purpose today is to hear from experts, advocates, and the public on the
19 critical issue of hate crimes. How to identify and report them. How to gather
20 data on trends. Most importantly, how to prevent and prosecute them. Just two
21 weeks ago, the eyes of the world were focused on the tragic shooting at a pair
22 of mosques in New Zealand. Two years ago, the eyes of our nation were focused
23 right here on the Commonwealth as a Unite the Right Rally in Charlottesville
24 descended into chaos, violence and hate. We're honored to have with us today
25 some speakers with unique and deeply personal connections and insight into
26 the events of that tragic day.

27 So, I would now like introduce our first speaker, Ms. Susan Bro, President and
28 Chairman of the Heather Heyer Foundation. Ms. Bro, you have 15 minutes for
29 your statement. Welcome and please begin.

30 [Susan Bro:](#) Thank you. Good morning. Thank everyone for being here today on this
31 beautiful Friday. I'm going to give you a brief history and then tell you why it
32 matters and tell you how it didn't matter. As a black student in Charlottesville
33 city schools, studied Civil War history, she questioned why there were statues
34 celebrating Confederate war heroes in the city park. She began a petition to
35 have them removed. Mind you, this is a high school teenager. She gathered
36 enough signatures to bring to City Council. Charlottesville City Council voted to
37 remove the statues. A local self-proclaimed white supremacist organized a
38 protest to the statues' removals. He was joined by national leaders and a variety
39 of white supremacy movements, including the KKK, the Traditional Workers
40 Party, the Alt Right and Neo Nazis from 35 states.

1 The call was sent out under the pretense of protecting freedom of speech and
2 white rights. They opened the weekend with a tiki torch march on the University
3 of Virginia lawn on Friday night clashing violently with students and faculty. The
4 night rang with chants of, "Blood and soil and Jews will not replace us." They
5 also chanted, "You will not replace us" and "into the ovens." Saturday's protest
6 was to begin at noon. As early as 8:30 in the morning, hate-filled protesters
7 began to arrive and converge on the downtown park by the statue. Some
8 arrived with knuckles taped for fighting and carrying shields, bats, wooden poles
9 and wearing helmets. Some arrived with semiautomatic weapons. Some carried
10 knives. Violent clashes with counter protesters erupted throughout the day.

11 My daughter, Heather Heyer, was part of a group of peaceful counter protesters
12 who stayed away from the areas of violence. They gathered along the opposite
13 side of the downtown mall from the areas of fighting while chanting and singing
14 songs of solidarity. As the governor declared an unlawful assembly, the park by
15 the statue cleared. My daughter was caught on film talking to one of the
16 helmeted girls as they were packing up their cars and leaving. Heather asked her
17 why she was there and if she could talk about why she felt hate for others. The
18 girl simply answered "no comment" to every question.

19 Heather's group was joined by other counter protesters who were relieved it
20 was over and the haters were leaving. The group decided to head up Fourth
21 Street to meet up at the downtown mall for celebrating. What they did not
22 know was that a young man from Ohio was sitting at the top of the hill of that
23 street watching them. Earlier in the day, he was filmed chanting Nazi slogans
24 and marching with a Nazi shield while wearing the white polo and khakis
25 requested by the organizers. He had started down the street in his car a few
26 minutes before and then backed up to sit a moment.

27 Perceiving the crowd to be in support of black and brown persons, he hit the
28 accelerator and drove his car into the crowd. Bodies flew into the air or were
29 smashed into the ground. My daughter spun through the air smashing his front
30 windshield leaving behind blood and skin. Her body then fell to the ground. As
31 he began to shift into reverse, people raced up the street to smash his rear
32 windshield trying to stop him. He raced back up the street running over some
33 people coming and going. He ran over others who had raced down the street to
34 help – between 30 to 40 people were injured that day. My daughter died almost
35 instantly as she bled out internally and externally.

36 Hate crimes statistics are on the rise in the country according to the FBI's
37 released . . . Sorry, I'm having trouble seeing through the tears a little bit.
38 According to the FBI's released statistics for 2017, there was a 17% increase in
39 hate crimes from 2016 to 2017. In Virginia, there was an almost 50% increase in
40 crimes reported for 2017 and those come from the FBI's site. You can look them
41 up. I have the footnotes. Yet, we have a major loophole in the reporting system
42 that allows local agencies to avoid reporting hate crimes. None of the victims of
43 the car attack in Charlottesville are counted among those statistics for

1 Charlottesville for 2017. Charlottesville only reported one hate crime for 2017
2 and it actually occurred a few months after the car attack.

3 Joe Platania: We in this country do not have accurate information about the actual number of
4 hate crimes that occur. So, we don't even know how much of a problem with
5 which we are dealing. To offer an accurate diagnosis, a doctor must have a full
6 understanding of the symptoms. It is my hope that this Committee can gather
7 information to push for more accurate reporting and a clearer understanding of
8 the actual numbers of hate crimes. There needs to be accurate reporting of
9 figures to give us a much clearer picture of how to best allocate resources for
10 combating hate.

11 It is my hope that the work we do here today can prevent other mothers and
12 fathers from feeling the pain of losing a child to hate. Thank you.

13 Committee Chair: Thank you Ms. Bro.

14 So, now, we will take a minute to assemble our first panel of experts who will
15 discuss the history of hate crimes in Virginia, the current legal framework,
16 enforcement and data. Joe are you on the line?

17 Joe Platania: I am.

18 Committee Chair: Perfect. We're going to get started in just a minute.

19 Joe Platania: Okay, and I heard of all of Susan's remarks.

20 Committee Chair: Okay, excellent. Thank you. The experts on our first panel include Joe Platania,
21 the Charlottesville Commonwealth attorney who is joining us on the phone;
22 Mary McCord, Professor of Law at the Institute for Constitutional Advocacy and
23 Protection at Georgetown University Law Center; Barbara Oudekerk, Statistician
24 in the Victimization Statistics Unit of the US Department of Justice Bureau of
25 Statistics; Kai Wiggins, Policy Analyst at the Arab American Institute. Welcome
26 and please proceed with your opening statements. Mr. Platania, we'll start with
27 you.

28 Joe Platania: Thank you. This is a little awkward that I'm on the phone and I can't see who's in
29 the room, but I wanted to say good morning to the members of the Committee,
30 my colleagues on the panel and anyone else I might have missed. I'm truly
31 appreciative for being included and I don't know if Susan can hear me, but good
32 morning Susan and thank you for your remarks.

33 I believe everyone's been provided with some written materials and I'm going to
34 briefly go over them and then probably defer to my colleagues for their
35 comments and leave more time for questions and discussion. Three main
36 points. The first is the status of existing hate crime laws in Virginia and I am a
37 state prosecutor, so our office prosecutes crimes that are going to be dealt with

1 in state court. So, we're different from federal prosecutors and federal courts.
2 So, I'm speaking narrowly to the code of Virginia and state laws as it applies.

3 Did someone just say something?

4 [Committee Chair:](#) No, you're fine.

5 [Joe Platania:](#) Okay. Are you able to hear me okay?

6 [Committee Chair:](#) Yes, loud and clear.

7 [Joe Platania:](#) Okay, great. So, there are several, what I would describe as specific hate crime
8 offenses. They're rarely quite candidly, prosecuted. They rarely seem to be the
9 meat and potatoes of what we do as state prosecutors, but they are listed in the
10 written materials. Wearing a mask in public and there's some rationale behind
11 why the general assembly enacted that law. Burning a cross. Burning an object.
12 Displaying a noose. Placing swastikas on certain properties. So, those are just
13 kind of a summary what I would describe as the existing hate crimes laws on the
14 books and I think as Susan mentioned that's not a lengthy list and it probably
15 misses quite a bit of conduct.

16 The second point I'd like to make in my opening remarks are there are two,
17 again, very narrow criminal offenses that carry with it an enhancement for
18 behavior that is motivated by racial, ethnic or religious animus and that's a
19 misdemeanor assault and battery, which is a harmful or offensive touching
20 without injury. That can be enhanced to a felony if you're able to charge and
21 prove that the actions were motivated by racial, ethnic or religious animus.

22 There is also trespassing on the property of another for the purpose of
23 damaging property. That also is able to be enhanced if you're able to prove the
24 racial animus. The third and final point I'll make is that there are a whole host of
25 ordinary criminal offenses that we charge and prosecute where racial, ethnic,
26 religious animus are not an element of proof and are not part of what we need
27 to charge or bring evidence of into court. And, that's what really happened in
28 state court with the prosecution of Mr. Fields and some of the individuals that
29 beat DeAndre Harris in the parking garage. They were charged with basically
30 state crime felony assault offenses – malicious wounding, aggravated malicious
31 wounding in the case of Heather, first degree murder, but those were . . . there
32 was nothing about those charges or those prosecutions that injected race into
33 our proof or our elements. So, in one way, it was strategically one less thing we
34 had to prove and one less thing that we needed to have evidence of in state
35 court.

36 A second point is my feeling in being in front of, I guess, three or four different
37 juries is it was so clearly part of the case. It was in some ways almost more
38 powerful left unsaid because it was just so clear was what motivating these
39 individuals on August 12th of 2017. But, it was very difficult to explain to the

1 public and to the victims why we weren't charging a hate crime. A lot of the
2 folks were asking – that were victims of Mr. Fields' car attack – well, you're
3 charging him with aggravated malicious wounding, why aren't you charging him
4 with attempted murder? They wanted to hear something that made more sense
5 to them, as lay people. Aggravated malicious wounding carries the penalty of 20
6 years to life whereas attempted murder carries with it a penalty of only two to
7 10 years.

8 [Joe Platania:](#) So, I think there was also a disconnect in trying to interact with victims and
9 explain to the public why we were charging felonious assaults without getting
10 into language that made more clear to people what actually happened. Because
11 we all knew what happened. And, I think Susan covered it really nicely in her
12 opening comments about some of the statistical problems that this presents
13 when you look at the prosecutions from August 12th of 2017. For none of them
14 to qualify statistically as a hate crime, I think is what gives many people pause.
15 So, that's a brief overview of some of the comments I wanted to make. I'm
16 really interested in hearing from some of my colleagues and then being
17 available to answer any questions and once again, thank you for including me in
18 this very important discussion.

19 [Committee Chair:](#) Thank you very much. Professor McCord.

20 [Mary McCord:](#) Good morning. Thank you for inviting me here this morning. I am currently as
21 the Chair indicated, a professor at Georgetown and a litigator doing full-time
22 constitutional impact litigation, but before helping start up this small litigation
23 shop within the law school, I spent most of my career at the Department of
24 Justice – the last three years either as the Principal Deputy Assistant Attorney
25 General or the acting assistant Attorney General for National Security at DOJ.
26 Prior to that, 20 years as a federal prosecutor in the US Attorney's Office in DC.
27 So, my expertise is really on violent extremism and terrorism crimes and under
28 the National Security Division that I led, we prosecuted all crimes of terrorism
29 under the federal code. Primarily since 9/11, that has meant terrorism
30 committed by those who are doing their acts on behalf of or in furtherance of
31 the goals of a foreign terrorist organization like Al Qaeda or like ISIS, as opposed
32 to those who are motivated by domestic ideology.

33 That means it's been predominantly Islamist extremist terrorism. Now, there are
34 some terrorism offenses on the federal books that allow for prosecuting crimes
35 based on domestic ideological goals particularly when weapons of mass
36 destruction are used or when the target is a US official, mass transportation or
37 US federal property. So, for example, recently the Department was successful in
38 prosecuting three Southwest Kansas men for their attempt to bomb an
39 apartment complex and mosque that was frequented, used for worship and
40 lived in by Somalian Muslims. They were able to prosecute that under both
41 federal terrorism crimes of conspiracy to use a weapon of mass destruction as
42 well as federal hate crimes based on the attempted bombing. That was a good

1 example of sort of the combination of different federal crimes being used to
2 vindicate separate interests.

3 [Mary McCord:](#) Similarly, in Virginia recently with the prosecution of James Fields by the state
4 prosecutor, by Joe Platania who we just heard from, the state's interest, and the
5 exposure of Mr. Fields to a life sentence and more were vindicated, while the
6 guilty pleas obtained just a couple of days ago by the federal prosecutor there,
7 the United States Attorney there, were able to vindicate more the national
8 interest and show the moral opprobrium and the societal condemnation that
9 should be directed at that crime based on its hateful motivation.

10 But, we lack currently in the federal code a domestic terrorism offense that
11 would have applied otherwise to Mr. Fields' conduct. Something that would
12 allow for the prosecution as terrorism of the use of a firearm or a vehicle in the
13 case of Mr. Fields to commit an act of violence based on an intent to intimidate
14 or coerce a civilian population or to influence a policy of government by
15 intimidation or coercion. There is a domestic terrorism statute on Virginia's
16 books – a state domestic terrorism charge – and it is broad enough that it could
17 be used for . . . I should say it's a terrorism charge not a domestic terrorism
18 charge. It is written broadly enough that it could be used for terrorism cases
19 whether inspired by Islamist extremist terrorism or by domestic ideological
20 grievances.

21 And, we can certainly talk later about why or why that might not have been
22 used with respect to Mr. Fields. It does have an intent requirement that just
23 elevates the burden of proof on the prosecutor, so there are good reasons that
24 a prosecutor might decide not to charge it. Also, I think, states are accustomed
25 to the federal government investigating and prosecuting terrorism and the
26 federal government is better resourced for it, has better access to information,
27 etc. I don't want to take up all my time on that because I think it's important to
28 also talk to you about some of the tools that are available under Virginia law.

29 So, my organization in the wake of the Unite the Right Rally, used Virginia's own
30 anti private militia and anti-paramilitary activity laws to bring a civil case in the
31 Charlottesville Circuit Court against many of the individuals and groups who had
32 invaded Charlottesville during the Unite the Right rally. These were groups that
33 included not only the white supremacists, neo Nazi and neo confederate groups,
34 but also the self-professed militia who came heavily armed with assault rifles
35 and side arms and in full military gear. But, even among the alt right groups and
36 the white supremacist groups who didn't necessarily carry assault rifles, they
37 formed up as battalions – as private military. They marched through the streets
38 with the shield bearing members on their flanks. They formed up into phalanxes
39 to batter their ideological opponents, etc.

40 So, under Virginia's constitution, like that of 48 other states, private militias are
41 forbidden and this provision dates back to the very founding of the Constitution
42 and it was designed specifically to ensure the right of all citizens to live free

1 from the fear of an alien soldiery commanded by men who are not responsible
2 to the law and political process. And, that was one basis for our suit that was
3 recognized by the Charlottesville Circuit Court. Another basis was an anti-
4 paramilitary activity statute that's on the books in Virginia, which is also on the
5 books of 25 other states, that prohibits teaching, training or practicing in the use
6 of a firearm or any technique capable of causing serious bodily injury or death in
7 furtherance of a civil disorder. And, this was another basis for our lawsuit that
8 the Charlottesville Circuit Court recognized.

9 [Mary McCord:](#) This lawsuit was successful in obtaining 23 court orders against individuals and
10 groups including those mentioned by Ms. Bro like . . . not the KKK, but like
11 Vanguard America, Traditional Workers Party, National Socialist Movement,
12 which is the American Nazi Party. Court orders that they could not return to
13 Charlottesville in groups of two or more people acting in concert while armed
14 with anything that could be used as a weapon during any rally or protest. These
15 are current authorities that could be used more aggressively to actually prevent
16 violence.

17 There's another statute 28 states have that bars drilling or parading with
18 firearms in a public place. 28 states have this and it could be something Virginia
19 should look into.

20 Finally, one last very quick comment. Virginia should clarify that it's firearms
21 regulation preemption statute does not apply to reasonable and generally
22 applicable regulation by local governments that allow them to protect public
23 safety by prohibiting all weapons, including fire arms, from public events where
24 violence is expected. Right now that statute is somewhat unclear and because it
25 provides for court costs and expenses to be awarded against anyone who
26 prevails in a challenge, it means law enforcement often has to make the horrible
27 choice between doing reasonable things to protect public safety at public
28 marches and facing litigation expenses. Thank you.

29 [Committee Chair:](#) Thank you very much Professor McCord. Ms. Oudekerk.

30 [Barbara Oudekerk:](#) Good morning everyone. Thank you for inviting me here today. I'll be discussing
31 the Bureau of Justice Statistics effort to collect national data on the prevalence
32 and characteristics of hate crimes. For those of you that may not be familiar
33 with BJS, the Bureau is a statistical agency within the Department of Justice; I
34 am a Statistician at the BJS Victimization Statistics Unit. I work on the National
35 Crime Victimization Survey (NCVS), so I will be focusing most of my presentation
36 today on the NCVS data. The Department of Justice also administers the FBI's
37 Hate Crime Statistics Program, which is part of the Uniform Crime Reporting
38 Program or the UCR, which I just mentioned. These data are compiled from local
39 law enforcement agencies and reflect crimes that are known to police and
40 recorded as hate crimes by police.

1 In contrast, the NCVS is a nationally representative household-based survey that
2 asks residence about their victimization experiences, including whether or not
3 the crimes were motivated by bias or hate. In 2017, about 146,000 interviews
4 were conducted with residents across the United States and again, asking them
5 personally about their experiences with victimization. Both of the national
6 collection, the NCVS and the UCR define hate crime according to the Hate
7 Crimes Statistics Act – meaning crimes motivated by bias against the victims
8 because of his or her race, or ethnicities, gender or gender identity, sexual
9 orientation, religion or disability.

10 [Barbara Oudekerk](#): In the NCVS, when a respondent reports that they've experienced a violent or
11 property crime, the respondent is then asked a series of questions including
12 whether they thought that it was motivated by one of these biases. Then the
13 survey asks whether they have any evidence that the crime was motivated by
14 hate and, in order to be classified as a victim of a hate crime in the survey, the
15 victim has to state that one of these three things happened. Either the offender
16 used language that made them think that they were a victim of a hate crime,
17 the offender left hate symbols at the scene of the crime or the police told the
18 victim at any point that this was a hate crime. If one of those three things
19 occurred, it's coded as a hate crime victimization in the NCVS.

20 And, even though the NCVS and UCR are both aligned with the Hate Crime
21 Statistics Act, there are key differences between the two collections that are
22 important to consider when examining the difference in their estimates. I've
23 provided today a handout with slides and one of the slides goes over some of
24 those key differences, but for example, two of the very important ones are that
25 the crimes they capture, are different and the victims that they cover are
26 different. Again, the NCVS covers ages 12 and older.

27 In addition, the NCVS is based on victims' perceptions, which is a lower burden
28 of proof than what police investigators need to record an incident as a hate
29 crime. Also, the NCVS captures those crimes that are reported and not reported
30 to police. That's a key aspect of the NCVS design.

31 So, I wanted to present three figures today showing data up through 2017 from
32 the NCVS and the first in the packet is on page five, figure one. If I can draw your
33 attention to that. This slide compares the average annual number of hate crime
34 victimizations in the NCVS to the UCR and you can see that the numbers are
35 lower in the UCR. Starting with that first bar, this is looking at the five-year time
36 period between 2013 and 2017. Again, looking at the average annual number of
37 victimizations across that five-year time period. The first bar here shows that
38 there were about 204,600 hate crimes reported in the NCVS on average per
39 year – about half of those, 50%, were reported to the police. So, we see there's
40 a large number here that are never reported to police and then if we look at the
41 next bar, about 22% of that total was reported to police and the victims told
42 police at some point that they thought it was a hate crime.

1 [Kai Wiggins:](#) So, that means about 45,600 victimizations on average per year were reported
2 to police as hate crimes over those time periods based on NCVS. For about
3 15,200 of those, at some point, the victim said that the police identified the
4 crime as a hate crime – confirmed that it was a hate crime in their investigation.
5 And, you can see how these numbers compare that on average, during this
6 same timeframe there were about 7500 hate crimes reported through the UCR.

7 [Barbara Oudekerk:](#) We can also use the NCVS and UCR to start to examine what are the biases
8 motivating these hate crimes. If I can draw your attention to figure two at page
9 six. Here in the dark blue bar is the NCVS and in the light blue is the UCR. You
10 can see that in both collections the largest proportion of hate crimes were
11 motivated by race or ethnicity. But, then if we look at the middle three bars, you
12 can see that a larger proportion of the hate crimes reported in the NCVS were
13 motivated by gender, sexual orientation, or disability. If you look at the last set
14 of bars, a larger proportion UCR hate crimes were motivated by religion.

15 The last slide I bring to your attention is on page seven, figure three. This is
16 looking at the trends of the hate crimes reported and not reported to police
17 from 2009 to 2017. You can see that between 2009 and 2017, if you look at that
18 top bar - the black bar - the number of hate crimes not reported to the police,
19 has decreased from 172000 to about 87000. So, another way to think about
20 this, is that the percent of hate crimes reported to police has increased over
21 time. In 2009, about 40% of hate crimes victimizations were reported to police
22 and in 2017 this proportion was larger, about 55% of hate crimes were reported
23 to the police. And I'll stop there. Thank you again for the opportunity to share
24 BJS's National Crime Victimization Survey data. These estimates are available at
25 the BJS website. I look forward to answering any questions you have about
26 NCVS.

27 [Committee Chair:](#) Thanks Ms. Oudekerk. Mr. Wiggins.

28 [Kai Wiggins:](#) Members of the Committee, my fellow panelists, and those in attendance, good
29 morning. My name is Kai Wiggins, and I am a Policy Analyst at the Arab
30 American Institute. Before I begin, I'd first like to thank the Committee for
31 holding a briefing on this topic and for inviting the Arab American Institute to
32 share its research and recommendations. I would also like to recognize Ivy
33 Davis, of the U.S. Commission on Civil Rights, for her guidance and support in
34 coordinating today's proceedings.

35 The Arab American Institute is a non-profit, non-partisan organization founded
36 in 1985 to nurture and encourage the participation of Arab Americans in
37 political and civic life. Historically and, as with many communities in the United
38 States, threats of targeted hate violence have prevented Arab Americans from
39 full participation in a democratic process. Given this historical perspective, not
40 to mention the reported nationwide increase of hate crime in recent years, we
41 are committed to promoting effective hate crime prevention in every state,
42 including the Commonwealth of Virginia.

1 When it comes to this commitment, our principal concern is improving the
2 national hate crime reporting and data collection system, of which I will provide
3 a general outline before turning to the subject of this Briefing. Under the Hate
4 Crime Statistics Act, the Attorney General is required to collect data on crimes
5 that manifest evidence of prejudice based on race, gender and gender identity,
6 religion, disability, sexual orientation or ethnicity. The Federal Bureau of
7 Investigation carries out this requirement through its administration of a
8 Uniform Crime Reporting Program, which publishes annual statistics based on
9 crime data submitted from federal, state and local law enforcement.

10 While federal departments and agencies are required to provide the Justice
11 Department with data on crimes that occur within their respective jurisdictions,
12 state and local law enforcement participate in the UCR system on a voluntary
13 basis. This should inform our understanding of the federal government's annual
14 hate crime statistics, and in particular, our assessment of the data
15 corresponding to individual law enforcement agencies. One should not
16 overlook, however, that many states, including Virginia, have an active
17 requirement for law enforcement reporting of hate crimes and other types of
18 crimes to state-level repositories for criminal justice information. These entities
19 generally perform the function of state UCR programs, which serve as
20 intermediaries between the federal program and participating agencies.

21 In this respect, agencies in some states, have greater incentives to report hate
22 crimes than others participating in the UCR system, as those agencies may be
23 required under state law to submit hate crime data that components of state
24 government customarily transmit to the federal government. These
25 discrepancies could have some effect on the numbers we see reflected in
26 federal hate crime statistics. Other factors related to state code, such as the
27 nature or existence of criminal statutes offering protections for hate crime
28 victims, or laws requiring basic and in-service training on hate crime for law
29 enforcement, might also have an effect.

30 At the local level, some agencies have adopted specific hate crime policies and
31 devote substantial resources to hate crime prevention. These factors are also
32 worthy of consideration. Having provided this general outline of the national
33 hate crime reporting data collection system, I hope the Committee appreciates
34 the intersecting, multi-dimensional factors that might affect the nature and
35 extent of hate crime reporting in particular jurisdictions. A centralized federal
36 program collects, but does not require, hate crime data from state and local
37 agencies under congressional mandate. These agencies must answer to
38 different state laws that require, incentivize or generally promote the provision
39 of hate crime data, and these agencies have also adopted different policies, not
40 to mention institutional cultures or attitudes toward hate crime and hate crime
41 reporting.

42 Therefore, in crafting policy recommendations to improve the national hate
43 crime reporting and data collection system, we must take a comprehensive

1 approach. One that is attentive to these intersecting, multi-dimensional factors.
2 And when we assess the landscape in a particular state, as we are in this
3 Briefing, these considerations should inform our perspective.

4 [Kai Wiggins:](#) I will devote the remainder of my time to briefing the Committee on the present
5 legal framework in Virginia to address, prevent or respond to hate crime. Given
6 my time constraints, and the information my fellow analysts have already
7 provided, I will concentrate on the relevant state laws and not address the
8 question of federal hate crime enforcement. Furthermore, while my written
9 statement includes a review of the historical hate crime data submitted from
10 state and local agencies to the UCR system, and a series of recommendations,
11 these are not included in my oral statement. I'm prepared to answer any
12 questions the Committee might have on these items during the panel discussion
13 and have submitted my full written statement for the record.

