

*Written Testimony of*

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Co-chair Manning, co-chair Bynum, and members of the Joint Committee Task Force, thank you for inviting me to testify today about the infiltration of law enforcement by white supremacist and far-right militants, and the motivations of the various entities participating in far-right and police accountability protests.

The FBI's 2015 Counterterrorism Policy Guide warns that, "Domestic terrorism investigations focused on militia extremists, white supremacist extremists, and sovereign citizen extremists often have identified active links to law enforcement officers..."<sup>1</sup> This alarming declaration followed a 2006 intelligence assessment, based on FBI investigations and open sources, that warned of "white supremacist infiltration of law enforcement by organized groups and by self-initiated infiltration by law enforcement personnel sympathetic to white supremacist causes."<sup>2</sup> These warnings echo concerns FBI leadership and Joint Terrorism Task Force members expressed to me during investigations I participated in the 1990s as an FBI special agent, working undercover in neo-Nazi groups in Los Angeles and militia groups in Washington State.

Obviously, only a tiny percentage of law enforcement officials are likely to be active members of white supremacist groups. But one doesn't need access to secretive intelligence gathered in FBI terrorism investigations to find evidence of overt and explicit racism within law enforcement.

Since 2000, law enforcement officials with alleged connections to white supremacy or other far-right militant activities have been exposed in Alabama,<sup>3</sup> Florida,<sup>4</sup> Texas,<sup>5</sup> Louisiana,<sup>6</sup> Virginia,<sup>7</sup> West Virginia,<sup>8</sup> Nebraska,<sup>9</sup> Michigan,<sup>10</sup> Oregon,<sup>11</sup> Oklahoma,<sup>12</sup> Washington,<sup>13</sup> Connecticut,<sup>14</sup> California,<sup>15</sup> Illinois<sup>16</sup> and elsewhere. Research organizations have uncovered hundreds of federal, state, and local law enforcement officials engaging in racist, nativist, and sexist social media activity, which demonstrates that overt bias is far too common.<sup>17</sup> Typically, these officers' activities are known within their departments, but only result in disciplinary action or termination if they trigger public scandals.

The national security and public safety harms that armed police officers affiliated with violent white supremacist and far-right militant groups pose could hardly be overstated. Active links between law enforcement officials and the subjects of any terrorism investigation should raise alarms within our national security establishment,

but federal, state, and local governments have not responded appropriately to address this problem.

The FBI and Department of Homeland Security have identified white supremacists as the most lethal domestic terrorist threat.<sup>18</sup> Recent white supremacist shooting rampages in Charlestown, South Carolina, Pittsburgh, Pennsylvania and El Paso, Texas and narrowly thwarted attempts by neo-Nazis to manufacture radiological “dirty” bombs in Maine in 2009 and Florida in 2017 show their dangerous capability and intent to unleash mass destruction.<sup>19</sup> The recent assassinations of Federal Protective Service officer in Oakland and a Santa Cruz County deputy sheriff by far-right militants attempting to start the “Boogaloo”—a euphemism for a new civil war—show these groups continue to pose a lethal threat to law enforcement as well.<sup>20</sup> Any law enforcement officers who are part of these groups should be treated as a matter of urgent concern. But the truth is we don’t know the full scope of white supremacist and far-right violence in this country because no government agency tracks these crimes.

Overtly racist officers unaffiliated with organized militant groups also pose a threat to the communities they serve. Operating under color of law, such officers put the lives and liberty of people of color, religious minorities, and anti-racist activists at extreme risk, both through the violence they can mete out directly, and by their failure to properly respond when these communities are victimized by hate crimes or other violent crime. Racial disparities continue to be seen in every step of the criminal justice process, from police stops, searches,<sup>21</sup> arrests,<sup>22</sup> wrongful convictions,<sup>23</sup> shootings and other uses of force,<sup>24</sup> to charging rates,<sup>25</sup> and lengths of sentences.<sup>26</sup> These chronic disparities have led many to conclude that a systemic or structural bias against people of color continues to infect the criminal justice system, but overt and explicit racism also play a role.<sup>27</sup> Beyond the physical threats, biased policing tears at the fabric of our society by undermining public trust in equal justice and the rule of law.

