

**Dissenting Statement of Commissioner Peter N. Kirsanow**

COMMISSIONER KIRSANOW: I just have a couple of questions for all of the witnesses, if you have this information. I looked through the material that was provided by all witnesses, not just this panel, to see if this information was there and I didn't see it, maybe I missed it.

Are you aware of any data, studies, or other evidence that show that designating a crime a hate crime deters, prevents, or reduces that crime?

Second, whether designating a crime a federal hate crime reduces, deters, or prevents incidents of that crime?

Then, one other question, are you aware of any databases, study, or other evidence that shows that designating a crime a hate crime, whether municipal, state, or federal hate crime, assists in the resolution of that crime or the apprehension of the perpetrator?<sup>1</sup>

None of the witnesses had any such information.

One witness spoke in general terms about the increased likelihood of apprehending a perpetrator if he can enlist the FBI due to a hate crime designation.<sup>2</sup> That is a resources issue. If you didn't designate the crime a hate crime and still brought the FBI in to assist, there is no reason to think you wouldn't get the same result. He also stated that the longer sentence would have a greater deterrent effect, but presented no evidence to support this claim.<sup>3</sup>

The report also repeatedly attempts to ascribe the alleged rise in hate crimes to rising white supremacy<sup>4</sup> and the election of President Trump.<sup>5</sup> There have undoubtedly been horrifying crimes committed by white supremacists. The report cites the murders on the Portland train, the Emanuel AME murders, the murder of Heather Heyer, the El Paso Wal-Mart shooting, the murder of James Byrd, the murder of Srinivas Kuchibhotla and wounding of Alok Madasani and Ian Grillot, the murders at the Tree of Life synagogue, the Oak Creek Sikh temple murders, bananas hanging from trees at American University and racist trolling of the university's first black student body president, and a bicycle and two nooses hanging in a tree at the University of Southern Alabama. The report also mentions some individuals who are believed to have ties to white supremacist groups, but were charged with crimes unrelated to hate crimes, such as "conspiracy to riot." These are all terrible crimes. However, they took place between 1998 (the murder of James Byrd) and September 2019 – more than a twenty-year span. There may well be an increase in hate crimes

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<sup>1</sup> Briefing Transcript at 88-89, 289-290, <https://www.usccr.gov/calendar/2018/05-11-Hate-Crimes-Briefing-Transcript.pdf>.

<sup>2</sup> Briefing Transcript at 295-296.

<sup>3</sup> Briefing Transcript at 295.

<sup>4</sup> *See, e.g.*, report at n. 18 ("The Hate Crimes Coalition . . . contends that many hate crimes are the result of perpetrators holding white supremacy ideologies,"); report at n. 553 ("Aryeh Tuchman . . . argues that 'racists and white supremacists and other anti-Semites have felt more free to speak out and voice their hatred for minorities, including Jews.'").

<sup>5</sup> Report at n. 414-421; Report at n. 551-555; Report at n. 595-613;

motivated by white supremacy (and they should all be prosecuted), but the report does not establish that.

Nor are hate crimes only, or even disproportionately, committed by whites. According to the FBI's hate crimes statistics, in 2017, 50.7% of hate crime offenders were white, and 21.3% were black.<sup>6</sup> At first glance, this might seem to confirm the majority's view that white supremacy is rampant throughout the land. When you compare the percentage of hate crime offenders to percentage of the population, though, it is a different story. According to the Census Bureau, whites are 76.5% of the population – but they are only 50.7% of hate crime offenders.<sup>7</sup> Blacks are 13.4% of the population, but are 21.3% of hate crime offenders.<sup>8</sup> Similarly, New York City, which does not report hate crimes statistics to the FBI, arrested 150 people for hate crimes in 2018. 77 individuals were non-Hispanic white and 67 were black.<sup>9</sup> This means that 51% of those arrested were white, and 45% of those arrested were black. Non-Hispanic whites comprise 32.1% of the population of New York City, and blacks comprise 24.3%.<sup>10</sup> Both groups are overrepresented relative to their share of the population, but blacks more so than whites. When I asked the panelists about this at the hearing, they simply stared at me as if I had suddenly descended from the planet Mongo.<sup>11</sup>

### Miscellany

The report cites a study that found that counties where Trump rallies were held experienced a “226 percent increase in reported hate crimes over comparable counties that did not host such a rally.”<sup>12</sup> The not-so-subtle implication, of course, is that something about Trump rallies inspires deplorably racist Trump supporters to commit hate crimes. A subsequent examination of data by two economics doctoral students at Harvard found that, yes, hate crimes increased in counties that held a Trump rally – but they increased *even more* in counties that hosted a Clinton rally. More importantly, “adding a simple statistical control for county population to the original analysis causes the estimated effect of Trump rallies on reported hate incidents to become statistically indistinguishable from zero.”<sup>13</sup>

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<sup>6</sup> Offenders, 2017 Hate Crimes Statistics, FBI, <https://ucr.fbi.gov/hate-crime/2017/topic-pages/offenders>.

<sup>7</sup> U.S. Census Bureau, QuickFacts, July 1, 2018, <https://www.census.gov/quickfacts/fact/table/US/PST045218>.

<sup>8</sup> *Id.*

<sup>9</sup> *Arrest Statistics by Bias Motivation*, Annual 2018, NYPD, <https://www1.nyc.gov/site/nypd/stats/reports-analysis/hate-crimes.page>.

<sup>10</sup> U.S. Census Bureau, QuickFacts, New York, New York, July 1, 2018, <https://www.census.gov/quickfacts/newyorkcitynewyork>.

<sup>11</sup> Briefing Transcript at 151-152.

<sup>12</sup> Report at n. 424.

<sup>13</sup> Matthew Lilley and Brian Wheaton, No, Trump Rallies Didn't Increase Hate Crimes by 226 Percent, Reason, Sept. 6, 2019, <https://reason.com/2019/09/06/no-trump-rallies-didnt-increase-hate-crimes-by-226-percent/>.