14 One component of our research and advocacy at the Arab American Institute is
15 comparative review of hate crime laws in each state and the District of
16 Columbia. In conducting this review, we generally ask three questions. First,
17 does the state have a hate crime statute applicable to a broad range of criminal
18 conduct that offers inclusive protections for hate crime victims? Second, does
19 the state require law enforcement agencies to report hate crime and collect
20 hate crime data? And third, does the state authorize mandatory basic and in-
21 service hate crime training for law enforcement personnel?

22 To answer the first question: Yes, Virginia has a hate crime statute, though it is
23 not applicable to a broad range of criminal conduct nor offers inclusive
24 protections for hate crime victims. In Virginia, defendants who commit simple
25 assault, assault and battery, or entering another person's property for the
26 purpose of damaging it, and in doing so, intentionally selects the victim or the
27 property associated with the victim, because their race, religious conviction,
28 color or national origin, are subject to enhanced penalties. These provisions do
29 not extend to other forms of criminal conduct against persons or property, such
30 as murder or arson. Moreover, they do not apply to crimes in which the
31 defendant intentionally selects the victim or property associated with the victim
32 because of their sexual orientation, gender, disability or gender identity.

33 On to the second question: Virginia code requires law enforcement agencies to
34 report hate crimes to the Virginia State Police, which maintains a central
35 repository for collection and analysis of hate crime information. This law, which
36 predates the federal Hate Crime Statistics Act by two years, currently provides a
37 three-part definition of hate crime. For the purpose of data collection under this
38 section, hate crime is defined to include "criminal acts," "illegal acts" and "all
39 other incidents, as determined by law enforcement authorities," that are
40 directed against persons or their property because their race, religion or ethnic
41 or national origin. The range of criminal conduct covered under this definition of
42 hate crime is more expansive than that which is subject to hate crime penalty
43 enhancement under Virginia criminal code. However, consistent with Virginia's

1 hate crime statute, the definition of hate crime used for reporting and data
2 collection, does not include crimes motivated by sexual orientation, gender,
3 disability or gender identity.

4 [Kai Wiggins:](#) And, now we come to the third question. All law enforcement officers in Virginia
5 are required to complete statewide certification examinations developed and
6 administrated by the Department of Criminal Justice Services. While the
7 department's training manual and compulsory minimum training standards
8 include nonspecific sections on investigating and reporting hate crime, hate
9 crime training is not expressly required under state law. In contrast, some states
10 have laws requiring specific forms of hate crime training, which include
11 provisions relating to investigating, certain types of hate crime, reporting hate
12 crime incidents, and providing assistance to victims and communities.

13 As I have already emphasized, we must acknowledge the potential effect the
14 state laws and agency-level factors on the nature and extent of hate crime
15 reporting in particular jurisdictions, as reflected in federal hate crime statistics.
16 This should inform both our analysis of hate crime data and the
17 recommendations we promote to improve hate crime. And, as a final word, I'm
18 happy to brief the Committee on any of the material provided in my written
19 statement, which includes our research discovering the omission of
20 Charlottesville in the hate crime statistics data and historical hate crime data
21 over the last thirty years.

22 [Committee Chair:](#) Thank you very much. Members of the Committee will now ask questions of all
23 the Panel 1 speakers. For the Committee members on the phone, I'm going to
24 first turn to the members on the dais, with the exception of myself and Terry
25 Griffin. I will then turn to the members on the phone and then Terry and I will
26 wrap-up. Having said that, each member has 5 minutes, and you have one
27 follow up. Lorraine Waddill.

28 [Lorraine Waddill:](#) I'd like to ask Ms. Bro, did you see any new laws that passed the VA General
29 Assembly this year that pleased you?

30 [Susan Bro:](#) David Toscano –member, VA House of Delegates – and I had talked about the
31 fact that he had tried to put a few things through, but most of them died in
32 subcommittees, sadly. A resolution honoring Heather went through, but that's
33 pretty much all that happened as far as I know. Now I could be wrong on that,
34 but I don't think there were a lot of sweeping changes. I'm sure that other
35 members of the panel could tell you that better than I could.

36 [Lorraine Waddill:](#) Okay, so to the other members of the panel, did you see anything you liked
37 coming out of this year's General Assembly in Virginia?

38 [Mary McCord:](#) I'm not sure. I don't believe any of the bills that the Attorney General promoted
39 or introduced – I don't actually know who introduced them – the package they
40 put together, I don't believe any of those made it out of committee. I have some

1 quarrel with some of them, including designating domestic terrorist
2 organizations, which I disagree with, but there were some others that deserve
3 some considered discussion. There was a hate crime bill, as well, and perhaps
4 Kai has more details on that.

5 Committee Chair: Can I ask all the members and speakers to state your name for the record
6 before you answer, so the recording will capture the speaker.

7 Kai Wiggins: We track state legislation on hate crime. I believe there is one bill introduced
8 that would create a commission to study hate crime responses in the
9 Commonwealth, and that could not move forward. But we believe that it would
10 be an excellent first-step in trying to assess and address some of the apparent
11 shortcomings and issues present within the state. But, I don't believe that bill
12 moved forward.

13 Lorraine Waddill: Will all of you be helping to try to come together with the bill for next year that
14 maybe will be passed? After the horror of Charlottesville, I thought that
15 something would be passed.

16 Mary McCord: Certainly we have reached out to the Attorney General's office in the past and
17 offered our legal advice with respect to various bills, and stand ready to do that
18 again. I would hope that some reforms would get approved the next session.

19 Lorraine Waddill: Thank you.

20 Kai Wiggins: If I could add that in my written statement, for the record, we include federal,
21 state and local recommendations. So, I hope the members of the Committee
22 can review those. We do have thoughts and we're open to changes in the
23 future.

24 Lorraine Waddill: Thank you.

25 Committee Chair: Ed Cooke.

26 Edmund Cooke: Thank you, for your testimony to all the panelists. A brief question for Ms.
27 McCord – any of the panelists can address it if they so desire. Are we ever likely
28 to effectively control the impact of hate crimes in our communities without
29 enacting practical gun control laws and regulations?

30 Mary McCord: I think here we are talking about tools for law enforcement to prevent crimes
31 and a lot of the focus of my testimony this morning wasn't so much about
32 individual crimes, but tools that Virginia has or should have, that would actually
33 thwart the efforts of those who are bent on extremist violence, hate crime
34 motivated violence, from organizing themselves and coming into public spaces
35 and creating environments that are so conducive to the violence we saw in

1 Charlottesville that resulted in the death of Ms. Bro's daughter and serious,
2 serious injuries to many more people.

3 And, so that's why I focused on things like, using these anti-paramilitary
4 activities statutes which are content neutral, not based on your ideology, but if
5 you are organizing yourself and training to be able to come with the organized
6 use of force in an intimidating way like we saw in Charlottesville, that's illegal
7 right now under Virginia law. The statute I mentioned, that we relied on in our
8 lawsuit, dates back to the early 1980's when the KKK was opening up training
9 camps in a number of states around the country, and was originally used to try
10 to target those training camps, because the training was being done for use in
11 civil disorders.

12 We, of course used it to get an injunction that would prohibit using it out on the
13 open streets. But, those are things that certainly Virginia, I think, and I talked to
14 a lot of local law enforcement, Virginians weren't aware the statute was there.
15 The statutes that I indicated exist in 28 states that prohibit the drilling, parading
16 or marching with firearms in public as a military unit. Those date back to post
17 civil war reconstruction, and have been upheld by the Supreme Court in the
18 1800s. And the idea there is, where you have this intimidating show of force,
19 marching through the streets, by people completely outside of civilian
20 government authority, wholly unaccountable of the public, creating an
21 intimidating environment, it is really a powder keg for violence.

22 These are things that really need to be dusted off and I've been, since our law
23 suit, consulting with leaders in many different jurisdictions, Berkeley, Portland,
24 Dayton Ohio, just filed suit recently because a wing of the KKK is getting ready
25 to march there in May. And, so I hope I've answered. What I'm trying to get at,
26 there are other tools to try to calm down this environment of hate that we're in
27 right now, and for state and local law enforcement to use more proactively. But
28 this federal firearms regulation preemption statute is really bad. It really
29 hamstring's law enforcement's ability to do what is right to protect public safety
30 in their own community. Properly read, we actually think it would allow a city to
31 say, "at this event, at this rally, no weapons whatsoever, including firearms,"
32 because that's a generally applicable regulation. But, cities are scared to do
33 that, because they're concerned that they are going to be sued, and they're
34 going to be on the hook for a lot of money.

35 [Edmund Cooke:](#) Are there Federal prohibitions?

36 [Mary McCord:](#) So, the federal government doesn't have an anti-private militia piece in the
37 Constitution. The Second Amendment gives individuals the individual right to
38 bear arms for their self-protection, which is what the Supreme Court held in
39 2008 in the *Heller* case. The reason the states enacted these provisions was
40 because the state governments really did not want to have rogue militaries
41 challenging their authority, and that's why 48 states, Virginia was the first to
42 adopt that and 47 other states did too. The provisions are almost identical in

- 1 every state, that in all cases the military should be under the strict
2 subordination of the civilian power.
- 3 [Edmund Cooke:](#) Are there institutional reasons?
- 4 [Barbara Oudekerk:](#) We do ask the question "Why was the crime not reported to the police," and
5 have some estimates based on 2015 reported data that has been released. The
6 full report is available online, so you can go there as well. About 20% say that
7 they felt police couldn't do anything about it or would not help. But, we see the
8 larger category of people usually say something along the lines of, "it wasn't
9 important enough to report to the police" or they "did something else about it."
10 Or other reasons.
- 11 [Edmund Cooke:](#) Hate based crime?
- 12 [Barbara Oudekerk:](#) I cannot speak to whether the public understands hate-based crimes.
- 13 [Committee Chair:](#) Would anyone else like to respond?
- 14 [Kai Wiggins:](#) This is Kai Wiggins of the Arab American Institute. I'd like to add that even when
15 law enforcement responds or receives a report of hate crime, there are plenty
16 of breakdowns that occur within the hate crime reporting system, that result in
17 omissions from official statistics. So, for instance, at the events in Charlottesville
18 in August 2017 are not reported in federal hate crime data. We discovered that
19 as a result of a public records request to the Virginia State Police. Those aren't
20 incidents that would take a victim to report them for law enforcement to
21 respond. Similar high-profile omissions have occurred in other major hate crime
22 cases. We got on this beat after the murder of Khalid Jabara, who was an Arab
23 American in Tulsa Oklahoma, one of the highest profile hate crimes incidents in
24 2016. Tulsa police department reported no data corresponding to that incident.
25 As you'll see in my statement, I provide a table, that breaks down federal hate
26 crime statistics in Virginia according to bias motivations, If you look at laws in
27 Virginia, there're not protections or required reporting for sexual orientation,
28 disability, gender and gender identity. Law enforcement in Virginia has never
29 reported gender identity or gender motivated hate crimes to the FBI.
- 30 Well, there are other effects. For instance in the Arab American community
31 there is a sense that U.S. counter-terrorism and national security policies, that
32 have a discriminatory and disproportionate impact on members of the
33 community, so, there might be a general fear or distress of working with law
34 enforcement and there are things that happen in every community. For
35 instance, in anti-LGBTQ hate crimes, there might be a fear of coming out, in the
36 process of reporting victimization and many other things we can all speak to.
- 37 [Committee Chair:](#) Thank you.

1 I will now ask a question on behalf of a member of the Committee who is not
2 able to be here today. This is a question from Mr. Patrick O Reilly and it's
3 directed to Ms. Oudekerk. Ms. Oudekerk, do you know of any studies that have
4 investigated or established the full reliability and validity of the data on hate
5 crimes, and if so, what methods were used, and what were the findings?

6 [Barbara Oudekerk:](#) The National Institute of Justice has a portfolio of research on hate crimes, and
7 they would be the best to speak to I think about the individual studies that they
8 fund on hate crimes. I don't know at a national level, other than the two
9 national sources that I spoke about today. I'm not sure of any other national
10 level efforts that have specifically studied the reliability of hate crime data. My
11 colleagues might know more.

12 [Kai Wiggins:](#) There is certainly very informative investigative journalism on this topic. I know
13 the Documenting Hate Project – led by ProPublica – has done extensive work on
14 this. There's actually a national media story through CBS and ABC affiliates that
15 go into the accuracy of hate crime data. I don't know of any comprehensive
16 study on these issues. We're working on efforts in Congress that would promote
17 and improve data collection under the Hate Crimes Statistics Act, and one thing
18 that could be done, is that the Justice Department do a comprehensive revue,
19 assessing the relationship between these kind of intersecting and multi-
20 dimensional factors that I discussed.

21 So, agencies would put in factors with respect to whether they have policies on
22 hate crimes, state-level laws, legal framework, and then compliance with
23 federal standards and guidelines. Is there a relationship between those factors
24 and hate crime reporting rates? For instance, the law enforcement agencies,
25 municipal police departments with highest reported rates of hate crime are
26 those agencies like, Eugene Oregon, Boston Massachusetts, Seattle Washington,
27 Washington DC, that have comprehensive hate crime policies and devote a lot
28 of resources and that are also in states with comprehensive hate crime laws.
29 Major American cities with low reported hate crime rates, often are those cities
30 in the south, but have deep, dark histories racial and ethnic violence, but no,
31 generally speaking, agency or institutional focus on hate crime prevention, and
32 a lack of relevant state laws focused on hate crime prevention. And, we think
33 that, that's not a coincidence there. Though often I will say that with respect to
34 the effort in Congress, we would consider requiring certain states and even local
35 governments receiving federal grants to collect information from certain sub-
36 recipients of those grants on the policies and programs that they have in place
37 to assist that study. And, from there they will provide the federal government
38 with resources to develop better policies while also providing meaningful
39 information to the general assembly or local advocates on the nature and extent
40 of hate crime prevention in their communities.

41 [Committee Chair:](#) Thank you. Claire Gastaña.

42 [Claire Gastaña:](#) Joe, are you still on the phone?

1 [Joe Plantania:](#) I am still here, I am hearing everything except some of the questions being
2 posed, but the answers are coming through loud and clear, and I am still here.

3 [Claire Gastañaga:](#) This is Claire Gastañaga and I have a question for you. A number of the panelists
4 have talked about the events and the facts that our hate crimes reporting law
5 and our penalty enhancement act do not include gender, gender identity, sexual
6 orientation among the terms that are defined as hate crimes. Have you talked
7 with or do you know if the VA Association of Commonwealth Attorneys has
8 come out in favor of expanding the hate crimes statutes in Virginia and, do you
9 think it would improve the chances of passage for this bill that is being
10 introduced now for probably six to eight years in supported by Equality of
11 Virginia and others? Do you think it would improve the chances of passage if the
12 VA Association of Commonwealth Attorneys, the VA Association of Chiefs of
13 Police, and the VA Sheriffs Association all came out in favor of expanding the
14 hate crimes statute to cover those additional categories including disability?

15 [Joe Plantania:](#) Thank you for the question. I've been in office for about fifteen months and am
16 still learning about the interplay between the 120 elected Commonwealth
17 Attorneys that represent their own municipality and the interplay between
18 those 120 offices and VACA (VA Association of Commonwealth Attorneys),
19 which is the state wide organization of Commonwealth Attorneys. So, I can only
20 speak for myself, and my representation of the City Charlottesville. I am
21 certainly very supportive of that. VACA is its own entity and does its own thing. I
22 don't know how frequently, but I have many positions that are different than
23 VACA. I've been told, each individual Commonwealth Attorney can speak for
24 themselves, so I really don't want to get into what VACA should or should not
25 do, but I'm personally very much in favor. I think Kai spoke really eloquently and
26 persuasively on that we're missing a lot of stuff and, to me, it's something that's
27 important to capture and to know and to be aware of. And right now that's not
28 on the books. So, I'm not trying to duck your question for the statewide
29 position, but personally I would be very much in favor of advocating for that, I
30 think it would be a good idea.

31 [Claire Gastañaga:](#) I have a follow up question about the specifics regarding the rather disturbing
32 testimony that none of the events that occurred in Charlottesville were
33 reported to the state police as hate crimes, even though a number of panelists
34 have pointed out our hate crimes reporting law in Virginia includes any criminal
35 act, any illegal act, or any other incident as determined by law enforcement
36 authorities that was intended to intimidate or harass people based on race,
37 religion or national origin. And, I'm curious whether you think there's, given that
38 the Superintendent of the State Police has full authority under the statute, to
39 prescribe the form, time and manner of the reporting to local law enforcement
40 agencies. I'm curious as to whether you think there might be a way, without
41 having to change any law, to enhance, at least, the data that's available on these
42 particular the issues raised - race, religion and national origin. So that our state
43 data is accurate, and that the state police can report back to the federal
44 government and improve the accuracy of the federal government's data, given

1 that local reporting directly to the feds is voluntary. But, I wonder if you could
2 comment on why you think the local law enforcement agency in Charlottesville
3 would not have reported these incidents under the current statute that is
4 currently written to the state police.

5 [Joe Platania:](#) Again, I have not received Kai's materials and written recommendations, I'd be
6 very interested in looking at those. Yes, we have identified a significant and
7 serious problem and issue that needs to be addressed. I can't really summarize
8 it better than the concerns that you laid out in your question. I think that it's a
9 training issue that needs to be addressed, and again I haven't seen Kia's
10 recommendations. I'm sure they're quite thorough and detailed. Both the state
11 police and the Charlottesville police department and all law enforcement
12 agencies need to be doing a better job than that.

13 I again want to be careful that I only speak for the Charlottesville
14 Commonwealth Attorney's Office. We're a separate and independent entity
15 from the state police and the city police. But, yes, there needs to be something
16 done to address getting more accurate reporting data in the hands of the
17 people that need it. I'm not quite sure how you do that, I think you make a good
18 point, I'm not sure it needs to be formalized or codified, I think there are people
19 that are far more intelligent than I on this issue. Maybe we start with training
20 and say, can we fix it that way. But, yes, it's a problem that needs to be
21 addressed. And, I don't know why they're not getting the accurate numbers to
22 who it needs to be in the hands of. I don't have an answer to that.

23 [Committee Chair:](#) Thank you very much.

24 [Toa Do:](#) Mr. Chairman, I would like to reserve my time at the panel too because my
25 comments and questions are within both panels, and I hope this isn't going to
26 stay until the end. Thank you.

27 [Committee Chair:](#) We're now going to turn to questions from Committee members that are on the
28 phone. What I'll do is work down the list. If you don't have a question just
29 indicate that you don't want to use your time and I'll move on to the next
30 person.

31 Robert Bracknell are you with us?

32 [Robert Bracknell:](#) I am. No question. Thank you.

33 [Committee Chair:](#) Mr. Cameron

34 [Mr. Cameron:](#) Yes, I have a question. Can you hear me?

35 [Committee Chair:](#) Yes, please go ahead.

1 Bruce, we can hear you, go ahead.

2 [Bruce Cameron:](#) I heard one of the panelists refer to the current environment of hate, and it
3 seems that a number of the papers that have been presented refer to this
4 theme of hate crimes being on the rise. My question to the panelists is this, I've
5 gone back and looked at the official reports of the Virginia state police, and in
6 2000, the hate crimes reported were 357; in 2001 they were 409; in 2008 they
7 were 337. Now those are two to three times the amount of the current
8 numbers reported. How do the panelists explain that?

9 [Committee Chair:](#) To all the panelists, just go ahead and identify yourselves as you respond.

10 [Kai Wiggins:](#) I can answer that in two parts. The Committee member identified data from
11 2000 and 2001. If we can recall there was an incredible backlash of hate crimes
12 targeting Arab American and American Muslim communities and those
13 perceived to be Arab and Muslim, and Sikh Americans suffered greatly from this
14 backlash. If you look at the historical data, it's off the charts. Actually, in Federal
15 hate crime statistics in 2017 we saw the single greatest increase since 2001 –
16 that backlash – and the first three consecutive annual increases since 2001.

17 I will also note that it's difficult in reviewing historical hate crime data, given the
18 general culture and attitude regarding proactivities of hate crime reporting. The
19 federal Hate Crime Statistics Act was passed in 1990, and I think some experts,
20 who have been in this game for a long time, refer to the 90's as a more generally
21 proactive time when it came to hate crime reporting and data collection. I think
22 they refer to hate crime as the *cause celeb* of criminology back in the 90's. So I
23 think, those might have effects. It could be even as simple as, agencies had
24 programs for reporting hate crime, and those agents or officers who really led
25 that effort, left or retired, so, there's a lack of accountability .

26 I will also note that generally in American public discourse, there's a higher
27 sensitivity to hate crime right now and that could have some effect on hate
28 crime reporting rates. However representing a civil rights and advocacy
29 organization and working in coalition with other civil rights and advocacy
30 organizations and groups, that collect incident data outside of the criminal
31 justice system, not within official channels, there is a general sense that hate
32 crime and bias motivated targeting is indeed on the rise in communities. And I
33 would say the increases reflected in federal statistics compliment that, but I will
34 concede that there are inaccuracies, there is a general trend of underreporting
35 reflected in the data.

36 [Committee Chair:](#) Would any of the other panelist like to weigh-in on that?

37 [Mary McCord:](#) Yes thank you. I know that at the second panel we will have somebody from the
38 Anti-Defamation League who will probably be able to speak to those statistics.
39 But, I would note their most recent data of 2018, the highest number of
40 fatalities based on domestic extremism – about 50 fatalities resulted from

1 attacks by someone who was tied with the far right extremist ideology – were
2 committed last year. The highest number since 1995 when the Oklahoma City
3 Bombing occurred.

4 [Mary McCord:](#) So, I will also just say in my experience when I was at the Department of Justice,
5 we had a domestic terrorism counsel, who tried his best with the very poor data
6 reporting that was available, to keep track through every possible method of
7 what he was seeing in terms of hate crimes and incidents of domestic terrorism.
8 Hate crimes and incidents of domestic terrorism. These are kind of like a Venn
9 Diagram. Some things might be both, some things might only be hate crimes, or
10 only terrorism. And what we saw, late 2016, into 2017, already was extremely
11 alarming in terms of the sheer numbers of hate crimes, and domestic terrorism
12 incidents over just the previous year.

13 [Committee Chair:](#) Thank you. Bruce, do you have a follow-up?

14 [Bruce Cameron:](#) Well yes, it's a follow up comment. If the answer to me, is that it's under-
15 reported now, how can that explain the over-reporting, apparently, in 2000,
16 2001, and 2008? Not just 2000, 2001 but in 2008 the hate crimes reported 337,
17 approximately twice the rate currently raised in these reports that are
18 presented to the Committee.

19 [Committee Chair:](#) Would anyone like to comment on that?

20 Bruce, you presented that as a comment. None of the panelists wants to
21 respond to that right now.

22 [Bruce Cameron:](#) Well, thank you, Shiek.

23 [Committee Chair:](#) Okay. Ms. Combs, do you have a question?

24 [Sara Combs:](#) No questions.

25 [Committee Chair:](#) Ms. Dietrich-Hall.

26 [Vellie Dietrich-Hall:](#) No questions. Thank you.

27 [Mary McCord:](#) Can I go back and try to address, maybe to some extent, Mr. Cameron's
28 question?

29 [Committee Chair:](#) Please.

30 [Mary McCord:](#) I think some of what Mr. Wiggins said earlier, addresses this. The point is the
31 statistics are terrible. They just are. The federal government hasn't kept good
32 statistics, it hasn't been able to through the voluntary reporting systems that it
33 uses – that we've just been talking about for the last half an hour. That means

1 states are all over the board when it comes to what they report. Some
2 jurisdictions report absolutely nothing. I can't tell you exactly, other than what
3 Mr. Wiggins has already said, why reporting seemed to be better in 2001,
4 except to acknowledge the environment in 2001. I think none of us can ignore
5 what was happening at that time, and the incredible backlash after the terrorist
6 attacks in New York and elsewhere.

7 [Mary McCord:](#) So there was a lot of, I think, public discourse at that time, and encouragement
8 to report acts of hate that, you know, ebbs and flows over the time. And it was a
9 period that I hope to never repeat in my lifetime, in terms of its impact on our
10 country. And I think that that has a lot to do with why we saw that increase in
11 2001. I'm not really sure about 2008. I'd have to correlate that to things going
12 on at the time. But, I don't think you're going to find an explanation. What I
13 think this illustrates, is just how poor and how inadequate and inaccurate the
14 hate crimes reporting is.

15 [Committee Chair:](#) Before we get to Mr. Wiggins, Miss Gastañaga has a comment.

16 [Claire Gastañaga:](#) 2008 was a very definable year in Virginia. From 2006 to 2008, there was a lot
17 going on with respect to the Prince William Stop and ID Ordinance. And, in
18 2008, in that legislative session alone, there were 134 bills that were defined as
19 anti-immigrant, that were introduced. It was an issue in the 2007 fall elections.
20 It was very much a very heightened period of awareness in Virginia about ethnic
21 hostility particularly, and so it is not surprising at all to me to that the state
22 police data for those years would reflect something different from the national
23 data, and also something different year over year, with respect to Virginia.

24 [Committee Chair:](#) Mr. Wiggins, I believe you had a comment.

25 [Kai Wiggins:](#) I should also add that 2008 was an election year, and particularly a notable one.

26 One aspect that might affect the hate crime reporting is, we're currently
27 undergoing a transition in the method and format our law enforcement
28 agencies use to report hate crimes, and in all crimes up to the FBI.