### **Long History of Law Enforcement Involvement in White Supremacist Violence**

It is important to acknowledge that our nation was founded on white supremacy. It was the driving ideology that motivated European colonization of North America, the subjugation of Native Americans, and the enslavement of kidnapped Africans and

their descendants. Slave patrols were among the first public police organizations formed in the American colonies.<sup>28</sup> Put simply, white supremacy was the law these earliest public officials were sworn to enforce.

When slavery was finally banned in the U.S. after the civil war, de jure white supremacy lived on through Black codes and Jim Crow laws. In 1882 Congress passed the Chinese Exclusion Act, an openly racist law halting Chinese immigration and denying naturalization to those already living in the U.S.<sup>29</sup> As the nation expanded westward, policies of violent ethnic cleansing against Native Americans and Mexican Americans were enforced by government agents.

Where the laws were deemed insufficient to dissuade non-Whites and non-Protestants from exercising their civil rights, reactionary groups like the Ku Klux Klan used violence to enforce white supremacy. By the 1920's the KKK alone claimed one million members nationwide, from New England to California, fully infiltrating federal, state, and local governments and engaging in violent acts of intimidation to advance its exclusionist agenda.<sup>30</sup> Law enforcement officials often participated in this violence directly, or supported it indirectly by refusing to fulfill their duty to protect the peace and hold the lawbreakers to account. Many states beyond the deep south maintained "sundown towns," where police officers and vigilante mobs enforced official and quasi-official policies prohibiting Black people (and often other non-whites) from remaining in town past sunset.<sup>31</sup> Sociologist and historian James W. Loewen estimated there were 10,000 sundown towns across the U.S. by the 1970s.<sup>32</sup>

To this day, law enforcement agencies across the country, including in Oregon, remain disproportionately white compared to the demographics of the communities they serve.<sup>33</sup> Since racism is a persistent problem in society, it is somewhat inevitable that some explicit racists would also be found in law enforcement, particularly given the role police play in defending an inequitable status quo.

Few law enforcement agencies have policies that specifically prohibit joining white supremacist or far-right militant groups, so if these officers face disciplinary action, it is typically for more generally defined prohibitions against conduct detrimental to the department, or violations of anti-discrimination regulations or social media policies. Firings often result in litigation, with dismissed officers claiming violations of their First Amendment speech and association rights. Most courts have

upheld dismissals where police officers join racist or militant groups, as the Supreme Court has held that while public employees retain free speech rights in regard to matters of public concern, these rights are limited.<sup>34</sup> This is particularly so with regard to law enforcement agencies, which have a “heightened need for order, loyalty, morale and harmony.”<sup>35</sup>

Some officers who have joined militant groups or engaged in overtly racist behavior have not been fired, however, or have had their dismissals overturned by courts or in arbitration. Each case must stand on its own merits, based on its particular facts and circumstances, and due process must be followed to protect innocent police officers from unjust punishments. Certainly there will be cases where an officer’s behavior can be corrected with remedial measures short of termination. But leaving officers tainted by explicitly racist behavior in a job with immense discretion to take the life and liberty of people subject to their authorities, requires a detailed plan of supervision designed to mitigate the potential threat they pose to the communities they police, with the transparency necessary to restore public trust.

While progress in removing bias from law enforcement has clearly been made since the civil rights era, as Georgetown University law professor Vida B. Johnson argues, “the system can never achieve its purported goal of fairness while white supremacists continue to hide within police departments.”<sup>36</sup> The indifferent law enforcement response to racist violence and hate crimes, and the laissez-faire approach to white supremacist riots in cities across the U.S. over the last several years,<sup>37</sup> leave many Americans concerned that racist bias among law enforcement is persistent, if not pervasive.