29 Historically, law enforcement officers, agents have reported hate crimes using
30 the *summary reporting system*, which is now a rather antiquated format that
31 communicates a narrow amount of information, and which could also require a
32 supplemental incident report form when reporting. We are now undergoing a
33 transition to the *national incident-based reporting system*, which represents a
34 far more comprehensive and detailed data collection, and communicates a vast
35 number of granular details regarding hate crime.

36 However, this system is indeed more complicated, and requires more training
37 and resources. I can speak anecdotally, based on my research. In 2017, the
38 entire state of Nevada reported five hate crimes. That was, in large part, due to
39 the fact that the Las Vegas Metropolitan Police Department, one the largest

1 police departments in the country in terms of population served, reported zero
2 hate crimes. Typically, they report anywhere between 50 to 100. They represent
3 a population of 1.6 million people.

4 [Kai Wiggins:](#) I spoke to folks within the department of, I believe, Public Safety. It's hard for
5 me to remember all the agency titles from state to state. I was told that it was
6 largely an issue that resulted from the transition to NIBRS (National Incident-
7 Based Reporting System). These law enforcement agencies were not prepared
8 to report accurately, and that was something they anticipated – a general
9 depression in the accuracy – and then a gradual increase of dependability as
10 they became accustomed to NIBRS.

11 I can also speak to an incident in Olathe, Kansas, another major omission of a
12 hate crime. On February 22, 2017, an Indian immigrant named Srinivas
13 Kuchbhotla was killed in a local bar because of his national origin. While the
14 Olathe Police Department reported that crime up to the Kansas Bureau of
15 Investigation (KBI), the Olathe Police Department has limited resources, and
16 used the *summary reporting system* format. I spoke to both the Tulsa Police
17 Department, and the KBI, and they said they were not able to aggregate that
18 incident into their instant based reporting collection, such that it was not
19 reflected in the federal data.

20 So there are a lot of different, sorts of clerical or technical issues that contribute
21 to underreporting. And I think that transition to NIBRS, as it's ramping up as we
22 approach 2021, when the FBI will retire its *summary reporting system*, is
23 contributing to some of the depressed reporting that we're seeing.

24 [Committee Chair:](#) Thank you.

25 [Joe Platania:](#) May I make a general comment?

26 [Committee Chair:](#) Sure, go ahead.

27 [Joe Platania:](#) So, I forgot the gentleman who pointed out the apparent discrepancies in the in
28 the three years.

29 Bruce Cameron, thank you. It is a very general point. We have a local task force
30 that's the evidence-based decision making task force, and it's all the different
31 relevant stakeholders in our community: judge, defense prosecutor, mental
32 health, substance abuse, police and social services.

33 When we engage in criminal justice reform, we are very, sort of, cognizant of
34 needing legitimacy, and we rely on accurate data and accurate reporting
35 systems, and you need good data in for there to be good data out. And, one of
36 the things I just want to reflect, and summarize what everyone's been saying,
37 starting with Professor McCord is, I'm just hearing that it sounds standardless

1 and lacking in uniformity. And I think this is one of the things, I think, that many
2 of the panelists are doing work to address that, and is just so vital for legitimacy,
3 and integrity, and credibility that when you talk about this stuff across the
4 spectrum of people and beliefs, you have to get these numbers accurate and
5 right.

6 And it sounds like Kai is just identifying, even though it's anecdotally, and there
7 was a question posed about Virginia's reporting with the state police, we really
8 need to sort of address getting some standards, and some uniformity in this
9 process. It does not sound like we have it, which impacts our discussion about it
10 when, when people want to question it. That's just a general observation.

11 [Committee Chair:](#) Thank you. I'd like to move on to the next question. Mr. Suh, are you still with
12 us?

13 [Ryung Suh:](#) Yes. I work in an academic setting, and anecdotally we have seen a rise in hate
14 speech – it's not so much hate crime – and my question is, are academic
15 institutions required to report hate crimes and is that inclusive of incidents of
16 hate speech?

17 [Kai Wiggins:](#) Public universities are required to report hate crimes. I can't remember the
18 specific federal authority. They are.

19 [Committee Chair:](#) Would somebody else like to comment on that?

20 [Barbara Oudekerk:](#) I'll just say, I think the difference that you pointed out is important. The
21 difference between a crime versus something that might not raise to the level of
22 a crime. So, some of that plays into the context here as well, and we're thinking
23 about the context of hate that's different than crimes of hate.

24 [Committee Chair:](#) Ryung, do you have a follow-up question?

25 [Ryung Suh:](#) No follow-up question.

26 [Committee Chair:](#) Okay. We actually have a little bit of extra time, so I'm going to ask the question
27 now, and then Terrie Griffin has questions. If any other members, either on the
28 phone, or on the dais here, have a second question, hopefully, we'll have
29 enough time to get those in.

30 I actually have two. My first question is directed to a Professor McCord and Mr.
31 Platania. You both referenced the dual layers of the prosecution of Mr. Fields, at
32 the state level and then the plea that came out earlier this week. I wonder if
33 both of you could comment a little bit on what lessons we can take from the
34 way in which the two layers unfolded is instructive for us – in terms of how to
35 address some of the holes that have come up, and that each of our panelists
36 have addressed in a different format. Is there a lesson to be learned from the

1 way we approached the Fields case from two different sides that we can take
2 forward as we consider best practices. So, Professor McCord and Mr. Platania.

3 [Mary McCord:](#) So why don't you start, since you actually prosecuted Mr. Fields, and then I'll
4 chime in.

5 [Joe Platania :](#) Yeah. Mary said something earlier, that's extremely important, and struck me
6 and I wrote it down. She was talking about some of her work and she's, you
7 know, nationally, if not internationally, recognized. But she talked about the
8 work being content neutral, and not trying to criminalize ideology. I think one of
9 the things we learned from the Fields prosecution and I don't mean this in any
10 way to offend the trauma that the victims, and Susan and her family went
11 through, but we were very careful to say we were not prosecuting ideology, we
12 were prosecuting conduct – the conduct of Mr. Fields. And that's just the
13 elements that we had to prove, and I think we achieved a result where he'll
14 never be walking amongst us again, appropriately.

15 But I guess the flip side of that is, we definitely felt some of the public
16 dissatisfaction with, not more directly, in a public forum, in a public trial,
17 addressing what really happened in this community and what, you know, the
18 belief set of the victims were, and why they were targeted. So, it was a tough
19 needle to thread for us. We tried to be meticulous in our presentation of the
20 evidence relating to the conduct of Mr. Fields, not his ideology, as hateful, and
21 racist, and awful as it was. There were a few things the judge let in. There was a
22 text message he sent to his mother about that they need to be afraid, with an
23 image of Hitler. We were very careful to say to the judge, we're not arguing that
24 he should be convicted because of the posting of the Hitler image, but because
25 it showed his mindset, that he wanted to go and hurt people, that we're going
26 to be there on the other side.

27 But there was a tension there that we felt throughout, with people, I think,
28 wanting there to be something a little more explicit that we tried to shy away
29 from. I don't know if that really answers the question, but it was certainly
30 something that was present throughout the entire case.

31 Whereas the federal prosecutors, and Mary can speak to this more intelligently,
32 they were explicitly able to charge a crime with an element related to ideology,
33 that's part of the code section they charge him under, and they had federal
34 prosecutors from the Civil Rights Division of the Department of Justice, that go
35 all over the country and specialize in that. I think one of the gentleman that
36 prosecuted Dylan Roof, down in South Carolina, was sort of instrumental in
37 working through their case.

38 That's my general comment. I'll turn it over to Mary, and if there's any follow
39 from what I just said, I'd be happy to answer that.

1 [Mary McCord:](#)

2 Yeah, thank you Joe. So, I think Joe very eloquently explained, you know, the
3 state's interest is always, of course, first and foremost, is making sure that a
4 person who's committed heinous crimes like murders, and malicious wounding
5 pays the penalty, and you know, Mr. Platania was very successful in the
prosecution of James Fields, as well as others.

6 But you know, the criminal code exists for more reasons than obtaining just
7 punishment. It also exists as a way of showing societal condemnation, moral
8 condemnation, and that's why I think our federal code has enacted hate crimes
9 statutes, as well as many states, and that's why, also frankly, that we have
10 terrorism statutes in the federal codes and in many states, because these crimes
11 go beyond the mere personal one on one nature of a local crime, a local
12 murder, a local, other violent crime. I've prosecuted both in the District of
13 Columbia.

14 These crimes, whether it's to send this hateful message, or this intimidation
15 message that terrorists send, they really transcend those local boundaries,
16 those state boundaries, they even transcend, in many cases, national
17 boundaries.

18 When we look now at what happened in New Zealand just a couple of weeks
19 ago, and how we're seeing, now, connections between white supremacists all
20 over the world, and how they are modeling their behaviors and their tactics on
21 each other, and frankly on the same tactics, and behaviors, and recruiting tools
22 used by terrorists who further foreign terrorist organizations.

23 So, what I think is a good sign from this Fields prosecution, is you were able to
24 send, you were able to accomplish both of these. Now every prosecution, every
25 investigation, every crime isn't going to warrant that kind of resources at both
26 the state and federal level, but for some cases, and Dylan Roof, I think, is
27 another excellent example, and if we had a domestic terrorism crime on the
28 federal books, I darn sure would've loved to prosecute Dylan Roof, and James
29 Fields Bill, for both of those if that existed in federal law. But each time they at
30 least were able to use the hate crimes in federal statute to send that bigger,
31 broader message. And labels are important. It's not just, it's not just semantics,
32 it sends a message of how important our government feels that these crimes
33 are.

34 [Committee Chair:](#)

35 So, Professor McCord, if I could follow up and segue, slightly, based on what you
36 just said. You talked earlier about how domestic terrorism laws, or how some of
37 these same acts were treated separately under the criminal code versus
38 terrorism. And, obviously ideology is such a fundamental part in the definition
39 of terrorism. I wonder whether the lines delineating ideology from intent, which
40 sort of more applies in the criminal context, but how you would take the lessons
41 from the definitional aspect of terrorism, and apply that. Is that the way to sort
of bridge this hole that I was pointing to?

1 [Mary McCord:](#) So, you know, I think we need to be careful. Hate crimes are a little bit different
2 because it's specified that they're motivated by a particular bias, whether it's
3 racial bias, religious bias, gender identity and such, the things we've been talking
4 about. What's different about terrorism, it can also be straight political bias, but
5 it is a crime that is accomplished for this purpose of intimidation or coercion,
6 and that's key to it.

7 So, that can be very content neutral, right? It can be what we think of as a far
8 right cause, what we think about as a far left cause, and what it has been most
9 frequently used for, because the federal code skews so much toward it, what
10 I'm just going to put in air quotes, "international terrorism," has primarily been
11 used to prosecute Islamist extremist terrorism, and that's because that's what is
12 provided for in the federal code. Unless other acts of terrorism are done with a
13 weapon of mass destruction, or the target is US property, or a US official, you,
14 for the most part, don't have federal terrorism offenses available.

15 And so this why one of the gaps I think we currently see, and one reason I think
16 it's important for Congress to consider a federal domestic terrorism crime, is to
17 recognize the significance of the domestic terrorist threat, which is, right now,
18 in the United States, very much on par with and exceeds, in terms of lethality
19 and actual injury or harm to people, exceeds the threat from foreign terrorist
20 organization inspired violence. That's just the fact.

21 And yes, lots of violence overseas, and certainly 9/11 was, you know, was
22 something that I'm putting aside in terms of statistics right now, because those
23 numbers were off the charts, but since 9/11, the domestic terrorist threat has
24 shown itself to be just as great as the international terrorist threat. And so,
25 ideology aside, those should be put on the same plane, which would bring with
26 it resources, and frankly, better data collection.

27 [Committee Chair:](#) Thank you. Mr. Wiggins.

28 [Kai Wiggins:](#) On that question, I think we have more to say about this, but I will note that we
29 of the American Institute have deep concerns about efforts to expand systems
30 under which certain communities have been subject to unjust treatment, on
31 that being your US national security policy, and counter terrorism efforts.

32 I understand the intent, but we do have vast concerns, and it can be backed up
33 anecdotally. For instance, there was a report in the Guardian just recently, that
34 the FBI opened a domestic terrorism enterprise investigation -- enterprise
35 investigations are directed at organizations and their structure -- into a civil
36 rights group that had convened a counter protest event against Traditionalist
37 Workers Party and the KKK.

38 In that investigation, the KKK were treated as victims, and already, under federal
39 law, you know, federal law enforcement has vast resources and authorities to
40 investigate, and surveil criminal activity that can be defined, as I understood, as

1 domestic terrorism. So, we do have deep concerns about that, and I'm happy to
2 discuss our analysis of unsealed international terrorism related indictments that
3 can also speak to the data collection pieces as well.

4 The National Security Division publishes unsealed indictments on international
5 related terrorist cases, and they explicitly say that they use a vast array of
6 federal criminal statutes to aggregate these data. If you look at, I think there are
7 about 550 cases since 9/11, most of those cases were not, charges were not
8 brought involving, you know, material support for foreign terrorist organization,
9 which is a 2339b under criminal code, or crimes of terrorism transcending
10 national boundaries.

11 Only nine cases, or nine indictments involve those charges, and those are
12 generally the federal, international terrorism statutes that we measure against
13 the lack of domestic terrorism laws.

14 Committee Chair: You raised a good point, Mr. Wiggins, but I'm afraid my time is up. So, I'm going
15 to turn it over to Ms. Griffin for her questions.

16 Ms. Griffin: First, let me thank all of the panelists for their in-depth knowledge and
17 expertise, and even your passion. Greatly appreciate it.

18 Moving away from terrorism. Can you talk a little bit about, or address, hate
19 speech in social media? You know, what are we doing here? Are there any
20 current modalities to address that? How are we collecting data from that? Can
21 you just speak on that please?

22 Mary McCord: Yes, thank you. I think a couple of things need to just be very clear from the
23 outset. Oftentimes you'll hear from social media companies that say, based on
24 the First Amendment, they don't want to police hateful speech. And, I think it's
25 important, and I'm sure everyone here on this Committee realizes that private
26 companies are not actually bound by the first amendment. I think they, like
27 most Americans, believe in the value of free speech, and the free flow of ideas,
28 and they don't want to suppress ideas, but the fact is they don't have to comply
29 with the First Amendment. They're not the government. We did just see
30 Facebook this week recognize that merely banning white supremacists was not
31 sufficient, because white nationalism is a proxy for, or a euphemism for white
32 supremacy and they took a stronger stand on that.

33 I understand their concerns about, you know, suppressing ideologies. But I think
34 another point, to be clear about, is that incitement to violence, violence itself,
35 speech that directs violence, of course, is not protected. Even if the First
36 Amendment did apply to these social media companies, and certainly a lot of
37 these ideologies, and a lot of the things that are going on the Internet right now,
38 wouldn't cross that line yet into incitement of violence, but it's a precursor to it,
39 and it's an area where those who are like-minded in their motivation – and,
40 today it seems to be a lot of very far right extremist white supremacist

1 ideologies – they find a common place, just like we saw in international
 2 terrorism for years, a common place where they can unite with each other. They
 3 tend to think their ideology is more mainstream than it is, because they can
 4 isolate themselves in forums and chat rooms where they just hear it over and
 5 over and over, and they amplify each other's messages, and then, I think, get
 6 the sense that it's more mainstream and more acceptable.

7 And what we saw in Charlottesville, was actually this effort to say we are going
 8 to step out of the virtual Internet space, and show that we actually have power,
 9 and we can take physical space. Not unlike what we've seen, again overseas
 10 with foreign terrorist groups saying, "We're getting off of the Internet now and
 11 we're going to take property," and this is something that social media is
 12 beginning, you know, they were late to wake up to their own platforms being
 13 used by international extremists. They've been late to wake up to their own
 14 platforms being used by domestic extremists. And if it continues, public
 15 pressure is important, while respecting, not just First Amendment rights but the
 16 values that free speech includes.

17 [Joe Platania:](#) This is anecdotal, but we've had numerous instances of online, hateful, racist
 18 commentary directed at specific people in the City of Charlottesville. It's been
 19 discovered either by law enforcement, or the person at whom the speech is
 20 specifically directed at on social media. And I would sort of echo what Mary just
 21 said. These people are also extremely sophisticated, and they know right where
 22 that line is, and you read something, and have to bring a victim in to explain why
 23 it's not a prosecutable crime, because it's protected First Amendment speech.
 24 And again, it's a tough conversation to have, because you read how vile, with
 25 the writing is on social media, and identify someone by name, but they go right
 26 to that line, and don't cross it into criminal conduct. So, we're seeing certainly
 27 more and more of that, and I don't want to over compliment some of these
 28 folks, but they have a sophisticated knowledge of what they can do, and they're
 29 doing it.

30 [Mary McCord:](#) Yes.

31 [Ms. Griffin:](#) The question that I have now is for all members of the panel. Given your areas
 32 of expertise, what recommendations would you provide that we can include in
 33 our report to the Commission, that are doable?

34 [Joe Platania:](#) I'll start. I think I probably have the shortest answer. It sort of goes back, I'll
 35 repeat it again, Mary's statement about not prosecuting ideology, but conduct,
 36 and being content neutral.

37 I was also really struck by what Kai said about their proposal, and I apologize, I
 38 don't have it in front of me, but I think to be overly reactive, and not thoughtful,
 39 with some things going forward, it can do more harm than good. There's a local
 40 judge that says every time you create a rule, the exception walks through the
 41 door. So, I liked what Kai's proposal involved, which is getting some very smart

1 people around the table to study this, and to think it through to make sure that
2 it's going to be addressing the concerns that we're trying to address, and so I
3 again don't have Kai's proposal in front of me, but just listening to him today,
4 I'm quite sure it's something I would personally endorse, getting a working
5 group together to sort of study this problem and come up with some specific
6 recommendations. That's a very general answer. I'm sure my colleagues have
7 more specifics.

8 [Kai Wiggins:](#) I will begin just by saying, if the Committee finds it helpful, I'm happy to provide
9 full documentation of the work we did to both discover that Charlottesville was
10 not reported in federal hate crime statistics and state statistics, and
11 documentation of the conversation that we had with the Charlottesville police
12 department regarding that omission. Based on our interface with them, it seems
13 like there was confusion in general, with respect to: how hate crimes are
14 reported through the UCR system, and investigated and reported as such and
15 labeled as hate crimes; what that relationship is when, you know, hate crime
16 charges are brought in as to the criminal investigation.

17 And, it speaks to some of these issues at the agency level, both with respect to
18 whether they have policies and different programs, or resources devoted to
19 hate crime. So, that's more on an agency level recommendation. We need to get
20 agencies to be proactive on hate crime.

21 We also need to ensure that our cultural, institutional attitudes toward hate
22 crime, you know, there's an understanding of how severe they are, and how
23 they're distinct from other forms of crime.

24 At the state level, I mean, as we've talked about, we would hope that the
25 General Assembly considers expanding protections in there hate crime statutes,
26 and perhaps, you know, changing the framework with respect to, kind of a
27 narrow range of criminal conduct that's encompassed in there. And we would
28 also, you know, extend that recommendation to the data collection laws as well.
29 And, I believe Committee member Gastañaga has mentioned, you know, there
30 are laws in the books in Virginia, you know, relating to procedure, and whatnot,
31 really, on hate crime reporting, and maybe that's something we could address.

32 I think we should also get the General Assembly to work with the Department of
33 Criminal Justice Services in determining the potential viability of a law requiring,
34 and explicating more specifically what constitutes a good hate crime training,
35 and you know, enforcing that as a, you know, a mandatory basic and in-service
36 training. That's something we should consider up to the federal level, you know,
37 the federal recommendations we have involved, and seek accountability and
38 correspondence with the state in the agency level, and speaking to the nature of
39 the national hate crime reporting system. I think that's a good way to do it.

1 We are happy to provide, you know, the recommendations provided in our
2 written statement, we're happy to provide that to both my fellow panelists, and
3 I've already submitted to the Committee.

4 [Ms. Griffin:](#) Thank you. We will be happy to receive it.

5 [Barbara Oudekerk:](#) In my role today, I'm focused on data, and so the only recommendation I would
6 offer is just when you're looking at the national statistics, to really take to heart
7 some of the differences that we talked about today, and that are shown in the
8 materials about the different approaches to analyzing and collecting data.
9 Because when we start looking at how complementary different collections are,
10 they are really different data sets still. It's important to consider, what might be
11 reported to police is different than what we might collect through the national
12 crime victimization survey, for example, the types of victims they cover, and the
13 types of crimes they cover are all different. Some of the patterns are going to be
14 different across the two data sets. So, just to keep that in mind as you think
15 about the national data.

16 [Ms. Griffin:](#) Thank you.

17 [Mary McCord:](#) Yes, thank you. I agree with, I think, all of the proposals of Kai, particularly I
18 think clarification—because we do know reporting under the UCR is so poor—
19 clarification that what needs to be reported does not have to be something that
20 is prosecuted as a hate crime. In Virginia we don't have a general hate crimes
21 statute. That's already so self-limiting. It's almost useless, if people don't
22 understand, and with that's going to have to come – more training. I just don't
23 think enough has focused on getting the training out at every level of law
24 enforcement, to understand what they're supposed to be reporting.

25 As I've already indicated in terms of a legislative proposal at the state level, I
26 think it's critical to clarify that Virginia Code: Section 15.2-9-15 does not prohibit
27 reasonable, generally applicable public safety guidelines. Hamstringing law
28 enforcement, when we've seen the kind of events we've seen in Virginia is just
29 unconscionable.

30 And then I would also encourage the additional sort of training of local law
31 enforcement and state, on some of these existing anti-paramilitary activities
32 statutes, so they could perhaps be more proactive in thinking through. I don't
33 know if there are any training camps in Virginia for extremist groups who are
34 planning to march or appear at events. There might be, I don't know. It's worth
35 looking into and trying to use the statutes. Thank you.

36 [Ms. Griffin:](#) Thank you.

37 [Committee Chair:](#) Thank you. We actually have time, if other members either on the dais or on the
38 phone have a second question. [No members on the dais wished to be
39 recognized.]

1 [Committee Chair:](#) Any members on the phone? Do you have a second question that you would like
2 to ask Panel 1?

3 [Sara Combs:](#) This is Sara Combs. I have no questions. Thank you.

4 [Robert Bracknell:](#) No, nothing else.

5 [Committee Chair:](#) Anyone else?

6 Okay. Well, I greatly appreciate all the times that our panels I've put in, not only
7 being here today and sharing your thoughts, but also in particular, gathering
8 information and your written statements that you've already provided to us. I
9 haven't had a chance to go through all of it. I'm going to go through it again, in
10 conjunction with what you said today. I really appreciate your time. Thank you
11 very much.

12 We'll take a brief break so we can assemble our second panel.

13 **PANEL 2 [NEED CLARIFICATIONS FR: Claire: p. 47, lines 20, 36]**

14 [Committee Chair:](#) Thank you everyone. We're ready to resume, so we can please come to order.

15 Our second panel is now assembled, and they will be sharing their expertise on
16 preventing and responding to hate crimes, and what Virginia can and should do
17 differently. Our panelists are: Professor, Liz Coston, from the Department of
18 Sociology at Virginia Commonwealth University, in Richmond; Doron Ezickson,
19 Director of the Washington DC Region of the Anti-Defamation League; Harpreet
20 Mokha, National Program Manager for Muslims, Arabs, South Asian, Sikh, and
21 Hindu Communities for the Community Relations Service of the US Department
22 of Justice; Brian Johns, Executive Director of Virginia Organizing in
23 Charlottesville, which also has multiple chapters throughout Virginia.

24 The same rules applies from the first panel. The panelists will have roughly
25 seven minutes for their opening statement. At the conclusion of all of your
26 opening statements, we'll go to questions from the members here on the dais,
27 as well as on the phone. And I would just remind each of you, both with your
28 opening statement and when you're asked questions, if you could please
29 identify yourself before you speak for the recording. That said, you have seven
30 minutes, Professor Coston.

31 [Liz Coston:](#) Good afternoon. Before I begin, I would like to thank the Committee for inviting
32 me to speak on such an important issue. I'm Dr. Liz Coston, a faculty member in
33 the Department of Sociology, at Virginia Commonwealth University. My
34 research examines hate crime perpetration and victimization, as well as post-
35 victimization service provision to victims, with specific attention to hate crimes
36 against lesbian, gay, bisexual, and transgender people. In addition to my
37 research, I've also worked with community organizations that serve victims,

1 most recently as a board member with the Virginia Anti-Violence Project. It is
2 especially important that we're examining responses to and prevention of hate
3 crimes in this panel, as the number of hate crime incidents reported by the FBI
4 have been on the rise since 2014. This is a trend that's evident both nationally
5 and in Virginia. Despite the rise in violence, victims are often underserved by the
6 institutions that are designed to respond to these crimes.

7 [Liz Coston:](#) For example, less than half of all hate crime victims report the incidents to
8 police, and even fewer seek help from institutions that are poised to offer post-
9 victimization services, such as community organizations and health care
10 providers. The magnitude of the problem coupled with the inadequacy of many
11 post victimization services, necessitates that we better understand how to
12 prevent hate crimes, as well as how to improve responses to these crimes when
13 they do occur. Likewise, it is important that responses to hate crimes are
14 tailored to consider their unique nature and consequences. As hate crimes differ
15 from crimes that are not motivated by bias, specifically, they are more likely to
16 be violent and more likely to be committed by multiple offenders. These factors
17 also correspond with increased likelihood of injury to victims. In addition to the
18 physical health consequences that can result from victimization, victims also
19 often face serious long-term mental health consequences.

20 For example, increased anxiety, depression, post-traumatic stress disorder, and
21 other negative mental health consequences. Furthermore, it's not just the
22 individual targeted in a hate crime that suffers the negative impacts of
23 victimization, but entire communities often experienced fear and anger as a
24 result of these crimes. Well, my written statement covers national and Virginia
25 legislation that addresses legal responses to hate crimes. Kai Wiggins earlier
26 presented on these issues, and so I'm going to move us forward in my
27 statement.

28 While a variety of legal responses exist to address hate crimes, legislation
29 unfortunately doesn't stop those who choose to threaten harm or intimidate
30 using violence. As such, it is critical that we also understand other responses to
31 hate crimes and how to best serve victims. Unfortunately, many victims report
32 experiencing secondary victimization, or further traumatization when
33 interacting with the agencies that are meant to provide assistance to victims.

34 The criminal justice system is often difficult for victims of hate crimes to
35 navigate. The evidentiary hurdles for identifying hate crimes often alienates
36 victims. Police or prosecutors may not classify the incident as a hate crime,
37 despite evidence that the incident was motivated by bias, and sometimes
38 despite the victim's wishes to do so. Likewise, many victims of hate crimes forgo
39 reporting to the police out of here that they'll be harassed by the police, or that
40 the police won't take them seriously. This is especially true for racial and ethnic
41 minorities, as well as lesbian, gay, bisexual, and transgender people and
42 disabled people. While individual departments may have community liaison
43 officers that try to minimize these negative impacts, there has been relatively

1 little research into their effectiveness. While other services such, as the health
2 care system, are a potential site of response to victims, several barriers exist
3 that limit the effectiveness of medical response to hate crime.

4 [Liz Coston:](#) Many of the same groups who are impacted by hate crimes also have limited
5 access to appropriate medical care. Many members of these groups are under
6 insured, but more troublingly, these minority groups are also more likely to
7 experience negative interactions with healthcare providers. These negative
8 interactions can range from outright discrimination or insensitivity, to lack of
9 knowledge about the unique healthcare needs of these groups. These barriers
10 can be reduced through increasing comprehensive cultural competency training
11 for healthcare providers, and while community organizations that serve hate
12 crimes can also be important resources, the availability of these resources varies
13 greatly. For example, the National Coalition of Anti-Violence Programs, which
14 has addressed anti-LGBT violence, has member organizations in 26 states and in
15 the District of Columbia. But, this means that many states are lacking programs
16 that explicitly address the needs of LGBT victims of hate crimes.

17 Likewise, the resources of these organizations are often stretched thin, leaving
18 those in rural areas, for example, with decreased access to services that may be
19 available in larger cities. Services also vary according to the type of hate crime
20 victims' experience, with specific services available for some groups, while other
21 groups may have access to only more generalized victim services.

22 Ideally, comprehensive post victimization services that can distinguish between
23 the specific needs of different groups, would be available to all victims.
24 Importantly, cross sector collaborations between the police, health care
25 professionals, and community organizations would also have the potential to
26 offer the greatest number of resources to victims, allowing them to take
27 advantages of the services that are most beneficial to their particular situations.
28 While improving these responses is important, it is also critical to increase and
29 improve prevention efforts in order to push back against the rising tide of
30 violence we've seen in recent years. The same community organizations who
31 are already working with victims also play an important role in prevention,
32 focusing often on increasing tolerance and awareness in their communities.

33 Additionally, the prejudices that underlie hate crimes can be prevented,
34 particularly through focused intervention, and through education for youth. As
35 such, it is imperative that our policies and legislation addressing hate crimes,
36 begin to include consideration of prevention measures and responses to victims,
37 rather than focusing narrowly on criminal justice responses to offenders.

38 Thank you all.

39 [Committee Chair:](#) Thank you. Mr. Ezickson.

Doron Ezickson:

Thank you, Mr. Chairman. Good afternoon, again. My name is Doron Ezickson. I serve as regional director of the ADL's Washington DC office, where we serve the district, Maryland, Virginia and North Carolina. And I would like to thank you very much for the opportunity to participate in today's discussion.

For more than 60 years, the U.S. Commission on Civil Rights, and its state Advisory Committees, have done trailblazing work, elevating the issue with hate crime and bias motivated violence. In my presentation today, I'd like to briefly contextualize the problem that we face in Virginia, specifically, and then provide a few proposed policy recommendations for the Advisory Committee's consideration.

So, let's frame the problem. All Virginia residents – all of us – have a stake in effective response to violent bigotry.

Hate crimes demand priority attention because of their unique impact. They are intended to intimidate, not only the individual victim of the crime, but also members of the victim's community, leaving them, as has been noted, feeling fearful, isolated and vulnerable. Failure to properly address hate incidents often causes a single event to explode into widespread community tension. The damage is done by bigotry, therefore it cannot be measured solely in terms of physical injury or dollars and cents harm to institutions. By making members of targeted communities feel fearful, angry and suspicious of other groups, and of the power structure that is supposed to protect them, these incidents damage the fabric of our society and our democracy, and they fragment communities.

Over the past few years, we have seen hate filled language, memes, stereotyping and scapegoating injected into the mainstream of our policy debates and translated into federal policies and other actions that marginalize communities already vulnerable to hate crimes, deterring individuals from reporting such crimes to local police. And, the data that has suffered, as a result which is troubling.

For an example, ADL's recent Audit of Anti-Semitic Incidents in the United States documented a 57% increase in the number of anti-Semitic incidents reported to us in 2017, compared to 2016. That increase is the largest one-year increase in the 40 years that we have conducted this audit. With respect to hate crimes, specifically in 2017, as has been noted, the FBI documented a 17% increase in hate crimes nationally, the third successive year of increase, and the 58% increase in Virginia. Unfortunately, even with those numbers, we know there is still a significant underreporting of hate crimes across the United States. On a national level, many law enforcement agencies fail to participate, and of those that did, only a small number, 13%, reported even a single hate crime to the FBI in 2017. That means that 87% of all participating police agencies affirmatively reported zero hate crimes to the FBI.

[Doron Ezickson:](#)

This underreporting of hate crime data is significant, not only because it undermines the accuracy of the data, but, also because it may deter members of the community from coming forward to report hate crimes. Indeed, victims are far more likely to report a hate crime if they believe that the police are ready and able to respond effectively, and take them seriously. In order to develop a comprehensive multidisciplinary approach to reduce a crime and hate motivated incidents, Virginia should consider amending its hate crime statutes, as has been noted, updating law enforcement policies, strengthening anti-bullying guidance, promoting anti-bias education, and urging local officials to sign the Mayor's Compact to Combat Hate – launched by ADL and the U.S. Conference of Mayors – all of which are discussed in more detail in my written testimony.

This afternoon, however, I would like to highlight two of our recommendations. First and foremost, ADL would strongly urge Virginia to require a comprehensive training for law enforcement, with respect to identifying, responding to and reporting all bias motivated crimes. Unfortunately, such a requirement does not currently exist in the Commonwealth. Mandatory hate crime training for law enforcement, in addition to adequate funding and resources to support this training, is essential for several reasons.

First, law enforcement must be able to identify victims of hate crimes and respond appropriately, in a manner that is sensitive, not only to the victims, but also to the community at large. Proper identification is critical, not only to preserve and communicate, or maintain community trust, but also because victims themselves are not always aware of the existence of hate crime laws designed to protect them.

Proper response by law enforcement is equally important, in light of the unique impact that hate crimes have that I've mentioned. By definition, hate crimes involve the intentional selection of the victim because of their characteristics, something that the victim cannot change to prevent future crime.

In addition to training, with respect to hate crime identification and response, law enforcement must understand why some of the most likely targets of hate violence are often the least likely to report these crimes. For example, many immigrant victims, who are already face cultural and language barriers and reporting fear, reprisals or deportation of incidents are reported. Additionally, many immigrants come from countries where residents would never call the police. LGBTQ victim's face hostility, discrimination, and possibly other pressures, may be reluctant to come forward to report. So training with respect to why victims failed to report, coupled with training on how to identify such crimes and how best to respond in light of these sensitivities, is critical. Comprehensive hate crime training, as well as allocation of adequate funding, should therefore be a top priority.

1 [Doron Ezickson:](#) In addition to the mandatory training, ADL would also like to recommend that
2 Virginia convene a statewide hate crime task force, who ensure that hate crime
3 laws are effectively enforced, that crimes are accurately reported, that law
4 enforcement and communities are sufficiently trained and that public
5 awareness of hate crimes is maintained in the state. The task force should meet
6 regularly with stakeholders and community-based organizations to propose,
7 promote, cross agency collaboration to address hate crime prevention and
8 response.

9 Finally, the task force should consider whether diversity awareness education
10 would benefit persons convicted of hate crimes in Virginia. If so, a curriculum
11 should be developed. Ultimately, hate crime statistics do not just speak as
12 numbers, because behind each statistic is a victim injured or intimidated for no
13 other reason than how they worship, who they love, or who they are. We would
14 welcome the opportunity to continue to work with the Advisory Committee on
15 this very important topic. Thank you.

16 [Committee Chair:](#) Thank you. Mr. Mokha.

17 [Harpreet Mokha:](#) My name is Harpreet Mokha, and I'm the National Program Manager for
18 Muslim, Arab, South Asian, Sikh and Hindu communities, at the US Department
19 of Justice Community Relations Service (CRS). I've worked at CRS for nine years.
20 In the last two years, I've focused my work with the massive communities to
21 prevent and respond to hate crimes across the nation. CRS serves as America's
22 peacemakers by facilitating knowledge, understanding and communication, in
23 communities facing conflict, and developing communities' abilities to
24 independently prevent and resolve conflicts. Under title 10 of the Civil Rights
25 Act of 1964, and the Matthew Shepard Jamesburg Junior Act, Hate Crimes Act of
26 2009, CRS responds to community conflicts arising from differences of race,
27 color and national origin, and in the prevention and response to actual or
28 perceived the hate crimes based on gender, gender identity, sexual orientation,
29 religion or disability.

30 CRS does not have law enforcement or prosecutorial authority. Rather, CRS
31 works with communities in conflict to help rebuild relationships, facilitate
32 mutual understanding, and encourage the development of local solutions.

33 CRS staff works directly with state and local officials, community-based
34 organizations, community and civil rights advocates, faith-based groups and law
35 enforcement on a voluntary, no cost basis. CRS serves as a neutral third party,
36 and its services are confidential. CRS programming focuses on four major areas
37 that can be tools to assist law enforcement and communities, to reduce
38 community tension based on recent hate crimes.

39 First is facilitated dialogue. CRS facilitates dialogues between community
40 stakeholders in conflict, to open lines of communication between parties.

1 Second is mediation. CRS provides mediation services to help communities
2 resolve conflicts and tensions through face-to-face negotiations between the
3 stakeholders.

4 Third is training. CRS training programs bring together representatives from
5 state and local government agencies, faith-based organizations, law
6 enforcement, advocacy groups and other groups to develop common
7 understanding, and identify collaborative approaches for reducing community
8 conflicts.

9 Fourth is consultation. CRS offers consultation services to help communities
10 respond more effectively to conflict.

11 The 2017 hate crimes statistics show that hate crimes are increasing across the
12 country, and as my colleague has stated, including in Virginia. However, steps
13 can be taken to prevent and respond to these crimes. CRS works to educate,
14 engage, collaborate, and communicate with law enforcement, and
15 communities, to better prevent and respond to hate crimes.

16 Awareness and understanding of cultural differences is key to effective police-
17 community relations. CRS provides three types of community awareness
18 trainings to law enforcement, government officials and others on the customs,
19 cultures and practices of various communities, in order to strengthen
20 relationships between law enforcement and communities. These trainings
21 include Engaging and Building Partnerships with Muslim Americans, Engaging
22 and Developing Partnerships with Sikh Americans, and Law Enforcement and
23 the Transgender Community Training. These interactive and informative
24 trainings include topics such as cultural symbols and language, impacts of hate
25 crimes, and best practices for engagement and problem solving.

26 Since 2002, CRS has conducted over 600 of these Engaging and Building
27 Partnerships Trainings with Muslim and Sikh Americans across the country. Both
28 community members and law enforcement have appreciated how the training
29 has helped improve communication, and better understanding of each other.

30 Law enforcement can survey which communities live in their neighborhoods and
31 make outreach plans to engage with those communities. CRS can assist law
32 enforcement in planning the community engagement session, to inform the
33 development of an engagement plan and highlight the benefits of creating
34 partnerships between law enforcement, public officials, and community
35 members.

36
37 With collaboration and partnership between law enforcement and the
38 individuals and organizations that represent the community, communities can
39 be better served in addressing many of their unique needs and safety concerns. CRS
40 can help with collaboration and partnership between law enforcement and
41 individual organizations that represent the community.

1
2 Harpreet Mokha: CRS brings together diverse community leaders, and stakeholders to educate
3 communities on hate crimes, hate crimes prevention, and to find collaborative
4 solutions for hate crimes prevention and response in the following three
5 programs: facilitated dialogue, hate crimes forums and protecting places of
6 worship.

7
8 CRS facilitates meetings between community leaders, city officials, law
9 enforcement and other key stakeholders to open lines of communication and
10 promote problem solving in cases of alleged bias/hate crimes.

11 CRS facilitates a half day forum, called a hate crimes forum, which provides
12 community members with information related to the Matthew Shepard and
13 James Byrd Hate Crimes Prevention Act, as well as state and local hate crime
14 laws. The program engages local law enforcement, district attorneys, federal
15 law enforcement and community members in discussions and information
16 sharing on methods to combat and prevent hate crimes.

17 CRS also facilitates a half-day forum on protecting places of worship. The forum
18 provides faith-based leaders and congregations with information about religious
19 hate crimes, local, state and federal law enforcement threat assessments and
20 how to take steps to protect against hate crimes and other threats of violence.
21 We've done nearly seven of those since 2018.

22
23 Communication can lead to greater reporting and build trust between parties.
24 On October 29, 2018, the Department of Justice launched a hate crimes
25 website, www.justice.gov/hatecrimes. The website is a centralized portal for the
26 Department's hate crime resources for victims, law enforcement, researchers,
27 civil rights groups, media, and other stakeholders. CRS worked with the Civil
28 Rights Division, FBI and other DOJ components to create the informative
29 website with information regarding federal hate crimes laws, hate crimes data,
30 how to report hate crimes, victims support and free resources on how to
31 prevent and respond to hate crimes. This tool provides communities easy access
32 to key information and has already had more than 50,000 visitors.

33 CRS stands ready to assist law enforcement and the communities in Virginia as
34 they continue working to prevent and respond to hate crimes and to prevent
35 community tension. Thanks.

36 Committee Chair: Thank you. Mr. Johns.

37 Brian Johns: Good afternoon. My name is Brian Johns. I'm the Executive Director of an
38 organization called Virginia Organizing. I'm going to start by thanking you, all the
39 members of the Virginia Advisory Committee to the United States Commission
40 on Civil Rights. I greatly appreciate your work, especially this examination, into
41 hate crimes in Virginia. Thanks, also, to my much more educated and smart

1 co-panelists, both here and on the panel prior to this, and to the staff who
2 helped pull together this hearing. I really look forward to what comes out of it.

3 [Brian Johns:](#) Virginia Organizing is a 24 year old, multi-issues, statewide, grassroots
4 community organizing group that works with people to get a sense of their own
5 power, and then to democratically and nonviolently build that power to change
6 and improve their communities. We exist because in every part of Virginia,
7 people have been traditionally and deliberately left out of the decision-making
8 process – low income folks, people of Color, women, young people, LGBTQ
9 people and others.

10 We believe the most effective way to build power is to organize multi-issue
11 groups, and campaigns, locally and statewide, led by people directly affected by
12 the issues in their communities. Our overall purpose is to create a statewide
13 political force which has a diverse grassroots base, and deliberately includes
14 these folks who have not been active before. We're always conscious of place
15 and time, and bring in people new to social efforts, social change efforts, help
16 them understand the broader context for their actions, and deal directly with
17 the isms that confront them in their daily lives. Our organizing is directed
18 towards making specific and tangible changes that also have a long-term
19 impact. Any expertise that I have today, on dealing with hate crimes in Virginia,
20 comes from our leaders and their experiences. We have organized 17 chapters
21 in almost every corner of the Commonwealth, and whether they're in
22 Pennington Gap, in far southwest Virginia, in Danville on the south side, or in
23 Accomac, on the eastern shore and just about anywhere in between, our
24 members and chapters had some common experiences dealing with hate and
25 discrimination over the years.

26 In fact, one of the main reasons our organization was formed in the mid-
27 nineties, was to work with people to create ways to dismantle the racism,
28 sexism, heterosexism, etc. that often leads to the harassment, discrimination
29 that feed take crimes. Our organizers and leaders are talking to people every
30 single day, to hear what issues they're facing and what they would like to see
31 changed. It probably comes as no surprise, that in our work to engage people
32 who've been left out of the process, we're almost constantly hearing from
33 people about their horrible experiences. For example, we have worked with
34 African American families, in southwest Virginia, who have dealt with nooses
35 being hung on a student's high school locker, or even worse, a student who had
36 a noose placed around his neck on the bus ride home from school.

37 We've heard from college students of color in that same region, who have been
38 threatened and followed on campus, simply for suggesting the campus create
39 an office of diversity and inclusion. We've listened to the LGBTQ high school
40 students, in central Virginia, have played tapes, dating myself there, played
41 tapes of terrible verbal harassment that they recorded on a tape recorder they
42 hid in their backpack, while they walked down the halls of their school between
43 class. We've worked with a mother and her son, to set up a meeting with the

1 south side police chief, after her son, one of our summer interns, was called the
2 N word by a police officer, and told to leave the part of the town he was
3 canvassing in. We've worked with transgender folks in Roanoke, as they've
4 asked a health system how they are supposed to receive health care when they
5 routinely feel unsafe in local physicians' offices.

6 We've organized forums in Hampton roads where we heard students of color,
7 and students of disabilities, describe the verbal and physical harassment that
8 they had to deal with on a daily basis. We've stood in solidarity with the
9 Fredericksburg residents in the face of harassment, as they tried to get approval
10 to build a mosque in the area, and we have done thousands of interviews in
11 predominantly Latino communities, in the Shenandoah Valley, many of whom
12 described the harassment and abuse they have dealt with, because of their
13 appearance or their accents.

14 These are just a few of the incidents of discrimination, harassment and the hate
15 crimes that we have heard people describe. However, my main purpose here
16 today is not to relay the details of each of these incidents. You've done the
17 research, and heard, and read testimony on similar instances in crimes. You've
18 also heard from my co-panelists on data and statistics that will inform your
19 report and recommendations.

20 I believe all of these pieces are essential, as we figure out how to better address
21 hate crimes in the Commonwealth.

22 My main purpose here is to share how we have organized to improve these
23 situations through our chapters, and worked to help communities respond to,
24 and hopefully prevent, hate crimes. In each of the examples above, our
25 members were involved in organizing to respond to that incident. One example
26 is our long-term work on racial profiling. In 2002, we were doing hundreds of
27 one to ones and heard frequently from people of color, who had been stopped,
28 detained, frisked or generally profiled. Around that time, North Carolina began
29 collecting data on traffic stops by their state police and analyzing it, and as a
30 result we decided to organize a campaign, with the goal of getting the General
31 Assembly to pass legislation to require data collection on traffic stops.

32 Even though are directly affected members built a sound strategy, it was
33 apparent that at the time we didn't have the power we needed to pass a bill. So,
34 we redoubled our efforts. Over the course of the next several years, we worked
35 on the issue locally. We built new chapters, and several of them were focused
36 on profiling in one way or another. While we didn't have the power to move the
37 issue legislatively or administratively on the state level, we were building
38 relationships and organizing directly affected people all over the
39 Commonwealth, which leads us to today.

40 In most of our chapters, people of color, LGBTQ folks and others have been
41 working to build relationships with their local law enforcement. We've had

1 several meetings with local chiefs and sheriffs, who are committing to things like
2 data collection in their local offices, and body cameras on their officers, in order
3 to better serve communities of color in their local jurisdictions. We've also
4 expanded these campaigns to address the school-to-prison pipeline, which
5 places much higher numbers of students of color, LGBTQ students, students
6 with disabilities into suspensions or into the criminal justice system.

7 In some parts of the state, our chapters are working jointly with law
8 enforcement and the school systems, to develop memorandums of
9 understanding for the agencies, and including things like funding, restorative
10 justice, and building clear policies for responding to incidents of discrimination
11 and hate crimes.

12 So, our experience tells us that we have to respond to prevent hate crimes
13 when we build relationships between affected communities and local decision
14 makers. These relationships must result in policies that are created by the
15 directly affected individuals in those communities, who have a real seat at the
16 table. When that happens, we've seen those communities be much more willing
17 to report hate crimes, and those agencies be much more effective in their
18 response to and prevention up these crimes.

19 As a result, we recommend that you call on the state to better fund community
20 policing, and restorative justice practices among others. We also hope your
21 report contains examples of hate crime response and prevention work that has
22 been effective.

23 Finally, we hope that you focus on the voices of people who've experienced
24 these crimes, and people that are routinely at risk of the possible crime and
25 creating local and statewide solutions. Thank you again for your time.

26 [Committee Chair:](#) Thank you. Thank you to all of our panelists. We'll now turn to questions from
27 the members, and we'll use the same rules as with the first panel. We'll start
28 with the members on the dais. You've got five minutes – time for one question
29 plus one follow up – and after we do the members on the dais, we'll go to those
30 on the phone. The Vice Chair, Terrie Griffin, and I will go last.

31 [Lorraine Waddill:](#) I have a question for anyone on the panel, probably first Professor Coston. Well,
32 bullying is not a hate crime. Are you concerned about bullying leading to hate
33 crimes, and are your organizations doing anything to try to counter some of the
34 bullying that's going on even in colleges?

35 [Liz Coston:](#) So even though bullying isn't typically considered a hate crime, normally it's
36 something that's handled within schools. There are many incidents of bullying
37 that could rise to the level of hate crime. So, for example, an assault committed
38 by someone who is a student is still an assault. Normally these are handled
39 internally, rather than being handled through the legal system, though that
40 would be a potential response as well.

1 There are a number of educational programs that are targeting bullying,
2 particularly based around issues of gender identity and sexual orientation. We
3 do know that some of the most effective responses to reducing prejudice, are to
4 intervene early on. And, so, I think it's very important to include comprehensive
5 education about multicultural awareness. So, knowing about groups that are
6 different than our own in reducing prejudice, reducing bias and reducing
7 bullying. Thank you.

8 [Doron Ezickson:](#) I think it's an excellent question. We at ADL think of hate as a pyramid structure.
9 At the base of the pyramid are bullying, and slurs, and ethnic jokes, which can
10 escalate, and we have a documented over time, will escalate acts of bias, which
11 can then convert to a more systematic discrimination, and ultimately acts of
12 violence and in rare instances and very tragic incidences, a genocide. That is the
13 history of humanity unfortunately.

14 And, so, a very critical part of our work is to intervene in schools. We have also
15 found that the best methodology for teaching children the importance of
16 tolerance, is to have children lead that education effort, that this is not as
17 effective when it's dictated or taught.

18 And so for example, one of the programs which we have recently expanded in
19 the state of Virginia, all the middle schools for example, and Enrico County
20 around Richmond, now participate in what we call our No Place for Hate
21 Program, which is a peer-to-peer program to change the culture in schools
22 where each child will both commit not to act in any way that is bullying of
23 another, on the basis of who they are, and also to be an ally, to be an upstander,
24 to stand by people who conduct themselves that way. And we think that is a
25 critical part of the work. Just to give a statistical analysis, I mentioned that 57%
26 increase in anti-Semitic, as an example, incidents that we documented in 2017,
27 most disturbingly, we saw a 93% increase in those incidents in K through 12
28 schools, and an almost a hundred percent increase on campuses. And it is not
29 just people picking things up on the Internet. We know that there are
30 affirmative groups out there, pedaling propaganda, encouraging hate,
31 particularly on campuses, and, so, we have to counter it in a systematic way.

32 [Harpreet Mokha:](#) CRS has a program called SPIRIT, which stands for Student Problem
33 Identification Resolution of Issues Together – where we go into schools and we
34 sit down with students, faculty and administration and identify problems and
35 solutions together. We've used that program to address the bullying in the past
36 and continue to do in the future.

37 The U.S. Department of Education has done a lot of work, I mean, that's outside
38 of my topic but they have a website: www.stopbullying.gov. And, we work with
39 them, in a coalition, to develop materials, to provide cultural competency
40 information to schools, to help them with addressing bullying issues.

1 We continue to do that as of now and work with a whole conglomerate of
2 governing components that's lead by the Department of Education in addressing
3 that issue. That program, that SPIRIT Program has been very successful and
4 we've done that since the 1980s, in addressing bullying issues.

5 [Brian Johns:](#) Just quickly, I would add that we've done a lot of anti-bullying work with local
6 school systems and what has struck our members and me routinely, is that
7 those professionals are coming to us because they don't know where to go, to
8 get the information.