### **Anatomy of a Protest**

Protests are disruptive by nature, as their purpose is to draw public attention to issues that are otherwise overlooked. For officials responsible for defending law and order, however, such disruption presents a challenge. Because law enforcers are defenders of the establishment powers, they have a natural tendency to view protests against government policies—and particularly protests against police—as security threats rather than legitimate political activism. They often react aggressively in response, bringing a disproportionate and indiscriminate level of force to bear to clear the streets. When law enforcement officials become unnecessarily confrontational at

protests it can start a cycle of escalating violence, which the police justify by pointing at damaged property or the bad acts of a few within the crowd. But a violent police response draws more violent actors in response, who justify their actions as necessary to answer the suppression of non-violent protest methods.

Arizona State University professor Edward R. Maguire's 2012 study of protest policing tactics since the 1960s warned that "the premature or ill-advised use of force against protesters, particularly the use of riot control techniques, often amplifies conflict with protesters and can instigate violence."<sup>38</sup> Following the recommendations of four presidential commissions established to study police actions in civil disturbances in the 1960s and 1970s, law enforcement moved away from "escalating force" in favor of a "negotiated management model," in which police communicated with protest leaders to seek mutually agreeable outcomes. Though generally successful in reducing the number and intensity of violent protests during this period, law enforcement began moving back toward more aggressive and militarized police responses by the late 1990s. The 1968 Eisenhower Commission's description of "unrestrained and indiscriminate police violence" at the 1968 Democratic convention in Chicago, mirrored tactics we're unfortunately seeing repeated today:

"That violence was made all the more shocking by the fact that it was often inflicted upon persons who had broken no law, disobeyed no order, made no threat. These included peaceful demonstrators, onlookers, and large numbers of residents who were simply passing through, or happened to live in, the areas where confrontations were occurring. Newsmen and photographers were singled out for assault and their equipment deliberately damaged."<sup>39</sup>

As Maguire indicates, these aggressive riot control tactics against protesters incite greater violence in response, undermine police-community relations, and often result in costly civil suits as a result of the injuries they inflict.

White supremacists and far-right militant groups<sup>40</sup> understand this protest dynamic, and seek to exploit it. They often plan public demonstrations in localities where tensions are already high as a result of previous racial conflict and they know their presence will draw strong political opposition.<sup>41</sup> At times they make efforts to mute overtly racist or fascist symbols and statements in favor of more socially

acceptable iconography and language, calling themselves patriots and carrying American flags. They also typically come armed and ready to inflict injury on those that protest against them. These demonstrations serve multiple purposes. First, they draw media attention that the organizing groups and leaders use to promote themselves and to recruit new supporters. Second, they incite conflict with their opponents, which provides the opportunity for some of their supporters to inflict injurious violence against them in a context where they can claim self-defense. Third, they exploit the ensuing violence to undermine public confidence that the police are capable of providing sufficient protection, positioning their vigilantism as a necessary and legitimate method of defending their communities.

Anti-racist and anti-fascist activists often respond to these white supremacist and far-right demonstrations using a multiplicity of tactics. While most are non-violent and legal, some tactics involve using force and violence to deny the demonstrators a public platform.<sup>42</sup> They justify this tactic as necessary to defend their communities against racist and fascist violence both during the protest, and after, if the white supremacist and far-right militants are allowed to recruit new members unopposed. Anti-fascist counter-protesters often outnumber the far-right demonstrators and view police as sympathetic allies and protectors of racists and fascists. Any police action against counter-protesters, or inaction against far-right violence only reinforces the belief that law enforcement is biased, which generates further justification for confrontational community defense.

This dynamic often increases police hostility toward the anti-racist and anti-fascist protesters, which far-right activists fan with disinformation that often finds its way to right-wing media and law enforcement intelligence streams. The Trump administration has amplified this misinformation, threatening to designate “Antifa” as a domestic terrorism organization. “Antifa” is not an organization, however, and there are no U.S. homicides resulting from anti-fascist actions, so even if the government had a legal mechanism to make such a designation it would not make an appropriate target. This rhetoric from the head of government is dangerous, however, as it signals to the white supremacists and far-right militants that their enemies are the President’s enemies, and that the use of force against them enjoys government support.