9 Learning about programs like this, is huge in some way, to continue to get it on
10 the radar screen of a system, particularly under-performing systems, where
11 there's about 15 - 20 other things on their list to get through every day, has
12 been striking to us.

13 [Committee Chair:](#) Thank you.

14 [Edmund Cooke:](#) A lot of the testimony that I think is included in this panel and the previous
15 panel, takes me back to this concept of institutional barriers, to achieving what
16 we're trying to achieve. I'd just like to ask all the panelists, if you would please
17 comment on, what are the institutional and other barriers to identifying
18 unlawful behavior as hate crimes?

19 What are the most significant and practical ones, if there is this concept of
20 constructive dialogue out of a more constructing dialogue? I've been told that
21 I'm not being heard. Can anybody comment on that? I was struck by Dr.
22 Coston's discussion and her written annual testimony of what prevention looks
23 like. We're trying to get at, what are the institutional areas too.

24 [Liz Coston:](#) I think that one of the biggest barriers we have is, lack of awareness about the
25 experiences of the groups that experience hate crimes. I would say that,
26 generally, police, healthcare providers, are not knowledgeable about these
27 issues. We get misclassifications of hate crimes for this reason.

28 We get victims of hate crimes feeling that they've been persecuted when they
29 go to seek help – experiencing re-victimization by either healthcare providers or
30 police officers. I think that one of the biggest barriers is lack of knowledge of
31 these institutions that are actually poised to help victims.

32 There is a huge wealth of knowledge in the community organizations, that
33 already work with victims. For example, providers that serve the LGBT
34 community, they know this is a problem, they know this is an issue and they
35 know how to be sensitive to LGBT victims who experience violence. But, that
36 also requires the LGBT community to have knowledge of those providers, to
37 know to go to them.

1 What we're really seeing is, a lack of coordination amongst these various
2 groups. I think that knowledge is one barrier. I think that lack of coordination is
3 another barrier. Some of this also is due to things like lack of funding. It's very
4 difficult to say that we're going to implement trainings for police officers, and
5 that we're going to implement trainings for healthcare providers.

6 Many times, we think of implementing these things simply as, people need to
7 have multi-cultural training. But, the way that we need to respond to the African
8 American community, differs from the way we need to respond to the Hispanic
9 community, differs from the way that we need to respond to lesbian, gay,
10 bisexual and transgender communities.

11 When we really lump all of these things together into multi-cultural awareness
12 or multi-cultural competency, we're doing it a disservice and I think that people
13 really aren't getting enough of the training, to be able to appropriately address
14 these issues.

15 Doron Ezickson: I would just suggest that there's an enormous amount of very creative work
16 being done on the ground, in all of the areas. The institutional question is, how
17 do you disseminate that information? Most hate, if not all hate, actually is local.
18 It hits people where they live, where they work, where they drive, where they
19 shop.

20 What we want to do is, take the best practices and make them available to as
21 many institutions that are doing the work on the ground and that is a convening
22 and a sharing of information, that doesn't exist on a coordinated basis in
23 Virginia and quite frankly, in most states.

24 Harpreet Mokha: I do think it is a lack of awareness on both community and law enforcement. I
25 think with communities it is about just not knowing or understanding the laws,
26 the federal, the state, the local laws or understanding what a difference the
27 nuance between a hate incident versus a hate crime. On the other hand with
28 law enforcement, understanding how to better engage with communities after
29 a hate incident or crime has occurred is important.

30 I think the second issue is a distrust of law enforcement by a variety of different
31 communities. With many of the communities that I have been working with,
32 they have an innate distrust from the countries that they've immigrated from
33 and that distrust just continues on here because of a number of reasons.

34 Third, just not knowing about the resources that local government agencies can
35 offer them or even going about, "How do I report this or what would be the
36 process? I just want to support my family and do what I need to do and I'm
37 going to put my head down and do that and I'm just going to avoid this."

38 We want to encourage communities to be proactive and engage. I think by
39 conducting hate crime forums with law enforcement and communities can

1 serve as a step to promoting better engagement. The Hate Crime Forum can
2 serve as a one-stop-shop in providing education on hate crime laws, available
3 resources, tools and programs and community agencies on how to report,
4 prevent and respond to hate crimes.

5 [Brian Johns:](#) Yeah. I mean, I completely echo all three of these, right. I think that, one, it was
6 informed to us in Stafford County, we worked to help create a memorandum of
7 understanding between the chair's office and the school system, on what school
8 resource officers were allowed to do in the school.

9 Part of that was a huge training component. We stumbled upon the fact that
10 there was no model MOU and so, we met with the Department of Education,
11 who then got it out to every school district. We could do some of the back sales
12 of getting local chapters to go to local districts and say, "Did you know there's
13 now a model to use?"

14 Things like that feel very practical and speak to building trust because
15 community members are a part of that discussion along the way.

16 [Claire Gastañaga:](#) Just a question for any and all of the panelists. All of you referred a little bit to
17 anti-bullying and the work that that might be important to, in terms of the first
18 steps of early intervention and prevention. Have any of you reviewed the
19 Virginia Anti-Bullying statute that's compelled for development of a model
20 policy by the Virginia Department of Education?

21 Has anybody looked at the model policy the Virginia Department of Education
22 has adopted and sent out to school divisions or done any looking at whether
23 that's been implemented at the local school division level?

24 [Doron Ezickson:](#) Yes, we're aware of the model policy. I think the comment there would be that,
25 the Commonwealth does not have a model curriculum for the training under
26 that policy and that is our strong recommendation, that that be developed and
27 published, and that annual training be provided for educators and for student
28 leaders as well.

29 [Claire Gastañaga:](#) Is there a curriculum that you would recommend?

30 [Doron Ezickson:](#) Other states do have a curriculum and there are a number of our private
31 organizations that have as well. Sitting here today, I wouldn't want to
32 recommend one or the other but those resources do exist.

33 [Claire Gastañaga:](#) The second overarching question is, the process of hate, whether it's White
34 supremacist hate or other kinds of hate, is the same psychologically, it seems to
35 me, across the board, regardless. I mean, you talked about the pyramid and that
36 there's bullying at its base, followed by alienation and othering and that there's
37 a really kind of recognized process of hate.

1 The other thing that I understand is that, you go to the Internet, there are
2 thousands and thousands of mechanisms that people are using to take
3 advantage of that process on the hate side but not much going on the tolerance
4 and education side.

5 When you think about that pyramid, what can we do as a community, really, to
6 address that underlying sort of impetus that people fall victim to, if you will or
7 buy into, that results in their becoming part of these hate groups across the
8 spectrum?

9 [Liz Coston:](#) Liz Coston. What I will say is that, there are actually a number of different
10 resources out there for understanding, for teaching tolerance, that are widely
11 available on the Internet. I think that the difference is that, people latch onto
12 the hate speech. The people who are going out and looking for tolerance
13 materials, are not the same ones who are latching onto the hate speech and so,
14 the dynamics are very different.

15 I think that one of the things that has been important and Doron mentioned this
16 in terms of anti-bullying and things like that is, things like bystander
17 intervention. People being willing to speak up in situations of injustice or
18 intolerance. I think that that is something that we unfortunately, see too little
19 of.

20 Those have been proven effective models, when people are willing to engage in
21 them.

22 [Claire Gastañaga:](#) A final question for Mr. Mokha. Can you give me an example of concrete
23 outcomes from the forums that you conduct, like the half day forum that you
24 conducted in Sterling, VA. What concrete outcomes can you point to, from
25 those kinds of programs?

26 [Harpreet Mokha:](#) Thank you for the question. A concrete outcome would be, first, a better
27 engagement with law enforcement. I think we had over 100 people there and it
28 wasn't at their main mosque, it was at the one in Sterling. We had a lot of
29 people come to us afterwards and say that, "We did not know that the state and
30 local county officials were also here. Is that going to help us with maybe doing
31 an assessment, outright assessment of our place of worship?"

32 So, the first one was just to get to know who the players were out there. The
33 government players that could help them out.

34 Two, is how to report a hate crime.

35 Then three, getting to know best practices about getting to know your precinct,
36 your neighborhood liaison and having a back and forth communication and not
37 only inviting law enforcement to religious events and festivities and what have

1 you but to have an ongoing dialogue and not to wait until times of crisis to
2 engage.

3 I think the key thing here is and my mentor used to say this all the time is, "The
4 last time you want to hand out cards, is during a time of crisis. You want to get
5 to know people beforehand," and I think that was the greatest takeaway that
6 we had at that forum, is that people were getting to know each other, before
7 something arises.

8 Then thereafter, people had told me, "Oh yeah, I met that person there and he
9 helped me out on another issue." That was one of the many takeaways.

10 [Committee Chair:](#) Thank you.

11 [Toa Do:](#) Thank you Mr. Chairman and thank you to all the people on the panels. Before
12 the hearing, I asked one big question that I think I want to learn. Also, my
13 concern is about the data collection and the analysis of data. That would seem
14 like something that would have to guide us through all this discussion today.

15 However, after listening to all of the testimonies and from the both panels, I
16 think I have more questions than answers. I know that we have a long way to
17 go in Virginia. Being an immigrant, first generation immigrant, I have to tell you
18 that I don't think I'm personally, a victim of hate crime but I'm definitely a victim
19 of hate speech and bullying, many, many, many times.

20 I was a guest speaker in Fairfax County a few years ago and talking about
21 diversity, in Fairfax County. And one of the gentleman in the audience told me
22 that, if I didn't like it here, why didn't I go home? I want to make clear, I'm very
23 fortunate that being here and being on this Advisory Committee. I appreciate
24 and am grateful to everything.

25 I'm a beneficiary of the 1980 President Carter Refugee Act, and I could bring my
26 family here after eight years. Also, at work, if people did not like me, they could
27 say that, "Hey Toa 02:32:21, I don't understand your English." I also served on
28 the State Commission to study the impact of English as a Second Language (ESL
29 Commission) on ESL students in school.

30 I even got some delegates and a senator in the Commission, told me also that
31 they didn't understand my English. I said, "Well, I'm the only one serving on the
32 ESL Commission, who speaks English with an accent." Anyway, from what I
33 heard, so far, from all the presenters, I know that we have a long, long way to
34 go, including how we collect and analyze statistics. I love all the
35 recommendations from ADL and I think it's great.

36 But I don't really have any specific question. I just wanted to have a general
37 statement, and I want to join the other members who really thank Susan Bro.
38 And being a father and also a grandfather, I think I want to borrow your last

1 statement, that no-one wants to have to go through something that you had to
2 go through.

3 I know that we have a long way to go. And then, I think we have to stand
4 together, you know. At least not to solve this problem but at least to see the
5 numbers not going up, like we're seeing in the last couple of years. We need to
6 see the numbers coming down. Thank you.

7 Committee Chair: Thank you. Before we go to the members on the phone, we're going to switch
8 up the protocol a little bit. I'm going to recognize the Vice-Chair, Terrie Griffin,
9 for a question.

10 Terrie Griffin: Thank you. I sort of feel like Toa. The more I hear, the more questions I have. I
11 want to make a statement and then I want to pose a question because I'm tired.
12 I hear you both talking about multi-cultural awareness, cultural competency but
13 then, if you do multi-cultural awareness, you're doing a disservice. You have to
14 have competency about a culture, before you can have an intervention.

15 I keep hearing talk about there are curricula out there. But, if you get a
16 curriculum from Kansas, it's not going to fit in Virginia. The lack of resources, it
17 does not take resources to sit across the table and talk to someone.

18 It just doesn't and if we don't start looking outside of the box and engaging in
19 conversations, building relationships first, like you say, "Ah, that person was
20 that previous forum. I recognize that person." I'm not going to trust you, if I
21 don't feel like we couldn't even talk together.

22 When you see me, I'm more than an African-American woman; there's more to
23 who I am. But I'll be willing to engage in understanding the consciousness of
24 people, who have been oppressed, who are not invited to the table. If I sound a
25 little bit upset, I am because we're talking to responses to and prevention of
26 hate but we've got to begin to engage in dialogue, so that we can understand
27 each other.

28 My question to each of you is, are you willing to look outside the box? Don't put
29 just a band aid on something because it sounds good or it's politically correct.
30 Are we willing to take risks? Are we willing to sit down and write our own
31 curriculum and be creative in addressing the problems that are in our
32 community, rather than importing something that doesn't have anything to do
33 with who we are?

34 What are you going to do? That is my question to each of you.

35 Liz Coston: To be clear, I do think that multi-cultural awareness think that multi-cultural
36 awareness is very important. I think that the problem is that we label something
37 multi-cultural awareness, we do a one- or two-hour training and expect that we

1 are going to have knowledge about all of the various groups that fall under
2 multi-culturalism, right.

3 That somehow in two hours, we would understand all of those differences. I
4 don't think that's the case. I think that we absolutely need to have those
5 conversations across lines of difference. Across communities of difference,
6 between African American communities and the LGBT community, between
7 religious communities and the LGBT community.

8 I think that everyone has an investment in building a better future for all of us
9 and I do think that it's important to have those difficult conversations. I also
10 think that you're absolutely correct, what works in one place, you can't just
11 import it and expect it's going to work somewhere else.

12 There are different strengths in different communities that we can build on. For
13 example, in understanding the experience of LGBT people in rural areas, right?
14 We often think that rural areas are unsafe and unfriendly for LGBT people but
15 there are many rural LGBT people who say, "Actually, the ties that I have to the
16 people in the community, make me feel safer, not less safe."

17 I do think that we have to be able to sit down, have conversations across lines of
18 difference and figure out responses that are going to work in particular places. I
19 will be honest, funding is an issue because a lot of people won't come to that
20 table, unless there are funds to develop the curriculum. I think that this is one of
21 the barriers.

22 If you can put together a task force, of people who are willing to serve on it and
23 develop those materials and do it at no cost, I think that's fantastic. I have
24 experienced challenges in working with agencies who say, "Even if you have the
25 curriculum for us to implement it, it's going to take hours for our people to sit in
26 those trainings, so where is the funding for that?"

27 I think that this is a realistic barrier that many agencies face. I know that there
28 are community organizations who are often willing to go in and do those
29 trainings at no cost but the organizations have to be able to and willing to
30 commit their people to those trainings as well. Thank you.

31 [Doron Ezickson:](#) Thank you for your honesty, your passion, your commitment, your challenges. I
32 think that question should apply to every American. In other words, what we
33 confront here and my organization has been fighting this fight for 106 years, not
34 to be depressing but there's something about humanity, there is something
35 about the nature of the way we interact and to put it in a more positive context.

36 Look, this country is an ongoing experiment. It is something that has not been
37 accomplished in other places before. There are issues that we have not
38 confronted, our past with regard to slavery. We still have not confronted as a

1 society, the treatment of the Native American population has not been
2 confronted adequately and yet, we find new ways every day to hate each other.

3 This has to start at the top, in terms of leadership but it also has to be at every
4 table, in every home, whether it is a conversation about are we as Americans?
5 What country do we want to be citizens of? And to take that challenge. As an
6 organization, we try to provide the vehicles for that conversation.

7 We produce table talks, how can a parent talk about what happened in New
8 Zealand or can talk about Charlottesville, can talk about a Swastika showing up
9 in their school. We need to empower people with knowledge and a
10 commitment and this has to come from people.

11 No bureaucracy, no institution is going to impose the kind of tolerance and
12 ongoing change of our institution that you are talking about and that really, our
13 democracy compels.

14 [Harpreet Mokha:](#) The Community Relations Service has been doing this work for the last 50 years.
15 We are termed the American peacemakers and we've been working hard from
16 the 1960s 'til now, to work on race relations and since 9/11 and onwards, to
17 dealing with different programs.

18 With our new programs of hate crimes forums, where we do bring communities
19 together to have those tough conversations and to find out about resources.
20 Whether it be our protecting places of worship forum, where we talk about the
21 unfortunate incident that happened in New Zealand or the shootings in South
22 Carolina or the shooting at a Sikh temple in Wisconsin, 2012.

23 I mean, we had those tough conversations but we turned that conversation into,
24 yes, we need to agree. We need to address trauma but what can we do to
25 prevent those acts taking place in the future or helping others grieve. I think we
26 are working on that and our programs are free, at no cost. We are again, the
27 lack of resources and issues are out there.

28 But, I think, I taken up your challenge and I'm working, to the best of my ability,
29 to try to serve as communities as I can. Even though I'm mandated with a
30 massive community, I think, we, at a Community Relations Service, have worked
31 hard for the last 50 years to address and have those tough conversations. I think
32 with everyone's partnership here and the Committee's, I think we can do more.

33 I do think we're scratching the surface. I have a positive outlook and though you
34 have more questions, we are far beyond what we used to be. I understand you
35 may have questions about data collection but there are people we can talk to
36 about data collection. More people are reporting, that's what we want to have.

37 Let's always, you know, don't look at the glass half-full or half-empty but look at
38 how much progress we can make. I think that despite the challenges we have,

1 we are going to have this and we will continue to have this. Like my colleague
2 has said, this is a great country and we have the freedom to sit down and have
3 these discussions.

4 I'm proud my family had to come to this country, where I can practice my faith
5 freely but also, to help others in their practice of their freedom as well. Back to
6 the topic, I do think that we are moving far beyond where we were from and I
7 do think that we are addressing new challenges.

8 But, I think there are a lot of groups and experts out there that are now studying
9 this matter – whether it be ADL or the Southern Poverty Law Center – and
10 trends. I think by looking at a whole conglomerate of these programs, we are
11 now able to pick and choose what we want to do. I think that's the beauty, is
12 that you don't only have one curriculum but you have several to choose from. I
13 would look at it that way. Thank you.

14 [Brian Johns:](#) You know, I absolutely appreciate your questions and your sentiment and it's
15 something we think about on a daily basis in our organization and we are just
16 one approach but we have, in the late '90s, we built a curriculum around
17 dismantling racism and we started with racism because at that time, our
18 members were mainly from south-west or the eastern shore, they were facing
19 racism every single day.

20 We lead with the fact that we're in the home of “massive resistance” and we're
21 in a state that has some very hateful public entities that are out there actively
22 working to sow that. Ours is not the only approach but we like to say we do
23 things the hard way.

24 We also like to say, we try to be strategic, more so than busy. We will do
25 workshops. We did more last year, than we've ever done and they're free, for
26 the most part. We certainly won't turn down a donation but our thought is that,
27 it's got to be a lot more than a workshop and I think that's what we've each
28 expressed.

29 When we are doing that work best, it's where it's in part of a chapter where,
30 even if you get someone to commit three days, to think about dismantling
31 racism and how to do that institutionally. We have our best success, when we
32 know that we're going to see most of those folks again in three weeks or two
33 weeks or whenever the next chapter meeting is.

34 And that, we now have a common language for how to take this issue on. We
35 will continue to do that and I really appreciate that.

36 [Terrie Griffin:](#) I appreciate that. Let me just say this, the glass is half-full and when we begin
37 talking about diversity, inclusivity and equity, it's a long conversation and it's not
38 going to happen overnight.

1 [Committee Chair:](#) Thank you. I'm going to turn to questions from our members who are on the
2 phone. If you don't have a question, please just get on the line and indicate that
3 and move to the next person. Let's start with Mr. Bracknell [no response].
4 Moving onto Mr. Cameron.

5 [Bruce Cameron:](#) My question is a sharp inversion, I would say of the question I asked the last
6 panel, several of the panelists have said that hate crimes are on the increase. In
7 fact, radically on the increase but the Virginia police statistics show just the
8 opposite.

9
10 Now when I asked that question last time, the experts said to me, well, the
11 statistics are all over the place and because I had suggested specific years, there
12 were explanations as to certain years. During the break, I went back and looked
13 at every year and between 2000 and 2009, 2000, 2008, hate crimes reportedly
14 officially in Virginia, were between 300 and 400. In fact, one year, they peaked
over 400 by just a little bit.

15 Now starting in 2010, the hate crimes have all been between 100 and 200. 2017,
16 slightly increased, 200. Those statistics are consistent and what they're
17 consistently showing, is that hate crimes are down by at least 50%, if not more.

18 Now, my question is, how do you explain that? I know that a number of you are
19 connected with organizations that raise money, as a result of raising this issue
20 but how do you explain, these statistics directly contradict with what you're
21 suggesting to us? I might add, that my concern about this is increased by the
22 fact that, as we've seen in the news recently, very famous person was making
23 up a hate crime.

24 Apparently hate crimes were so scarce, he had to manufacture his own. I'm very
25 troubled about this idea of people manufacturing hate crimes, suggesting that
26 the statistics are opposite than what they are. If it's true that they're increasing,
27 then I'd like to know why the statistics, the official statistics are just the
28 opposite?

29 [Liz Coston:](#) You're referencing some earlier years of data but in 2016, for example, Virginia
30 was down to 122 hate crimes being reported. In 2017, we were back up to 100
31 again. If we look at the prior years of data, what we do see is, since about 2014,
32 we did see a decrease until 2014 but then we see hate crimes creeping back up,
33 increasing again from 2014 on.

34 So, if we look at the statistics and data that we do have on hate crimes, we
35 know that even those 200 reported, are a gross underestimation of the actual
36 number of hate crime incidents that occur every single year. When we compare
37 number one, half of all hate crimes aren't reported to the police. Even more of
38 these are not reported, depending on the particular social group.

1 For example, the National Coalition of Anti-Violence Program's (website:
2 <https://avp.org/ncavp/>) reported that in almost 20% of all hate crimes, where
3 the victim was lesbian, gay, bisexual or transgender, that when the person went
4 to file the report with the police, that the police actually turned them away.
5 These are national statistics, not specific to Virginia.

6 Likewise, you mentioned the data collection. I do want to particularly point out,
7 for example, anti-transgender hate crimes. In 2017, the Uniform Crime Reports
8 that there are zero anti-transgender murders that occur in the United States.
9 However, we know from media reporting that, in fact, there were 29 murders of
10 transgender people in the United States in that year. Specifically, many of them
11 transgender women of color. We also see that these intersections are
12 important. We can't think only about someone's gender identity, but that
13 people are also victimized based on their race and gender identity
14 simultaneously.

15 When we talk about this data, the important thing to note is that these are
16 under representations of the total amount of crime. Some of these are crimes
17 that are only verifiable by police. Police only report them because they think
18 that there's enough evidence to prove that it was a hate crime. This does not
19 negate people's actual experiences of victimization. Just because someone was
20 called a racist, or homophobic, or trans-phobic, or religious slur during the
21 attack that doesn't necessarily mean that the police are classifying it as a hate
22 crime.

23 I do think that it's important to frame this in terms of, yes, in prior years there
24 may have been higher numbers reported, but there was a decrease over time
25 and now we're seeing those numbers rising again. Thank you.

26 [Committee Chair:](#) Somebody else on the panel like to address that question?

27 [Doron Ezickson:](#) Just to validate again, that after seeing an apparent decline in Virginia for some
28 number of years, we're now seeing an increase, yet again. And, if you think
29 about the pyramid, the crimes reported, not only are they under reported, but
30 they represent a very small number of the overall amount of intimidation,
31 harassment, online, in person, that is going on in our society. If law enforcement
32 is able to prevent more hate crimes, or intervention educationally is allowed,
33 and it enabled us to perhaps stop the increase at this time, that would be
34 wonderful, but it still leaves hundreds of victims in the Commonwealth and
35 thousands across the country who are being targeted with crimes for no other
36 reason than their identity. That is Un-American, and that is not acceptable.

37 [Committee Chair:](#) Thank you. Moving on to Ms. Combs.

38 [Bruce Cameron:](#) Can I have a follow-up?

39 [Committee Chair:](#) We're over your time, Bruce. If we have time at the end, we'll circle back.

- 1 [Bruce Cameron:](#) All right.
- 2 [Committee Chair:](#) Sara Combs.
- 3 [Sara Combs:](#) I have no questions, thank you.
- 4 [Committee Chair:](#) Thank you. Moving on to Ms. Vellie Dietrich-Hall [no response].
- 5 Moving on to Ryung Suh.
- 6 [Ryung Shuh:](#) I have no questions.
- 7 [Committee Chair:](#) Thank you. Given that we have some extra time Bruce. You can have the follow-
- 8 up.
- 9 [Bruce Cameron:](#) Well, thank you. The response was that I wasn't looking at all the years, but I am
- 10 looking at all the years between 2000 and 2017. And while I agree that there
- 11 should be zero hate crimes, the question is what the trend is. For example, in
- 12 2010 the hate crimes in Virginia were 184, 2017 the year of this huge increase is
- 13 2002. It's very close, the numbers here. If in fact the hate crime reporting is
- 14 underrepresented, which I don't debate, the point that I'm making is it would be
- 15 under represented in every year. Thus, that does not negate what the statistics
- 16 show, which is that the number of hate crimes are rapidly dropping in the
- 17 Commonwealth and are half of what they used to be. I think that is something
- 18 that the panelists need to address.
- 19 If you just want to say, as I believe, "That the number of hate crimes are
- 20 dropping rapidly". Well, we can say, "That's great. How do we get rid of the rest
- 21 of the hate crimes?" And, I'm with you, but to suggest that they're going up, I
- 22 think, unless there's some reasonable explanation, that the statistics show just
- 23 the opposite. And, I'm hoping that people who are expert in this can show me,
- 24 in some logical way, why I'm not reading these statistics correctly.
- 25 [Committee Chair:](#) The panels have already spoken to this. So, I'm actually going to recognize Claire
- 26 Gastañaga, who has a comment on this point.
- 27 [Claire Gastañaga:](#) Mr. Cameron, one of the things that I find personally confusing as I read the
- 28 State Police Report, I'm thinking the state police report should report in a way
- 29 that concords with the state statute which says, "The crime and incident", or
- 30 some other thing in their three different categories of experiences, if you will,
- 31 that are supposed to be reported. Yet, in the most recent 2017 state police
- 32 report on crimes in Virginia, it says, "Hate crimes are not separate, distinct
- 33 offenses but rather reported crimes motivated by the offender's bias". If this
- 34 year it's only about reported crimes but in another year they took more
- 35 seriously what the actual statute says, which is supposed to be more
- 36 comprehensive than criminal acts. Supposed to be criminal acts, illegal acts, or
- 37 other incidents that involve bias.