It is possible to see the delegitimizing dynamics of racism and police violence play out in a local example. In Portland, Oregon, the National Lawyers’ Guild filed an

excessive force lawsuit against a police officer who sprayed non-violent anti-war protesters, including children and a TV camerawoman, with pepper spray in 2002 and 2003.<sup>43</sup> The City of Portland paid \$300,000.00 to settle the lawsuit, but the officer was not disciplined, and instead received a promotion. During the lawsuit, however, a whistleblower came forward alleging that as a young man, the officer was a Hitler admirer who publicly shouted racist and homophobic rhetoric, vandalized property with Nazi graffiti, dressed in Nazi uniforms, and collected Nazi memorabilia.<sup>44</sup> A second long-time friend of the officer later came forward to confirm these allegations, and charge that the officer maintained these Nazi beliefs while working at the Portland Police Bureau. He provided evidence that indicated that while working for the police department, the officer illegally erected a memorial to five Nazi soldiers, including an SS officer suspected of war crimes, in a public park.<sup>45</sup> The officer dismantled the shrine, and someone reportedly stashed it in the Portland City Attorney's office until after the brutality lawsuit concluded. The officer later denied he had been a Nazi, claiming instead that he was just a "history geek."<sup>46</sup>

In 2010, the Portland Police Bureau suspended the officer for two weeks for erecting the Nazi shrine on public property.<sup>47</sup> Portland officials later rescinded the disciplinary action in 2014, however, in order to settle a defamation lawsuit the officer filed against a superior who called him a Nazi.<sup>48</sup> The officer continued to be promoted to positions of authority within the Portland Police Bureau.

This history became relevant when the PPB was again accused of bias regarding its response to a series of violent demonstrations led by far-right militants and white supremacist groups from 2016 through 2019. Portland police and Department of Homeland Security agents appeared to treat violent members of the far-right groups, many from out of state, with a light touch while conducting mass arrests and indiscriminately deploying so-called "less lethal" munitions like rubber bullets, flash bangs, pepper spray, and tear gas against local anti-racist and anti-fascist counter-protesters.<sup>49</sup> DHS officers clad in riot gear also policed the protests and were captured on video using militia members to assist them in arresting anti-racist protesters.<sup>50</sup>

A draft report of an Independent Police Review investigation of the PPB response to the rallies appeared to substantiate these concerns. It quoted a police lieutenant who "felt the right-wing protesters were 'much more mainstream' than the left-wing protesters."<sup>51</sup> Allegations of PPB bias surfaced again when *Willamette Week* published



friendly text messages between a PPB lieutenant and the out-of-state leader of a far-right group whose members had engaged in violence at these rallies. The texts included advice on how one member with an active warrant could avoid arrest, and details about the movements of opposing groups.<sup>52</sup> The PPB later claimed the texts were intended to gather intelligence and cooperation from the far-right group to prevent violence at the rallies.<sup>53</sup> Though several of the violent actors traveled interstate in order to engage in the rallies, the U.S. Department of Justice brought no federal charges.

The PPB was not the only law enforcement agency criticized for apparent bias as white supremacists and far-right militants engaged in violent protests around the country. California Highway Patrol investigators treated neo-Nazi skinheads who stabbed anti-racist counter-protesters at a 2016 Sacramento rally as victims, and sought their cooperation in investigating the counter-protesters and a Black journalist.<sup>54</sup> Likewise, Police in Anaheim, California arrested seven anti-racism protesters at a KKK rally in 2016, but not the Klansman who stabbed three people.<sup>55</sup>

In Huntington Beach, California Park Police refused to investigate the battery of OC Weekly journalists by members of the white supremacist Rise Above Movement at a 2017 pro-Trump march, citing a lack of resources. The Orange County District Attorney did prosecute an anti-fascist protester who attempted to defend the journalists by slapping one of the white supremacist attackers, however.<sup>56</sup> The FBI later charged four members of the Rise Above Movement for engaging in violence at a series of riots, including the Huntington Beach attack, but a federal judge dismissed the charges arguing the 50-year old Anti-Riot Act was unconstitutional.<sup>57</sup> In 2019, in Washington, D.C. a group of Proud Boys disrupted a permitted flag burning by members of a communist group in front of the White House, instigating a scuffle. D.C. police arrested two of the communists, but escorted the Proud Boys away, fist-bumping them as they walked into a bar. An investigation determined the officers violated no police policies.<sup>58</sup>