1 Over the years you may have had different people making decisions about what
2 to report that were different based on the instructions from the
3 Superintendent. That's why I made a comment earlier that I think one of the
4 most important things that could be done is to sit down with the
5 Superintendent and clarify how this current reporting law is administered, and
6 to ensure that the instructions going out to law enforcement are very clear so
7 that we do get a comprehensive picture. I think over time, in each and every
8 year, you could have different people making different decisions about what to
9 report. That could explain part of the reason why the data aren't comparable
10 over these years.

11 [Committee Chair:](#) Thank you. This will be the last question from the Committee. During Panel 1, I
12 asked a question in terms of how we can use the dual layers of the state and
13 federal prosecution to close the gap that we perceived and how hate crimes are
14 prosecuted. I want to ask a variation of that question to this panel. A number of
15 you, I think all of you, in one shape or another, touched on the question – I'm
16 paraphrasing here – what mechanisms can we use to incentivize, equip, educate
17 our communities to, on the one hand, understand what their rights and
18 resources and responsibilities are and to develop a sense of relationship that
19 would give them the trust and the confidence to be able to feel comfortable in
20 reporting incidents that happen to them?

21 On the other side of the coin, we talked about how do we train both before, and
22 Professor Coston spoke a lot about post-victimization training. How do we train
23 our first responders, our police, our hospitals to handle the situation? I'd like to
24 bring those two things together and really focus on the word incentivize. How
25 can we incentivize both sets of stakeholders? This really is an adaptive
26 leadership question, how do we change the culture such that this is not merely
27 checking a box, this is not really just understanding what your resources are,
28 there's an incentive. Understanding, some of my colleagues talked about, that
29 the vision of a better tomorrow lies with each of us. And, what can we do to
30 come together to show that all of us, victims, law enforcement, first responders,
31 all of us in the room here today, we all have an equal and important stake in
32 reaching that future?

33 I would like all four of you to weigh in on this and give me one or two concrete,
34 specific things on what we can do to incentivize those two groups. The two sides
35 of the coin to work together to grab that stake.

36 [Liz Coston:](#) I think that one of the inherent challenges is always getting people to
37 understand how participation is going to benefit them in these processes. For
38 law enforcement, it's important to recognize that until we actually know the
39 extent and scope of the problem, we're not going to have adequate responses
40 to that problem. If law enforcement aren't properly reporting when hate crimes
41 occur, when hate incidents occur, then it's going to be very difficult for us to
42 truly understand the nature and scope of the problem. In order to proactively
43 solve those problems, we need the data to understand them.

1 I think in terms of healthcare providers, one of the really important things is
2 that victims of hate crimes experience serious, long-term consequences from
3 victimization. Cuts, bruises, scrapes, those may heal relatively easily, but the
4 traumatic impact lasts a lifetime. Healthcare providers have to continuously
5 respond to the needs of victims. If we can be proactive about treating people
6 sensitively and proactive about getting them help early on when they need it
7 the most, we can prevent some of those most negative consequences down the
8 road.

9 [Liz Coston:](#) Obviously, there is a huge stake for communities that are impacted by violence.
10 There has been a long history of those communities having negative
11 experiences with the police and also with healthcare providers. So, building that
12 trust back up is something that is essential, but it's a long road. Thank you.

13 [Doron Ezickson:](#) Thank you for the question. I think the challenge is one about how do we
14 leverage institutions to meet the challenge that you're speaking about. If we
15 think about trying to change the heart and mind, the focus of every individual
16 who might be well intentioned but is not informed. That is an enormous task.
17 What we can do is go to the places where they, our citizens, are. We can
18 redefine, as I have challenged many universities and school systems, to redefine
19 education as including a basic understanding of the history of diversity in our
20 country, of the challenges we face, of the concepts in our Constitution that
21 ensure to us, each as individuals, equal rights no matter what our identity.

22 We need to get back to some very basic concepts and make them part of how
23 we define education. We must engage our leaders of faith. And, where people
24 congregate, in a sense of faith, bring resources to those institutions for the
25 conversation, to our community centers. And, we need to implore our leaders
26 to use the bully-pulpit, in whatever leadership role they play, to encourage the
27 sense that diversity, rather than it being a source of division, is actually
28 historically our strength and it can be again.

29 It is an education process, and there are many institutions represented here
30 today and others who are ready and willing to partner in that regard. But unless
31 we figure out a way to leverage that to scale, I think we're going to continue to
32 have a challenge that we will be discussing every year.

33 [Harpreet Mohka:](#) It's an interesting question. When I think of incentive, it means dollar signs or
34 some kind of motivating factor to act. But, in this scenario I would think showing
35 the community just the benefits of these programs. Sharing with communities
36 and law enforcement, and community leaders that these practices have been
37 done across the country. They have proved over and over again to be effective
38 addressing and preventing hate crimes – by educating and getting to know each
39 other, by engaging with each other, and collaborating, and then maintaining
40 that contact. We serve to address these problems, and if we don't then we are
41 going to see issues as they are and they're going to continue. Tying them to the
42 action, as my colleagues have said, getting the community out there. Whether it

1 be your faith-based institutions, your community centers, your YMCA, your
2 hospitals, this is the way to go, in the future.

3 If we're not talking to each other, how are we going to be able to serve each
4 other? I think it's common sense, for them to show a part of education, as our
5 training that we do, as our ongoing training that we provide for everybody in
6 our jobs, in our life, in our schools. I think it will be key to show these benefits,
7 and that they are long-lasting and effective.

8 Brian Johns: The two things came to mind when you asked the question on incentivizing.
9 One is that we think a lot, organizationally, around self-interest. The community
10 has a huge self interest in feelings they can trust, those they would report hate
11 crimes to. To that end, we worked for years in a couple of places around
12 immigrant rights. Then, worked after that on a city hiring campaign, where we
13 went to the law enforcement and said, "Look, you all are able to do your job and
14 your self-interest and police the community better if you know what's going on
15 and people aren't scared to come to you". The folks, mainly Spanish speaking
16 folks in the area I'm thinking about, first off, helped law enforcement figure out
17 where to advertise. And, said, "Look, we want to see your numbers on what
18 your local police force looks like. Let's expand that to the school systems, and
19 let's figure out how that helps you all do your jobs too".

20 We did a similar thing around the school-to-prison pipeline and working with
21 teachers – allowing them to also have the opportunity to talk about, I can teach
22 all the kids better if I know how to relate to them. Those are the things that we
23 think about, how do we figure out what is in the best interest of the folks who
24 we need to make the change. That's been our experience.

25 Committee Chair: Thank you very much and thank you to all four of you. This concludes our
26 scheduled panels. I want to thank everybody for their participation. You've
27 provided a very rich record for us to consider as we write our report.

28 **OPEN PUBLIC COMMENT SESSION**

29 In a moment, we will take brief comments from members of the audience. Let
30 me say to those that are joining on the phone and wish to speak, please indicate
31 and get in line by pressing * 1 on your phone now. I will ask the operator to
32 provide the number of people on the line who wish to speak.

33 As I said at the start of the meeting, every speaker will have up to five minutes
34 for comments, no questions. Because of time constraints, please understand
35 that I will cut you off if you go beyond the allotted time. Also, please note that if
36 you are speaking about something other than hate crimes I will cut you off
37 because that is the sole focus of today's briefing.

38 Operator, can you tell me how many speakers we have on the line?

1 Operator: It looks like we still have three Committee members and three members of the
2 public.

3 Committee Chair: Okay. How many people in the meeting room would like to speak?

4 I'll start with those in the meeting room. Then, I'll go to the operator for any
5 members of the public who want to speak.

6 I ask the speakers to state their names.

7 Hurunnessa Fariad: Good afternoon, my name is Hurunnessa Fariad, I am head of outreach and
8 interface at the All Dulles Area Muslim Society, also known as the ADAMS
9 Center located in Sterling, Virginia. We serve over 25,000 American Muslims.
10 We are the second largest mosque in the whole United States and the largest in
11 Virginia. I'm here today to relay to you all some of the issues that the American
12 Muslim community in Virginia is dealing with due to hate crimes.

13 Some of them are not crimes, but they're incidents that could relate and could
14 come into being a hate crime. Although nothing I will be saying is new news. For
15 the past few years I have been hearing stories from my own community about
16 Muslims being verbally harassed in grocery stores, some being physically
17 attacked, or even both. We are seeing a rise in the amount of people talking
18 about these incidents within their family and peer circles but most of the time
19 are too hesitant in informing law enforcement and/or don't perceive verbal
20 threat or harassment as incident to report.

21 Working at the second largest mosque in the United States comes with its share
22 of burdens due to Islamophobia and the rise in white supremacy. We receive
23 threats on a regular basis. The last one came via email to the mosque just a few
24 days ago. Now imagine the impact these incidents have on our community. The
25 amount of stress parents are dealing with because they do not know if their
26 children and family members are safe to come to the mosque. The biggest fear
27 has always been the New Zealand type of homegrown terrorist attack at our
28 own mosque.

29 Our children are being verbally, and in some cases physically, harassed at
30 schools. Some of our children do not want to return to school, some girls are
31 forced to take off their Hijabs because their fellow classmates are constantly
32 pulling at them or pull their headscarves right off their heads. Others are going
33 through depression, while others start to disassociate themselves from even
34 being called Muslim. A few years ago my own two daughters, who were 15 and
35 13 at the time and wore the headscarf, were verbally harassed at Reston Town
36 Center by an elderly white man. He followed them for two blocks, called them
37 all sorts of names like terrorist, immigrant, and infidels. No one on the street
38 jumped in to help them. They finally decided to run back to the parking garage
39 and hid behind my car. For a long time they did not want to go back to Reston
40 Town Center.

1 The emotional, psychological, and physical trauma that impacts our community
2 due to hate crimes are much more serious than we think. Needless to say, hate
3 crimes against the Jewish, Sikh, and Hindu community is also on the rise all over
4 the country. At ADAMS, we are working with local, public schools and law
5 enforcement in providing sensitivity training for all teachers and staff on the
6 American Muslim community. We feel this is one way we can educate the public
7 on who we so that if any of them have negative perceptions of us, we are able
8 to change their minds.

9 Hurunnessa Fariad: Although it is a small part of the solution, I believe that if we all work together
10 to educate the American public, at the same time hold those accountable for
11 their violent acts, we can slowly leave a better America for our children.

12 Committee Chair: Thank you very much. Operator, can you queue up our first speaker on the
13 phone?

14 Operator: Just a reminder to members of the public, if you would like to ask a question or
15 make a comment, please press * 1. I have no one on the phone line wanting to
16 ask a question or make a comment.

17 Committee Chair: All right. Thank you. In that case, we have two more speakers who are in the
18 room here today. Let me call Mr. Price Dennis.

19 Please introduce yourself for the record.

20 Aidan Price Dennis: My name is Aidan Price-Dennis. I am a Virginia high school student. The first
21 high school I went to, I was severely bullied for being black and Jewish. I decided
22 to transfer to another school and did not go back. I decided to transfer to
23 another school. I found out on Facebook that there were some students at my
24 first high school that were posting really racist things on social media. When it
25 was brought to the school board, nothing was done. There were pictures that
26 surfaced of them with swastikas in the bathrooms and racial slurs in the
27 bathrooms. For Halloween, one kid came to the school as Hitler, did the whole
28 pose and everything and nothing was done about it.

29 I hope the Commission on Civil Rights is able to facilitate change in Virginia.

30 Committee Chair: Thank you for sharing your experiences. I'd like to recognize Mr. Sable. Can you
31 please start by introducing yourself for the record?

32 Michael Sable: My name is Michael Sable. I'm actually from Pittsburgh, Pennsylvania. I am here
33 somewhat by happenstance today. I came to support a member of this
34 Committee. I will say that I did live in Virginia for three years, from 2008 to 2011
35 in Virginia Beach. I actually thought it was rather tolerant – compared to
36 Pittsburgh, Pennsylvania – with issues of hate and all. However, I'm a member
37 of the Tree of Life Or L'Simcha Congregation. The members of my congregation,

1 who, by happenstance I was not there the day the gunman came through.
2 Several of the congregations, I knew each person. This is exactly what we're
3 talking about, how both a lack of political leadership but also the lack of action
4 by us parents. It's up to all of us to set an example for our children. For instance,
5 the situation that Aidan has gone through, we all know. I think we all have heard
6 some sort of racist or intolerant joke being told in our presence.

7 The most effective way to deal with that is not to be silent but rather to call out
8 that person. It took a long time in my life to be able to do that. To actually speak
9 up, that it wasn't us versus them because usually those jokes are based on
10 ignorance when it comes to that. What I wanted to say is that I know the
11 members of the panel – and I really do appreciate hearing from those panelists
12 – they're working with organizations to change the public's view of things. But
13 what is really important is something I learned many years ago when I heard Elie
14 Wiesel, a survivor of the Holocaust and who was a brilliant man, speak. He said
15 something that I still remember to this day. That the opposite of love is not
16 hate, it's indifference. That saying that we say to people is something that we
17 really need to have adults use. "You see something, say something; do
18 something."

19 When we see intolerance and hate and all, we need to call it out. When
20 someone's being bullied, it doesn't matter that they don't look like us. It doesn't
21 matter that English may be a second language for them. One has to step in and
22 if we do that and model that for our children, I have three adult daughters and I
23 believe that each one of them does that. They don't stand for intolerance.
24 They're far ahead of where it took me a long time to get to. Really, what we
25 need to do is have parents and adults, not just in schools, but everywhere is to
26 have them take responsibility. All of us to take responsibility for actually not
27 being quiet.

28 So often, that is seen as validation for things that we would never ever
29 advocate. I hope that we will be able to use that, to be able to really have
30 people look into their hearts, and to behave differently. Don't be quiet,
31 challenge when something like that hateful speech is being used to turn people
32 against each other. Thank you for the time.

33 [Committee Chair:](#) Thank you. Before we conclude I'll just check in again with the operator to see if
34 any members of the public on the phone would like to make a comment.

35 [Operator:](#) I'm currently showing no members of the public queued up. If you do have a
36 question, please press * 1 now.

37 I'm still currently showing no questions in the queue.

38 [Committee Chair:](#) Thank you. Again, I want to thank all of our presenters, the members of the
39 public for attending today's briefing, for sharing your thoughts and your

1 experiences. In particular, for all our presenters I appreciate the enormous work
2 that you've put in to preparing for today.

3 Just a reminder that the record will remain open through April 29th, 2019. If
4 anyone would like to submit a written comment, please mail it to the Eastern
5 Regional office, U.S. Commission on Civil Rights 1331 Pennsylvania Avenue
6 North West, Suite 1150 Washington, D.C. 20425, or, you can email it to
7 ero@usccr.gov. Thank you for your time and consideration. This meeting is now
8 adjourned.

9

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Expert: Doron Ezickson, Regional Director, Anti-Defamation League (ADL)

Drafter: K. Shiek Pal

Editor: Maria Almond

FINDINGS

The following findings result directly from the expert testimony presented to the Virginia Advisory Committee, and reflect the views of the cited panelists. While each assertion has not been independently verified by the Committee, panelists were chosen to testify based upon their professional experience, academic research, subject matter expertise, and firsthand knowledge of the topics at hand.

1. There has been a statistically significant rise in hate crimes in Virginia
 - a) The Anti-Defamation League (ADL) has found that hate crimes are significantly underreported.¹ This is due to many reasons, including victims often feeling ashamed or intimidated at being targeted, a lack of knowledge of available resources or applicable legal protections, and the implementation of federal policies that further isolate communities being targeted for hate crimes.
 - b) This underreporting of hate crime data is significant, not only because it undermines the accuracy of the data, but, also because it may deter members of the community from coming forward to report hate crimes.²
 - c) The ADL has measured a stark increase in hate crimes over the past two years. During this period, the ADL has also observed an increase in hate filled language, memes, stereotyping and scapegoating injected into the mainstream policy debates and translated into federal policies and other actions that marginalize communities already vulnerable to hate crimes, deterring individuals from reporting such crimes to local police. Consequently, the data has suffered, which is troubling.³
 - d) The ADL's recent Audit of Anti-Semitic Incidents in the United States documented a 57% increase in the number of anti-Semitic incidents reported in 2017, compared to 2016. That increase is the largest one-year increase in the 40 years that ADL has conducted this audit. With respect to hate crimes, specifically in 2017 the FBI documented a 17% increase in hate crimes nationally, the third successive year of increase, and with a 58% increase in Virginia. Unfortunately, even with those numbers, ADL notes that there is still a significant underreporting of hate crimes across the United States. On a national level, many law enforcement agencies fail to participate, and of those that did, only a small number, 13%, reported even a single hate crime to the FBI in 2017. That means that 87% of all participating police agencies affirmatively reported zero hate crimes to the FBI.⁴

¹See Doron Ezickson, Testimony before the Virginia Advisory Committee to the U.S. Commission on Civil Rights, March 29, 2019, Transcript pg. 36 lines 24-29; lines 36-37. Available at:

<https://docs.google.com/document/d/1iehIA3tstU1W0Z0178sYbyZ5fjb9MgaBZ1tQ77XP6G6Q/edit>

² Ezickson Testimony, 2019 Transcript, Pg. 37, lines 1-5.

³ Ezickson Testimony, 2019 Transcript, Pg. 36, lines 24-41.

⁴ Ezickson Testimony, 2019 Transcript, Pg. 36, lines 30-41.

- e) Hate crimes are intended to intimidate not only the immediate victim, but also the community.⁵ Because these crimes are predicated upon certain identifiable traits of the victim, such as race/ethnicity, religion, sexual orientation, there is a generalized fear throughout the entire community that anyone could become a victim based solely on the shared trait. The use of memes, vandalism, graffiti, and other property damage is often directed at the targeted community as a whole rather than specific individual victims.
- f) The damage is done by bigotry, therefore it cannot be measured solely in terms of physical injury or dollars and cents harm to institutions.⁶ The psychological harm to both individual victims and their communities, and the associated damage done to notions of assimilation, identity, and civic engagement & belonging are all additional aspects of harm emanating from hate crimes. The residual fear, isolation, and distrust that is often sown among all members of the targeted community serve to amplify the damage of hate crimes.

2. Description of the Nature and Type of Hate Crimes and Identifying the Targeted Groups

- a) By definition, hate crimes involve the intentional selection of the victim because of their characteristics, something that victim cannot change to prevent future crime.⁷
- b) By making members of targeted communities feel fearful, angry and suspicious of other groups, and of the power structure that is supposed to protect them, these incidents damage the fabric of our society and our democracy, and they fragment communities.⁸
- c) Proper identification of hate crimes is critical, not only to preserve and communicate, or maintain community trust, but also because victims themselves are not always aware of the existence of hate crime laws designed to protect them.⁹

3. Legal Obstacles and Barriers to Better Law Enforcement & Prosecution of Hate Crimes

- a) Law enforcement must understand why some of the most likely targets of hate violence are often the least likely to report these crimes.¹⁰ Having this broader perspective will enable law enforcement to accurately understand the potential disparity between reported crimes and anecdotal evidence of increasing crimes.
- b) Victims are far more likely to report a hate crime if they believe that the police are ready and able to respond effectively and take them seriously.¹¹ The barrier here lies in the level of trust and the relationship between vulnerable communities and local law enforcement. A degree of familiarity and trust will make it more likely that hate crimes will be reported, either directly by the victim or a community member. Therefore, fostering closer relationships between law enforcement and the communities they serve, as well as developing knowledge and familiarity of different communities (particularly those defined by religion, national origin, or ethnicity) for

⁵ Ezickson Testimony, 2019 Transcript, Pg. 36, lines 13-16.

⁶ Ezickson Testimony, 2019 Transcript, Pg. 36, lines 17-19.

⁷ Ezickson Testimony, 2019 Transcript, Pg. 37, lines 27-29.

⁸ Ezickson Testimony, 2019 Transcript, Pg. 36, lines 19-23.

⁹ Ezickson Testimony, 2019 Transcript, Pg. 37, lines 22-25.

¹⁰ Ezickson Testimony, 2019 Transcript, Pg. 37, lines 30-32.

¹¹ Ezickson Testimony, 2019 Transcript, Pg. 37, lines 3-5.

the police and prosecutors serving those communities is very important to improving the reporting, identification, and elimination of hate crimes.

4. Recommendations and Best Practices

- a) ADL supports mandatory training on hate crime identification, response, and reporting.¹²
 - i. Virginia should require comprehensive training for law enforcement, with respect to identifying, responding to and reporting all bias motivated crimes. Unfortunately, such a requirement does not currently exist.¹³
 - ii. Mandatory hate crime training for law enforcement, with adequate funding and resources, is essential for several reasons, including the need for law enforcement to be able to identify victims of hate crimes and respond appropriately, in a manner that is sensitive, not only to the victims, but also to the community at large.¹⁴

- c) ADL also recommends a state-level hate crimes taskforce.¹⁵
 - i. Virginia should convene a statewide hate crime taskforce to ensure hate crime laws are effectively enforced, that crimes are accurately reported, that law enforcement and communities are sufficiently trained, and to maintain public awareness of hate crimes.¹⁶
 - ii. The taskforce should consider whether diversity awareness education would benefit persons convicted of hate crimes in Virginia. If so, a curriculum should be developed.¹⁷

¹² Ezickson Testimony, 2019 Transcript, Pg. 37, lines 14-19.

¹³ Ezickson Testimony, 2019 Transcript, Pg. 37, lines 14-19.

¹⁴ Ezickson Testimony, 2019 Transcript, Pg. 37, lines 20-41.

¹⁵ Ezickson Testimony, 2019 Transcript, Pg. 38, lines 1-8.

¹⁶ Ezickson Testimony, 2019 Transcript, Pg. 38, lines 1-8.

¹⁷ Ezickson Testimony, 2019 Transcript, Pg. 38, lines 9-11.

Expert: Barbara Oudekerk, Statistician, Bureau of Justice Statistics (BJS), US Department of Justice (DOJ)

Drafter: Danny Vargas

Editor: Jason Brennan

FINDINGS

The following findings result directly from the expert testimony presented to the Virginia Advisory Committee, and reflect the views of the cited panelists. While each assertion has not been independently verified by the Committee, panelists were chosen to testify based upon their professional experience, academic research, subject matter expertise, and firsthand knowledge of the topics at hand.

1. The testimony implies there is a statistically significant decrease in total hate crimes. However, there is a statistically significant increase in victim's reporting of hate crimes.
 - a) More victims are reporting crimes as hate crimes in recent years. The evidentiary burden for victims to claim something is a hate crime is far lower than for police to record it as such.¹
 - b) Between 2009 and 2017, the number of hate crimes not reported to police decreased from 172,000 to 87,000.²
 - c) In 2009, 40% of hate crimes victimizations were reported to police, in 2017 it was 55%.³
 - d) Using the statistics from 1b and 1c, we can calculate that there were 286,666 total hate crimes in 2009 and 193,333 total hate crimes in 2017.

2. Description of the Nature and Type of Hate Crimes and Identifying the Targeted Groups
 - a) The testimony concerns general statistics but does not describe the specifics.
 - b) In both the NCVS and the UCR, the largest proportion of hate crimes were motivated by race or ethnicity.⁴
 - c) In the NCVS, the next largest proportions were motivated by gender, sexual orientation or disability.
 - d) In the UCR, the next largest proportion of hate crimes were motivated by religion.⁵

3. Obstacles and Barriers to Better Law Enforcement & Prosecution of Hate Crimes
 - a) Few hate crimes are reported to police and officially recorded as such
 - i. According to the National Crime Victimization Survey (NCVS), between 2013 and 2017, there was an annual average of 204,600 hate crimes.⁶ Approximately half of these crimes were reported to the police⁷ Of these, 22% told the police it was a hate crime.⁸
 - ii. For 15,200 of those, victims said the police identified the crime as a hate crime⁹
 - iii. During the same timeframe (2013-2017), there were only 7,500 hate crimes reported through the Uniform Crime Reporting (UCR) system.¹⁰

¹ Oudekerk Testimony, 2019 Transcript, Pg. 10, line 27-29.

² Oudekerk Testimony, 2019 Transcript, Pg. 11, lines 17-19

³ Oudekerk Testimony, 2019 Transcript, Pg. 11, lines 21-22

⁴ Oudekerk Testimony, 2019 Transcript, Pg. 11, lines 10-11

⁵ Oudekerk Testimony, 2019 Transcript, Pg. 11, lines 12-14

⁶ Oudekerk Testimony, 2019 Transcript, Pg. 10, line 38

⁷ Oudekerk Testimony, 2019 Transcript, Pg. 10, line 39

⁸ Oudekerk Testimony, 2019 Transcript, Pg. 10, line 41

⁹ Oudekerk Testimony, 2019 Transcript, Pg. 11, line 3

¹⁰ Oudekerk Testimony, 2019 Transcript, Pg. 11, line 6

- b) Various reasons why victims do not report hate crimes to police
 - i. About 20% say they felt police couldn't do anything about it or would not help.¹¹
 - ii. Others claims it was not important enough to report.¹²

4. Recommendations and Best Practices

- a) Different data sets acquire and compile data in different ways and use different classifications. Accordingly, we should be cautious when using multiple data sets or making comparisons across data.¹³

¹¹ Oudekerk Testimony, 2019 Transcript, Pg. 17, lines 6 - 7

¹² Oudekerk Testimony, 2019 Transcript, Pg. 11, lines 10-11

¹³ Oudekerk Testimony, 2019 Transcript, Pg. 32, lines 5-15.

Expert: Joe Platania, Charlottesville's Commonwealth Attorney

Drafter: William Hyde

Editor: Jason Brennan

FINDINGS

The following findings result directly from the expert testimony presented to the Virginia Advisory Committee, and reflect the views of the cited panelists. While each assertion has not been independently verified by the Committee, panelists were chosen to testify based upon their professional experience, academic research, subject matter expertise, and firsthand knowledge of the topics at hand.

1. The expert's testimony does not establish whether there has been a statistically significant rise in hate crimes in Virginia
 - a) We do not have good data on the number of hate crimes that occur in this country.¹
 - b) Many cases that likely are hate crimes are not prosecuted as such (see §3) and so do not appear in state statistics.²

2. Description of the Nature and Type of Hate Crimes and Identifying the Targeted Groups
 - a) Virginia has only a few specific hate crime laws. They are: Wearing a mask in public, burning a cross, burning an object, displaying a noose, and placing swastikas on certain properties.³
 - b) Physical assault, battery, murder, and other violent offenses, as well as various property crimes, can also be prosecuted as hate crimes if prosecutors can demonstrate the attacks were motivated by racial or other demographic animus.

3. Legal Obstacles and Barriers to Better Law Enforcement & Prosecution of Hate Crimes
 - c) While misdemeanor assault, battery, and trespassing for the purpose of damaging property can be enhanced to a felony if the state can prove that the actions were motivated by racial, ethnic or religious animus, it is difficult to prove such animus exists. Accordingly, prosecutors often decline to do so as it may cost them a conviction.⁴
 - d) Offenses that have hate as a motivation are often charged as regular felony offenses.⁵ This makes convictions easier because the prosecutors need not prove racial, ethnic, or religious animus, which is difficult to do.⁶
 - e) Prosecutors must be careful not to charge people with hate crimes simply because of their ideology. They must demonstrate a particular crime was motivated by hate, and cannot charge

¹ Platania Testimony, 2019 Transcript, Pg. 5, lines 3-4; Pg. 20, lines 15-17.

² Platania Testimony, 2019 Transcript, Pg. 7, lines 11-14.

³ Platania Testimony, 2019 Transcript, Pg. 6, lines 7-12.

⁴ Platania Testimony, 2019 Transcript, Pg. 6, lines 16-24.

⁵ Platania Testimony, 2019 Transcript, Pg. 6, lines 24-27.

⁶ Platania Testimony, 2019 Transcript, Pg. 6, lines 33-35.

someone with a hate crime simply because they hate posted hateful images or subscribe to a racist or hateful ideology.⁷

- i. This can lead to public dissatisfaction with prosecutions because victims and the public may feel that the real issues about the motivation of criminals and the reason they chose certain victims were not addressed.⁸
- f) Many people who subscribe to hateful ideologies understand where the legal lines between free speech and hate crimes are drawn and knowingly tailor their behavior to be as extreme as possible without crossing the line into prosecutable conduct.⁹

4. Recommendations and Best Practices

- a) Create a working group to study the problem of hate crime laws and make concrete recommendations for solutions.¹⁰
 - i. Better training may lead to more accurate reporting.¹¹
 - ii. Reporting needs to be standardized and accurate.¹²

⁷ Platania Testimony, 2019 Transcript, Pg. 26, lines 7-26.

⁸ Platania Testimony, 2019 Transcript, Pg. 26, lines 7-26.

⁹ Platania Testimony, 2019 Transcript, Pg. 30, lines 21-29.

¹⁰ Platania Testimony, 2019 Transcript, Pg. 30, line 41; Pg. 31, lines 1-6.

¹¹ Platania Testimony, 2019 Transcript, Pg. 20, lines 8-9, 19-21.

¹² Platania Testimony, 2019 Transcript, Pg. 6, lines 33-37, Pg. 25, lines 1-5.

Summary of Testimony of Kai Wiggins, Policy Analyst at the Arab American Institute

Drafter: Brenda Abdelall

Editor: Ann Haney

NB: Error on top of pg 11 – lines 1 – 6. Does not appear that Kai Wiggins made a comment in the middle of Oudekerk testimony.

- 1) **Any data or commentary reflecting a significant increase in hate crimes or bias incidents in Virginia at the state or regional levels**
 - a) Historically and, as with many communities in the United States, threats of targeted hate violence have prevented Arab Americans from full participation in a democratic process.¹
- 2) **The nature and types of hate crimes/bias incidents and the affected or targeted groups**
 - a) Wiggins notes that amongst civil rights advocacy groups, there is a heightened awareness and a general sense that hate crimes and bias incidents are on the rise. Nonetheless, Wiggins notes that there are inaccuracies and a general trend of underreporting reflected section in the data.²
 - b) The 2001 data shows a greater number of hate crimes reported, because that was a time of incredible backlash against the Arab and Muslim and Sikh communities, as well as those communities perceived to be such.³
- 3) **Any challenges or barriers that may prevent law enforcement from addressing hate crimes, including whether Virginia hate crime related laws should be modified.**
 - a) The Hate Crime Statistics Act⁴ mandates that the Attorney General collect data on crimes that manifest evidence of prejudice based on race, gender and gender identity, religion, disability, sexual orientation or ethnicity. The Federal Bureau of Investigation carries out this requirement through its administration of a Uniform Crime Reporting Program, which publishes annual statistics based on crime data submitted from federal, state and local law enforcement.⁵
 - b) State and local law enforcement participation in the Uniform Crime Reporting system is voluntary. However, in some states, including Virginia⁶, there is an active requirement for law enforcement to report hate crimes and other types of crimes to state-level repositories for criminal justice information.⁷
 - c) State agencies have a greater incentive to report hate crimes if required by state law to submit hate crime data as a component of other state data transmitted to the federal government.⁸
 - d) In analyzing VA hate crime statute, the Arab American Institute asks three questions.⁹
 - i) *Does the state have a hate crime statute applicable to a broad range of criminal conduct that offers inclusive protections for hate crime victims?*

¹ See Kai Wiggins, Testimony before the Virginia Advisory Committee to the U.S. Commission on Civil Rights, March 29, 2019, Transcript pg. 11, lines 37-38. Available at:

<https://docs.google.com/document/d/1iehIA3tstU1W0Z0178sYbyZ5fjb9MgaBZ1tQ77XPG6Q/edit>

² Wiggins Testimony, 2019 Transcript, Pg. 21, lines 31-35.

³ Wiggins Testimony, 2019 Transcript, Pg. 21, lines 10-16.

⁴ 28 U.S.C. § 534

⁵ Wiggins Testimony, 2019 Transcript, Pg. 12, lines 3-9.

⁶ Va. Code Ann. § 52-8.5

⁷ Wiggins Testimony, 2019 Transcript, Pg. 12, lines 10-18.

⁸ Wiggins Testimony, 2019 Transcript, Pg. 12, lines 21-24.

⁹ Wiggins Testimony, 2019 Transcript, Pg. 13, lines 14-21.

Summary of Testimony of Kai Wiggins, Policy Analyst at the Arab American Institute

- (1) Virginia has a hate crime statute¹⁰, but it is not applicable to a broad range of criminal conduct. The Virginia hate crimes statute does not offer inclusive protections for hate crime victims.¹¹
 - (2) With simple assault, assault and battery, or entering another home, there are enhanced penalties if the person or persons home is selected because of their race, religious conviction, color or national origin, are subject to enhanced penalties.¹²
 - (3) One gap in Virginia hate crime statute¹³ is that it does not extend enhanced penalties to other criminal conduct, such as murder or arson. Further, the statute does not extend to sexual orientation, gender, disability, or gender identity.¹⁴
- ii) *Does the state require law enforcement agencies to report hate crime and collect hate crime data?*
- (1) “Virginia code¹⁵ requires law enforcement agencies to report hate crimes to the Virginia State Police, which maintains a central repository for collection and analysis of hate crime information.”¹⁶
 - (2) The Virginia code predates the federal HCSA and has its own definition of hate crime¹⁷. The definition and range of criminal conduct covered by the Virginia code’s reporting requirement¹⁸ is broader than the Virginia Criminal code’s hate crime penalty enhancement.¹⁹
 - (3) Both the reporting provision and the criminal code do not include crimes motivated by sexual orientation, gender, disability or gender identity.²⁰
- iii) *Does the state authorize mandatory basic and in-service hate crime training for law enforcement personnel?*
- (1) The Virginia Department of Criminal Justice Services requires all law enforcement offices to complete a statewide certification, which includes some references to investigating and reporting on hate crimes.²¹
 - (2) Unlike other states, Virginia state law does not mandate hate crime training for law enforcement.²²
- e) Some hate crimes are also not reported due to the transition in the method and format of reporting hate crimes.
- i) “Historically, law enforcement officers, agents have reported hate crimes using the summary reporting system, which is now a rather antiquated format that communicates a narrow amount of information, and which could also require a supplemental incident report form when reporting. We are now undergoing a transition to the national incident-based reporting system, which represents a far more comprehensive and detailed data collection.

¹⁰ Va. Code Ann. § 52-8.5

¹¹ Wiggins Testimony, 2019 Transcript, Pg. 13, lines 22-24.

¹² Wiggins Testimony, 2019 Transcript, Pg. 13, lines 24-28.

¹³ Va. Code Ann. § 52-8.5

¹⁴ Wiggins Testimony, 2019 Transcript, Pg. 13, lines 2-30.

¹⁵ Va. Code Ann. § 52-8.5

¹⁶ Wiggins Testimony, 2019 Transcript, Pg. 13, lines 33-36.

¹⁷ Va. Code Ann. § 52-8.5

¹⁸ See generally Va. Code Ann. § 18.2-57, 18.2-121, 18.2-422– 18.2-423.2.

¹⁹ Wiggins Testimony, 2019 Transcript, Pg. 13, lines 35-49.

²⁰ Wiggins Testimony, 2019 Transcript, Pg. 13, line 43 to pg. 14, line 3.

²¹ Wiggins Testimony, 2019 Transcript, Pg. 14, lines 4-9.

²² Wiggins Testimony, 2019 Transcript, Pg. 14, lines 6-9.

Summary of Testimony of Kai Wiggins, Policy Analyst at the Arab American Institute

- ii) Wiggins notes a specific bias incident in Kansas which was omitted from the federal hate crime data. The local police department reported the crime to the Kansas Bureau of Investigation using the summary reporting system due to limited resources. However, the information was not aggregated into incident-based reporting and thus not reflected in federal data.²³
 - f) Wiggins notes that there are often glaring omissions within the hate crime reporting system. He refers to the events in Charlottesville in August 2017 not reported in federal hate crime data. The Arab American Institute determined this omission after a public records request to the Virginia State Police.²⁴ He also notes that law enforcement in Virginia has never reported gender identity or gender motivated hate crimes to the FBI.²⁵
- 4) Best practices that law enforcement and communities should consider implementing to reduce the number of hate crimes and bias incidents, and to accurately tabulate statistics on such crimes.**
- a) Wiggins suggests that the Department of Justice conduct a comprehensive review of the relationship between state-level laws and their legal framework, and the federal standards and guidelines.²⁶
 - b) Regarding Congressional efforts, Wiggins notes a potential solution may be to require states and local governments that receive federal grants to collect information on hate crimes policies and programs in place.²⁷
 - c) Wiggins notes “deep concerns” regarding expanding the definition of domestic terrorism. He notes those concerns relate to efforts to expand systems used to subject certain communities to unjust treatment through counter-terrorism efforts.²⁸

²³ Wiggins Testimony, 2019 Transcript, Pg. 24, lines 11-19.

²⁴ Wiggins Testimony, 2019 Transcript, Pg. 17, lines 14-19.

²⁵ Wiggins Testimony, 2019 Transcript, Pg. 17, lines 28-29.

²⁶ Wiggins Testimony, 2019 Transcript, Pg. 18, lines 16-20.

²⁷ Wiggins Testimony, 2019 Transcript, Pg. 18, lines 33-37.

²⁸ Wiggins Testimony, 2019 Transcript, Pg. 28, lines 28-31.

Expert: Dr. Liz Coston, Dept. of Sociology- Virginia Commonwealth

Drafter: Lisalyn R. Jacobs

Editor: Ann Haney

FINDINGS

The following findings result directly from the expert testimony presented to the Virginia Advisory Committee, and reflect the views of the cited panelists. While each assertion has not been independently verified by the Committee, panelists were chosen to testify based upon their professional experience, academic research, subject matter expertise, and firsthand knowledge of the topics at hand.

1. There has been a statistically significant rise in hate crimes in Virginia
 - a) The number of hate crime incidents has been on the rise, both nationally and in Virginia.¹
 - b) The number of hate crimes reported by the FBI has been rising since 2014.²
 - c) Hate crimes are intended to intimidate not only the immediate victim, but also the community.³
 - d) Entire communities often experience fear and anger as a result.⁴

2. Description of the Nature and Type of Hate Crimes and Identifying the Targeted Groups
 - a) Hate crimes differ from crimes not motivated by bias.⁵
 - b) As bias crimes, hate crimes are more likely to be violent and committed by multiple offenders.⁶
 - c) Hate crimes are more likely to result in injury to the victim, and additionally victims often experience long-term mental health consequences.⁷
 - d) Mental health impacts can include PTSD, anxiety, depression and other consequences.⁸

3. Legal Obstacles and Barriers to Better Law Enforcement & Prosecution of Hate Crimes
 - a) Less than half of hate crime victims report the crimes to law enforcement.⁹
 - b) Even fewer report or seek services from organizations or health care providers that are able to provide post victimization services.¹⁰

¹See Dr. Liz Coston, Testimony before the Virginia Advisory Committee to the U.S. Commission on Civil Rights, March 29, 2019, Transcript pg. 34 lines 3-5. Available at:

<https://docs.google.com/document/d/1iehIA3tstU1W0Z0178sYbyZ5fib9MgaBZ1tQ77XPG6Q/edit>

² Coston Testimony, 2019 Transcript, Pg. 34, lines 3-4.

³ Coston Testimony, 2019 Transcript, Pg.34, lines 21-23.

⁴ Coston Testimony, 2019 Transcript, Pg.34, lines 23-24

⁵ Coston Testimony, 2019 Transcript, Pg. 34, lines 14-15.

⁶ Coston Testimony, 2019 Transcript, Pg.34, lines 15-16.

⁷ Coston Testimony, 2019 Transcript, Pg.34, lines 16-19.

⁸ Coston Testimony, 2019 Transcript, Pg.34, lines 20-21.

⁹ Coston Testimony, 2019 Transcript, Pg. 34, lines 7-8.

¹⁰ Coston Testimony, 2019 Transcript, Pg.34, lines 8-10.

- c) Victims that seek assistance are being further victimized and retraumatized vis a vis the institutions that are supposed to help them. ¹¹
- d) Police, prosecutors and evidentiary hurdles can all act as barriers to hate crime victims trying to navigate the criminal justice system. ¹²
- e) Many groups, including LGBT people, racial/ethnic minorities and people with disabilities do not report hate crimes to law enforcement because of fear of harassment. ¹³

4. Recommendations and Best Practices

- a) Dr. Coston's written statement addresses national and Virginia legislation focused on the legal response to hate crimes. ¹⁴
- b) Need for research into the efficacy of law enforcement community liaison officers at reducing the negative experiences/impact that minorities, the LGBT community, and people with disabilities have as a result of law enforcement interactions. ¹⁵
- c) Cultural competency training for health care providers to address the bias and insensitivity that hate crimes victims face in this sector. ¹⁶
- d) Bias crimes require a tailored response that recognizes the long-term mental health impact of the crimes. ¹⁷
 - i. We need to understand how to respond to the needs of hate crime victims. ¹⁸
- f) We need adequately resourced community-based resources, e.g. National Coalition of Anti-Violence Programs, which serves the LGBT community, but is under-resourced. ¹⁹
 - i. Rural areas may also be under-resourced, yielding decreased access to services. ²⁰
 - ii. We should also be attentive to the types of resources available as they vary by type of hate crime such that specific services may be available for some groups while general victims' services are all that is available to others. ²¹
 - iii. Need for comprehensive post-victimization services that distinguish between the needs of different groups. ²²
 - iv. Need for greater cross-sector collaboration between law enforcement, health care sector and community organizations to enhance services provided to victims. ²³

¹¹ Coston Testimony, 2019 Transcript, Pg.34, lines 31-33.

¹² Coston Testimony, 2019 Transcript, Pg.34, lines 34-38.

¹³ Coston Testimony, 2019 Transcript, Pg.34, lines 38-42.

¹⁴ Coston Testimony, 2019 Transcript, Pg.34, lines 24-25.

¹⁵ Coston Testimony, 2019 Transcript, Pg.34, lines 42-43; Pg. 35, line 1.

¹⁶ Coston Testimony, 2019 Transcript, Pg.35, lines 7-8, 10-11.

¹⁷ Coston Testimony, 2019 Transcript, Pg.34, lines 13-19.

¹⁸ Coston Testimony, 2019 Transcript, Pg.34, lines 30-31.

¹⁹ Coston Testimony, 2019 Transcript, Pg.35, lines 11-17.

²⁰ Coston Testimony, 2019 Transcript, Pg.35, lines 17-19

²¹ Coston Testimony, 2019 Transcript, Pg.35, lines 19-21

²² Coston Testimony, 2019 Transcript, Pg.35, lines 22-23.

²³ Coston Testimony, 2019 Transcript, Pg.35, lines 24-27.

- g) Importance of focusing on increased/improved prevention efforts:²⁴
- i. Community based organizations that provide victims' services also play a vital role in prevention efforts, including a focus on increased tolerance and awareness.²⁵
 - ii. Prejudices that underlie hate crimes can be addressed by focused intervention and education for youth.²⁶
 - iii. Policy and legislation that focuses on responses to hate crimes should focus on prevention efforts and responses to victims in addition to criminal justice system responses.²⁷

²⁴ Coston Testimony, 2019 Transcript, Pg.35, lines 28-30.

²⁵ Coston Testimony, 2019 Transcript, Pg.35, lines 30-32.

²⁶ Coston Testimony, 2019 Transcript, Pg.35, lines 33-34.

²⁷ Coston Testimony, 2019 Transcript, Pg.35, lines 35-37.

Expert: Brian Johns, Executive Director, Virginia Organizing (VO), Charlottesville Branch

Drafter: Jason Brennan

Editor: Maria Almond

FINDINGS

The following findings result directly from the expert testimony presented to the Virginia Advisory Committee, and reflect the views of the cited panelists. While each assertion has not been independently verified by the Committee, panelists were chosen to testify based upon their professional experience, academic research, subject matter expertise, and firsthand knowledge of the topics at hand.

1. The Testimony Does Not Establish or Concern Whether There Has Been a Statistically Significant Increase in Hate Crimes or Bias Incidents in Virginia

- a) Johns does not provide statistics about the incidence of hate crimes.
- b) Johns's testimony generally concerns bullying and abusive speech incidents.¹
- c) Johns does not testify to the incidence or changes in incidence of these bully or speech incidents.

2. Description of the Nature and Type of Bias Incidents and Identifying the Targeted Groups

- a) Johns does not offer a definition of bias.
- b) In every part of Virginia, certain people-- low income folks, people of Color, women, young people, LGBTQ people and others—have been traditionally and deliberately left out of the decision-making process.²
- c) Bias including racism, sexism, heterosexism, etc. often leads to the harassment, discrimination that feed hate crimes.³
- d) Johns offers examples of bias incidents his clients have experienced including: use of nooses to threaten black students, daily verbal abuse of students of color and students with disabilities, harassment of college students fighting for diversity/inclusion on campus, verbal abuse by peers of LGBTQ students in schools, verbal abuse by police officers towards a young black male canvassing a neighborhood, challenges within health care systems including feeling unsafe by those who identify as transgender, harassment experienced by Muslims attempting to build a community mosque, verbal abuse and harassment of Latino communities.

3. Legal Obstacles and Barriers to Better Law Enforcement & Prosecution of Hate Crimes

- a) Awareness of discriminatory practices towards minority groups across multiple societal structures including law enforcement.

¹ See Brian Johns, Testimony before the Virginia Advisory Committee to the U.S. Commission on Civil Rights, March 29, 2019, pp. 41-2. Available at:

<https://docs.google.com/document/d/1iehlA3tstU1W0Z0178sYbyZ5fjb9MgaBZ1tQ77XPG6Q/edit>

² Johns Testimony, 2019 Transcript, Pg. 41, lines 6-9.

³ Johns Testimony, 2019 Transcript, Pg. 41, lines 26-29.

- b) Building relationships between affected communities and local decision-makers, creates an environment in which those communities are much more willing to report hate crimes.⁴

4. Recommendations and Best Practices

- a) Virginia Organizing believes the most effective way to build power is to organize multi-issue groups, and campaigns, locally and statewide, led by people directly affected by the issues in their communities. Our overall purpose is to create a statewide political force which has a diverse grassroots base, and deliberately includes those who have not been active before.⁵
 - i. Use of community organizing to help communities respond to and prevent hate crimes. Johns discussed 2002 campaign around racial profiling in law enforcement which allowed for increased local relationship-building, even when initial goal of introducing legislation stalled.⁶
- b) Increase communication about effective programs statewide that can assist with institutions, such as schools, in addressing concerns related to bias/discrimination.⁷
- c) VO primarily focuses on and recommends anti-bias training and facilitating active communication between police and individuals in affected groups.
 - i. VO offers anti-bias training to local police.⁸
 - ii. VO tries to build better relationships between law enforcement and affected groups by facilitating meetings between groups.⁹
 - iii. VO has worked to create memoranda of understanding between school system and police including delineating forms of funding, policies of restorative justice, and building clear policies for responding to incidents of discrimination and hate crimes.¹⁰
 - iv. VO recommends increase in state funding for community policing, and restorative justice practices¹¹.

⁴ Johns Testimony, 2019 Transcript, Pg. 43, lines 12-18; Pg. 59, lines 9-19.

⁵ Johns Testimony, 2019 Transcript, Pg 41, lines 10-19.

⁶ Johns Testimony, 2019 Transcript, Pg. 42, lines 22-41 and Pg. 43, lines 1-6.

⁷ Johns Testimony, 2019 Transcript, Pg. 45, lines 5-12.

⁸ Johns Testimony, 2019 Transcript, Pg. 43.

⁹ Johns Testimony, 2019 Transcript, Pg.41, lines 32-41 and Pg. 42, lines 1-18

¹⁰ Johns Testimony, 2019 Transcript, Pg. 43, lines 7-11; Pg. 47, lines 5-13. Pg. 53.

¹¹ Johns Testimony, 2019 Transcript, Pg 43, lines 19-20.

EdExpert (Public Commenter):

Hurunnessa Fariad, Head of Outreach and Interface, All Dulles Area Muslim Society (ADAMS)

Drafter: Ilya Shapiro

Editor: Ann Haney

FINDINGS

The following findings result directly from the expert testimony presented to the Virginia Advisory Committee, and reflect the views of the cited panelists. While each assertion has not been independently verified by the Committee, panelists were chosen to testify based upon their professional experience, academic research, subject matter expertise, and firsthand knowledge of the topics at hand.

1. There has been a statistically significant rise in hate crimes in Virginia
 - a) In addition to the high frequency of specific incidents against Muslims experienced by members of the All Dulles Area Muslim Society¹, hate crimes against the Jewish, Sikh, and Hindu communities are also on the rise.²
2. Description of the Nature and Type of Hate Crimes and Identifying the Targeted Groups
 - a) Muslims are being verbally harassed in grocery stores, some being physically attacked. There are more discussions about these incidents within peer circles, but a hesitancy to inform law enforcement because of a perception that these things aren't serious enough.³
 - b) The second-largest mosque in United States, here in Sterling, VA, receives regular threats on a regular basis; the last one [before this hearing] came by email a few days earlier. The biggest fear is of New Zealand-style domestic terrorism.⁴
 - c) Muslim children are verbally and physically harassed at school; some girls are forced to remove their hijabs because classmates pull at them. A few years earlier, the testifier's own daughters (15 and 13 at the time, and wearing hijabs) were verbally harassed at Reston Town Center by an elderly white man.⁵
3. Legal Obstacles and Barriers to Better Law Enforcement & Prosecution of Hate Crimes

N/A
4. Recommendations and Best Practices
 - a) ADAMS is working with local public schools and law enforcement to provide sensitivity training for teachers and staff, educating them about the American Muslim community.⁶

¹ See Hurunnessa Fariad, Testimony before the Virginia Advisory Committee to the U.S. Commission on Civil Rights, March 29, 2019, Transcript pp. 60, lines 14-20, 21-28, and 29-40. Available at:

<https://docs.google.com/document/d/1iehlA3tstU1W0Z0178sYbyZ5fjb9MgaBZ1tQ77XPG6Q/edit>

² Fariad Testimony, 2019 Transcript Pg. 61, lines 2-4.