In May 2019, the Portland City Council hired a private police auditing company to conduct an independent investigation of the PPB response to the far-right protests.<sup>59</sup> To date, the auditing company has held no public hearings and issued no progress reports. Though that investigation is not yet complete, in January 2020, the Justice

Department reported the PPB was now in substantial compliance with its 2012 pattern and practice settlement agreement.<sup>60</sup>

Armed white supremacists and far-right militants have made appearances at dozens of the recent Black Lives Matter and police accountability protests following the killing of George Floyd, claiming various roles.<sup>61</sup> Some have claimed to support law enforcement or business owners from the protesters, others to support the protesters from police violence. Far-right militants have also mustered in large numbers in cities across the nation in response to social media hoaxes alleging Antifa-planned activities in these locations.<sup>62</sup> There is no evidence to support President Trump's claim that illegal activities at these protests are led by anti-fascist groups.<sup>63</sup>

### **Recommendations:**

The failure to aggressively address evidence of explicit racism among police officers undermines public confidence in fair and impartial law enforcement. Worse, it gives racist criminals the idea that their illegal acts enjoy government approval and authorization, making them much more active and more dangerous. Winning back public trust requires transparent and equal enforcement of the law, effective oversight, and public accountability that centers the concerns of targeted communities.

Where police officers are found to have participated in white supremacist or far-right militant activities, racist violence or related misconduct, the police department should initiate mitigation plans designed to ensure the public safety and uphold the integrity of the law. Mitigation plans could include dismissals; limitations of assignments to reduce potentially problematic contact with the public; re-training; and intensified supervision and auditing of the officer's performance. To ensure individuals charged with crimes have access to information indicating an officer's potential bias that may impeach his or her testimony, any offending officers' names should be added to Brady lists maintained by prosecutors' offices, as recommended by Georgetown Law Professor Vida B. Johnson.<sup>64</sup> These lists should be shared among federal, state, and local prosecutors' offices to ensure all defendants receive fair trials in all jurisdictions.

The most effective way for law enforcement agencies to restore public trust and ensure racism does not influence law enforcement actions, is to prevent individuals who are members of white supremacist groups or have a history of explicitly racist conduct from becoming law enforcement officers in the first place, or remaining law enforcement officers once bias is demonstrated.

All law enforcement agencies should:

- Establish clear policies regarding participation in white supremacist organizations and other far-right militant groups, and overt and explicit expressions of racism, particularly regarding the wearing of tattoos, patches, insignia and postings on social media. These policies should be properly vetted by legal counsel to ensure compliance with constitutional rights, state and local laws, and collective bargaining agreements, and clearly explained to staff.
- Hire a diverse workforce to more accurately reflect the demographic makeup of the communities the agency serves.
- Establish mitigation plans when biased police officers are detected. Mitigation plans could include referrals to internal affairs, local prosecutors, or the U.S. Justice Department for investigation and prosecution; termination or other disciplinary action; limitations of assignments to reduce potentially problematic contact with the public; retraining; and intensified supervision and auditing.
- Where existing evidence suggests a police officer has engaged in racist behavior this information should be made available to prosecutors and defendants via Brady lists or similar reporting mechanisms.
- Encourage whistleblowing and protect whistleblowers.

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<sup>40</sup> It is important to note that white supremacist and far-right militant groups, as well as the groups and movements opposing them have virtually no barrier to entry. Anyone could put on a Hawaiian shirt, write a manifesto, and act violently at a protest and the ideas expressed and the action taken would automatically re-define the parameters of the “Boogaloo” movement. Likewise, anyone donning a black hoodie and attacking a Nazi or a police officer automatically becomes an example of “anarchist” or “Antifa” violence. The various groups in these movements often change their names, and modify their public positions to avoid stigma associated with unpopular ideas or to distance themselves from the illegal actions of previous associates. Violent public demonstrations also attract opportunists, who may exploit the unrest to further political objectives or purely criminal interests that are antithetical to the goals of the protest or the interests of counter-protesters. Properly attributing acts of violence to any group or movement can be difficult.

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