³ Fariad Testimony, 2019 Transcript Pg. 60, lines 14-20.

⁴ Fariad Testimony, 2019 Transcript Pg. 60, lines 21-28.

⁵ Fariad Testimony, 2019 Transcript Pg. 60, lines 29-40.

⁶ Fariad Testimony, 2019 Transcript Pg. 61, lines 4-8.

Expert: Jeannie Bell, Richard S. Melvin Professor of Law, Maurer School of Law, Indiana University

Drafter: Angela Ciccolo

Editor: Maria Almond

FINDINGS

The following findings result directly from the expert testimony presented to the Virginia Advisory Committee, and reflect the views of the cited panelists. While each assertion has not been independently verified by the Committee, panelists were chosen to testify based upon their professional experience, academic research, subject matter expertise, and firsthand knowledge of the topics at hand.

Professor Bell was part of the National Panel and did not comment on the prevalence of hate crimes in Virginia.¹

1. Description of the Nature and Type of Hate Crimes and Identifying the Targeted Groups
 - a. The vast majority of hate crimes are not serious offenses, but are traumatizing to victims nonetheless. They may be classified as low level offense crimes, such as vandalism, and as a result, may not be investigated by law enforcement.²
 - b. Hate crimes often have repetitive patterns.³
 - c. Victims often wait to report low level crimes until they grow more serious. Her study of individuals moving into white neighborhoods between 1990 and 2010 showed individual targets had several incidents of hate crimes directed at them before they contacted police or sought legal intervention. Assistance was sought after the crimes grew more serious.⁴
2. Legal Obstacles and Barriers to Better Law Enforcement & Prosecution of Hate Crimes
 - a. The classification of hate crimes as low-offense level crimes means they are often not investigated and, thus, perpetrators are not caught.⁵
 - b. Identification of perpetrators of hate crimes is challenging due to the fact that frequently the perpetrator and victim have no prior relationship.⁶
 - c. Police departments do not have a standardized method for identifying, investigating and responding to hate crimes. A majority of police departments have no particular approach, which may enable hate crimes to be underrecognized.⁷
 - d. Even within special investigation units, police often lack specific training in recognizing hate crimes and bias-motivation, so may miss important hate crime patterns, may be unfamiliar with specific legal concerns related to hate crimes (e.g. first amendment conflicts) or may ineffectively follow-up.⁸

¹ Jeannie Bell Testimony, Testimony before the Virginia Advisory Committee to the U.S. Commission on Civil Rights, May 16, 2018. Transcript, Pg.14, line 11- Pg.17, line 7. Available at x

² Bell Testimony, 2018 Transcript, Pg.14, lines 12-32.

³ Bell Testimony, 2018 Transcript, Pg. 14, lines 32-35.

⁴ Bell Testimony, 2018 Transcript, Pg. 14, lines 35-38 and Pg. 15, lines 1-5

⁵ Bell Testimony, 2018 Transcript, Pg. 14, lines 18-26.

⁶ Bell Testimony, 2018 Transcript, Pg. 16, lines 17-21.

⁷ Bell Testimony, 2018 Transcript, Pg. 15, lines 15-16 and 18-22.

⁸ Bell Testimony, 2018 Transcript, Pg 15, lines 39-41 and Pg. 16, lines 1-7.

- e. Hate crime units are rare, but due to specific training and developed protocols confer the best protection for victims.⁹

3. Recommendations and Best Practices

- a. Create and fund special investigation units in police departments specifically trained to investigate hate crimes.¹⁰
- b. Standardize the reporting of hate crimes among police departments to uniform identification, investigation and responses to hate crimes.¹¹
- c. Consider elevating the offense level of hate crimes or creating a legal structure to ensure that no bias-motivated crimes are overlooked due to categorization as low-level crimes. This will allow for better investigation, services for victims and the apprehension of suspects.¹²

⁹ Bell Testimony, 2018 Transcript, Pg. 16, lines 8-16.

¹⁰ Bell Testimony, 2018 Transcript, Pg. 16, 8-10, 35-36 and Pg 17, lines 1-3

¹¹ Bell Testimony, 2018 Transcript, Pg. 15, lines 15-16.

¹² Bell Testimony, 2018 Transcript, Pg. 14, lines 27-32.

Expert: Professor Brian Levin, Director of the Center for the Study of Hate and Extremism at California State University in San Bernardino, California

Drafter: Arthur Rizer

Editor: Maria Almond

FINDINGS

The following findings result directly from the expert testimony presented to the Virginia Advisory Committee, and reflect the views of the cited panelists. While each assertion has not been independently verified by the Committee, panelists were chosen to testify based upon their professional experience, academic research, subject matter expertise, and firsthand knowledge of the topics at hand.

1. There has been a statistically significant rise in hate crimes in Virginia
 - a. Hate crimes rose 12 percent in 38 cities and counties across the United States from 2016 to 2017. In the ten largest cities in the U.S., hate crimes rose 12.5 percent.¹
 - b. For the ten largest cities, the totals reported hate crimes were the highest seen in over a decade.²
 - c. Major cities have reported an annual increase in hate crimes for four consecutive years.³
 - d. Notable examples of extremely low reporting were found, which is often related to issues with policies, procedure, resources, and victim services.⁴
 - e. There has been a general rise in hate crimes, but they have not been across the board. Of the 38 jurisdictions looked at, about 54 percent reported increases.⁵
 - f. In 2017, there were some notable declines in hate crimes. New York City's reported numbers were down slightly, though it hit a year-high in 2016. Chicago's reported hate crimes were also down 14 percent, though their numbers were also elevated in 2016.⁶
 - g. The cities with the highest numbers of hate crimes were New York at 339 (down 2 percent), Los Angeles at 254 (up 10.8 percent), Phoenix at 230 (up 33 percent), and Washington, DC at 179 (up 67 percent).⁷
 - h. For 2017 in Los Angeles, gay people were the most targeted group. In Chicago, African Americans and Jews showed equal numbers of reported hate crimes. In

¹ See Brian Levin, Testimony before the Virginia Advisory Committee to the U.S. Commission on Civil Rights, May 16, 2018, Transcript pg. 1, lines 39-42. Available at X

² Levin Testimony, 2018 Transcript, Pg. 2, lines 5-7.

³ Levin Testimony, 2018 Transcript, Pg. 2, lines 4-5.

⁴ Levin Testimony, 2018 Transcript, Pg. 2, lines 13-15.

⁵ Levin Testimony, 2018 Transcript, Pg. 2, lines 18-20.

⁶ Levin Testimony, 2018 Transcript, Pg. 2, lines 1-4.

⁷ Levin Testimony, 2018 Transcript, Pg. 2, lines 10-12.

Houston, hate crimes seemed to target religious people and groups. Phoenix and San Antonio targeted African Americans.⁸

- i. During the election period of 2016, there was an explosion of hate crimes across the U.S., with the exception of certain jurisdictions in the Midwest, like Chicago. The fourth quarter of 2016 saw a 25.9 percent increase in hate crimes over the previous fourth quarter. November 2016 was the worst since instituting systematic record-keeping nationally in 1992.⁹
- j. The Center for the Study of Hate and Extremism at California State University has seen hate crimes spike from catalytic events like terrorist attacks.¹⁰
- k. Organizations and other third parties can take advantage of existing social divisions which may, in turn, play a role in increased hate crimes. For example, the House Permanent Select Committee on Intelligence released 3,500 Facebooks ads that were placed by the indicted Russian internet research agency, and USA Today found a spike in racially divisive Facebook ad placements leading up to the election. This may have played a role in the spike in hate crimes around this time.¹¹
- l. Hate crimes can increase even when overall negative sentiment does not increase.¹²
- m. Post-Charlottesville, The Center for the Study of Hate and Extremism at California State University ~~they~~ saw a fragmentation and disintegration of the Alt-Right's ability to work together.¹³
- n. There is extreme under-reporting in hate crimes. The Bureau of Justice Statistics estimated 208,000 hate crimes in 2015, but the FBI only had around 5,800 hate crimes officially reported.¹⁴
- o. Many hate groups are attempting to incite violence in university settings by encouraging incendiary and racist advertising and speakers. Groups like Identity Evropa are active nationwide university campuses.¹⁵

2. Description of the Nature and Type of Hate Crimes and Identifying the Targeted Groups

- a. Hate crimes vary somewhat by the demographics and individual characteristics of each city. For example, New York City has, by far, the highest number of anti-Semitic hate crimes, and is home to one in six American Jews.¹⁶

⁸ Levin Testimony, 2018 Transcript, Pg. 2, lines 31-34.

⁹ Levin Testimony, 2018 Transcript, Pg. 3, lines 4-18.

¹⁰ Levin Testimony, 2018 Transcript, Pg. 3, lines 31-32

¹¹ Levin Testimony, 2018 Transcript, Pg. 3, lines 34-40 & pg. 4, lines 1-9.

¹² Levin Testimony, 2018 Transcript, Pg. 4, lines 23-24.

¹³ Levin Testimony, 2018 Transcript, Pg. 4, lines 18-20.

¹⁴ Levin Testimony, 2018 Transcript, Pg. 21, lines 18-22.

¹⁵ Levin Testimony, 2018 Transcript, Pg. 22, lines 24-35.

¹⁶ Levin Testimony, 2018 Transcript, Pg. 2, lines 25-29.

- b. The most common type of hate crimes are in order from greatest to fewest numbers of documented events: anti-Black, anti-Semitic, anti-gay, and anti-Latino. These statistics appear to revolve around demographic dynamics.¹⁷
- c. Levin found that political speech correlates to fluctuations of hate crime, at least in the immediate sense. For example, there were significant increases in hate crimes against Muslims after then candidate Trump's Muslim ban announcement in December 2015, but there were significant decreases in hate crimes against Muslims after President Bush spoke at the Islamic Center of Washington, DC after 9/11.¹⁸
- d. Fluctuations of hate crimes—statistics appear to be based on factors like demographics, numbers of serial offenders, as well as systematic stealth influence from outside the US to further inflame hatred.¹⁹
- e. Jews make up about 11 percent of hate crimes nationally, but they are only 2.1 percent of the population. Hate crimes against Muslims are about 5 percent nationally, and they only make up 1 percent of the population.²⁰
- f. Religion directed hate crimes surpassed 20 percent in 2016, which has only happened a handful of times since they started collecting data.²¹
- g. Self-radicalization has been shown to be related to serious hate crimes such as hate homicide.²²

3. Legal Obstacles and Barriers to Better Law Enforcement & Prosecution of Hate Crimes

- a. Researchers are seeing an increase in hate incidents, which may not be categorized as crimes. This can make reporting complicated. Levin recommends that non-criminal data needs to be tracked by police and human relations commissions.²³
- b. Individuals are mixing ideologies dangerously with personal and social frustrations, often consuming a myriad of hatred from the internet. When such persons act out violently, the multiple influences make understanding the core reasoning behind the behaviors difficult.²⁴
- c. The risk of a cycle of retaliatory violence in hate crimes can create under reporting.²⁵
- d. False reports of hate crimes get significantly publicized, but out of the more than 10,000 confirmed hate crimes only around 24 reports have been confirmed or suspected to be false.²⁶

¹⁷ Levin Testimony, 2018 Transcript, Pg. 2, lines 35-38.

¹⁸ Levin Testimony, 2018 Transcript, Pg. 3, lines 22-31.

¹⁹ Levin Testimony, 2018 Transcript, Pg. 4, lines 30-36.

²⁰ Levin Testimony, 2018 Transcript, Pg. 12, lines 35-36.

²¹ Levin Testimony, 2018 Transcript, Pg. 13, lines 1-2.

²² Levin Testimony, 2018 Transcript, Pg. 18, lines 22-26.

²³ Levin Testimony, 2018 Transcript, Pg. 10, lines 30-41.

²⁴ Levin Testimony, 2018 Transcript, Pg. 18, lines 27-30.

²⁵ Levin Testimony, 2018 Transcript, Pg. 21, lines 18-32.

²⁶ Levin Testimony, 2018 Transcript, Pg. 21, lines 35-37 & pg. 22, lines 1-2.

4. Recommendations and Best Practices

- a. Every police department needs an expert, also explained as a biased liaison officer by Levin, who can help handle hate crimes by being a source of knowledge and expertise that others may not have. This person can also be a spokesperson for the department in working with other government agencies, NGOs, and advocacy groups.²⁷
- b. Implementing model policies and procedure specifically for hate crimes is extremely important.²⁸
- c. Sustained infrastructure and clear leadership around hate crimes needs to be in place, such as hate crime task forces in the US Attorneys' offices. Organized communication amongst stakeholders and other government agencies is vital.²⁹
- d. Officers need to go out into the community and become trusted and known for wanting to help and encouraging people to report hate crimes.³⁰
- e. Human relations commissions need to be funded throughout the state and country to help track data.³¹
- f. For states or jurisdictions that have little to no reports of hate crimes, legislatures may want to do an audit where they speak with agencies and ask them about their policies and procedures. Additionally, they can do site visits and deeper dives in certain jurisdictions to understand why their reporting is so low.³²

²⁷ Levin Testimony, 2018 Transcript, Pg. 10, lines 15-21.

²⁸ Levin Testimony, 2018 Transcript, Pg. 10, lines 22-25.

²⁹ Levin Testimony, 2018 Transcript, Pg. 11, lines 1-7.

³⁰ Levin Testimony, 2018 Transcript, Pg. 10, lines 25-29.

³¹ Levin Testimony, 2018 Transcript, Pg. 10, lines 35-41.

³² Levin Testimony, 2018 Transcript, Pg. 19, lines 30-37 & pg. 20, lines 1-2.

Mary McCord, Professor of Law at the Institute for Constitutional Advocacy and Protection at Georgetown University Law Center

Drafter: Ann Haney

Editor: Maria Almond

FINDINGS

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1) There has been a statistically significant increase in hate crimes or bias incidents in Virginia.

- a) A domestic terrorism counsel at the Department of Justice found that late 2016 into 2017, hate crimes and incidents of domestic terrorism had dramatically increased from the year before.¹
- b) The Anti-Defamation League's data of from 2018 found the highest number of fatalities based on domestic extremism were committed that year.²

2) Description of the Nature and Type of Hate Crimes and Identifying the Targeted Groups

- a) Domestic terrorism is a crime that is accomplished for the purpose of intimidation or coercion; hate crimes are motivated by a particular bias, including racial, religious, gender identity, etc. Hate crimes and domestic terrorism can intersect but may also be wholly one or the other.³
- b) Some federal terrorism offenses allow for prosecuting crimes based on domestic ideological goals particularly when weapons of mass destruction are used or when the target is a US official, mass transportation or US federal property.⁴
- c) There are increasing connections between white supremacists all over the world, and how they are modeling their behaviors and their tactics on each other, and on the same tactics, and behaviors, and recruiting tools used by terrorists who further foreign terrorist organizations.⁵

3) Challenges or barriers that may prevent law enforcement from addressing hate crimes

- a) Federal code ~~only~~ covers terrorism committed by those who are acting on behalf of or in furtherance of the goals of a foreign terrorist organization; but will address terrorism with

¹ McCord Testimony, 2019 Transcript, Pg. 22, lines 4-12.

² See Mary McCord, Testimony before the Virginia Advisory Committee to the U.S. Commission on Civil Rights, March 29, 2019, Transcript Pg. 21, lines 37-40; Pg. 22, lines 1-3. Available at: <https://docs.google.com/document/d/1iehIA3tstU1W0Z0178sYbyZ5fjb9MgaBZ1tQ77XPG6Q/edit>

³ McCord Testimony, 2019 Transcript, Pg. 22, lines 8-10 and Pg. 28, lines 1-6.

⁴ McCord Testimony, 2019 Transcript, Pg. 7, lines 34-36.

⁵ McCord Testimony, 2019 Transcript, Pg. 27, lines 18-22.

particular domestic ideological goals when weapons of mass destruction are involved or when the target is a U.S. official, mass transportation or US federal property.⁶

- b) Law enforcement may be unaware of legal statutes that may be used to halt the growth of environments in which bias motivated violence may occur.⁷
- ⇨ Law enforcement has not been able to effectively utilize firearms regulations found within anti-private militia laws, such as banning weapons from events or rallies, because of the lack of clarity around VA's firearms regulation preemption statute and concern for lawsuits. This is despite lack of conflicting Federal prohibitions.⁸
- d) The federal government has not maintained good statistics through the governmental voluntary reporting system—the FBI Uniform Crime Reporting Program. Reporting of hate crimes seems to be highly variable, leading to inaccurate and inadequate information.⁹

4) Recommendations and Best Practices

- a) Prosecution plays dual roles within society. First and foremost, the criminal code ensures that those who commit crimes are appropriately punished. However, it may also demonstrate societal and moral condemnation. Hate crimes and terrorism statutes exist to address the broader impact these acts play on our society through their hateful or intimidating messages. Expanding terrorism statutes, which can be more content-neutral as compared to hate crimes, would provide an additional, powerful tool for prosecution.¹⁰ Note: the Intent requirement elevates prosecutor's burden of proof P. 8
- b) Congress should consider enacting a broader federal domestic terrorism crime law, which would bring more attention and resources, including data collection, to this growing threat that is very much on par with and exceeds, in terms of lethality and actual injury or harm to people, the threat from foreign terrorist organization inspired violence.¹¹
 - i) Virginia has terrorism statute, written broadly enough that it could be used for either foreign terrorism cases or domestic ideological grievances. Notably, however, it has an intent requirement that elevates the burden of proof on the prosecutor. The federal government also has significantly more resources and better access to information than states individually.¹²
 - ii) No recommendation to designate domestic terrorism organizations.¹³
- c) Legislation and other legal tools can be developed which are content neutral but which effectively prevent those exhibiting extremist or hate crime motivated violence from organizing and coming into public spaces and creating environments that are conducive to violence. For example, Virginia has anti-private militia laws, and anti-paramilitary activity laws that may be used to prosecute hate crimes.¹⁴

⁶ McCord Testimony, 2019 Transcript, Pg. 7, Lines 33-36; Pg. 28, lines 7-14.

⁷ McCord Testimony, 2019 Transcript, Pg 16, lines 13-14.

⁸ McCord Testimony, 2019 Transcript, Pg 8, lines 29-42; Pg. 9, lines 1-16; Pg. 15, lines 30-35; Pg. 16, lines 1-11 and 36-42; and Pg. 17, lines 1-2.

⁹ McCord Testimony, 2019 Transcript, Pg 22, lines 30-33; Pg 23, lines 1-6 and 12-14; and Pg. 32, lines 17-20.

¹⁰ McCord Testimony, 2019 Transcript, Pg. 8, lines 3-9 and Pg. 27, lines 1-12.

¹¹ McCord Testimony, 2019 Transcript, Pg. 28, lines 15-20.

¹² McCord Testimony, 2019 Transcript, Pg. 8, lines 15-28.

¹³ McCord Testimony, 2019 Transcript, Pg. 14, line 40 and Pg. 15, line 1-2.

¹⁴ McCord Testimony, 2019 Transcript, Pg 8, lines 29-42; Pg. 9, lines 1-16; Pg. 15, lines 30-35; Pg. 16, lines 1-11 and 36-42; and Pg. 17, lines 1-2.

- i) Increase training of local and state law enforcement regarding these legal tools in order to allow more proactive staunching of bias motivated crime. ¹⁵
- ii) Virginia could consider enacting a statute that bars drilling or parading with firearms in a public place. ¹⁶
- d) Virginia should clarify in Virginia Code: Section 15.2-9-15 that its firearms regulation preemption statute does not apply to reasonable and generally applicable regulation by local governments that allow them to protect public safety by prohibiting all weapons, including firearms, from public events where violence is expected. Currently there is lack of clarity because the statute provides for court costs and expenses to be awarded against anyone who prevails in a challenge. Therefore, effectively it means law enforcement often has to choose between doing reasonable things to protect public safety at public marches and facing litigation expenses. ¹⁷
- e) Law enforcement needs increased training regarding reporting guidelines, in particular clarification that what needs to be reported as a hate crime does not have to be something that is prosecuted as a hate crime.
- f) Public pressure is needed to hold private social media companies accountable regarding Internet-based amplification of extremist ideologies and hateful speech, both of which can be precursors to the incitement of violence. ¹⁸ Private companies can respect First Amendment values while offering protections against violence. Legally they are not bound by the First Amendment. ¹⁹

¹⁵ McCord Testimony, 2019 Transcript, Pg. 32, lines 30-25.

¹⁶ McCord Testimony, 2019 Transcript, Pg. 9, lines 17-19; Pg 16, lines 15-21.

¹⁷ McCord Testimony, 2019 Transcript, Pg. 16, lines 28-34; Pg. 32, lines 25-29.

¹⁸ McCord Testimony, 2019 Transcript, Pg. 29, lines 23-40 and Pg. 30, lines 1-16.

¹⁹ Mc Cord Testimony, 2019 Transcript, Pg. 29, lines 23-29.

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FINDINGS

The following findings result directly from the expert testimony presented to the Virginia Advisory Committee, and reflect the views of the cited panelists. While each assertion has not been independently verified by the Committee, panelists were chosen to testify based upon their professional experience, academic research, subject matter expertise, and firsthand knowledge of the topics at hand.

1. National statistics show individuals targeted for hate crimes are likely to sustain different types of harm based on their race, ethnicity, religion or sexual orientation; and there are 4 types of hate crime offenders.
 - a) LGBTQ and Muslim communities are most likely to face physical assault with injury.¹
 - b) Anti-Semitic hate crimes are mostly property crimes.²
 - c) An increased use of force has been reported by police officers targeting Latino and African American males.³
 - d) U.S. high schools and universities have experienced an increase in hate-motivated behavior and are the third most frequent place where hate crimes occur.⁴
 - e) There are 4 types of hate crime offenders: thrill offenders, defensive offenders, retaliatory offenders and mission offenders.⁵
 - f) Two thirds of hate crimes are committed by thrill offenders, one third by defensive and retaliatory offenders and less than 4 percent are committed by mission offenders.⁶
 - g) There has been an increase in defensive hate crimes and a decrease in thrill crimes.⁷
 - h) There has been a slight increase in gun use in hate crimes, while in the past, rocks, sticks and bats were used more often.⁸
 - i) Reporting on hate crimes is inconsistent among the states because not all groups are covered by hate crime protections in some states.⁹

¹ Mc Devitt testimony, p. 7, paragraph 3.

² Id.

³ Mc Devitt testimony, p. 17, paragraph 5.

⁴ McDevitt testimony, p. 22, paragraphs 4-5.

⁵ McDevitt testimony, p. 5, paragraph 4 –page 7, paragraph 2.

⁶ McDevitt testimony, p.7, paragraph 2.

⁷ Id.

⁸ Mc Devitt testimony, p. 7, paragraphs 4-5.

⁹ McDevitt, p.8, paragraph 1.

2. Description of the Nature and Type of Hate Crimes and Identifying the Targeted Groups¹⁰

- a) Muslims;¹¹
- b) LGBTQ individuals;¹²
- c) Jews;¹³
- d) African American men;¹⁴
- e) Latinos¹⁵

3. Legal Obstacles and Barriers to Better Law Enforcement & Prosecution of Hate Crimes

- a) In some states, certain groups aren't covered by protections against hate crimes.¹⁶
- b) Victims often fail to report the crimes because they feel nothing will come of their report and believe police are biased against them.¹⁷
- c) Officers don't come across the crimes often and forget some of the typology they learn in police academy training. Departments don't often have an expert in hate crimes in their departments.¹⁸

4. Recommendations and Best Practices

- a) Encourage policies officers to have outreach at the local level to build trust with communities so that individuals have better trust in the system.¹⁹
- b) Have a trained expert in every police department help investigate hate crimes and refer bias crimes to the trained expert for investigation.²⁰
- c) Look at, and call attention to police departments that report no, or low hate crimes as they may be doing something wrong.²¹
- d) Implement a policy that has a trained hate crimes expert in every police department. Have these trained experts help investigate hate crimes. Ensure that the officers for different departments come together regularly to compare trends and to discuss incidents.²²
- e) Encourage police departments to use social media to track hate crimes.²³

¹⁰ See also, Section 1.

¹¹ McDevitt testimony, p. 7.

¹² *Id.*

¹³ *Id.*

¹⁴ McDevitt testimony, p. 17

¹⁵ *Id.*

¹⁶ McDevitt testimony, p. 8, paragraph 1.

¹⁷ *Id.*

¹⁸ McDevitt testimony, p. 19, paragraph 5.

¹⁹ McDevitt testimony, p. 8 paragraph 2-p. 9 paragraph 7.

²⁰ McDevitt testimony, p. 9, paragraph 8.

²¹ McDevitt testimony, p.9, paragraph 9.

²² McDevitt testimony, p. 24, paragraph 3.

²³ McDevitt testimony, p. 13, paragraphs 8-9.

- f) Schools should create strong anti-hate policies and enforce those policies.²⁴

²⁴ McDevitt testimony, P. 23, paragraph 4.