



Written Testimony of

Michael German

Fellow

Brennan Center for Justice
at New York University Law School

Hearing: The Right of the People *Peaceably* to Assemble:
Protecting Speech by Stopping Anarchist Violence

Before the U.S. Senate Committee on the Judiciary,
Subcommittee on the Constitution

Tuesday, August 4, 2020

Chairman Cruz, Ranking Member Hirono, and members of the Subcommittee on the Constitution, thank you for inviting me to testify today about the rights of people to peaceably assemble. We are all concerned about the violence we're seeing at protests around the country, but framing the issue as a problem of Anarchist violence only spreads misinformation that puts law enforcement officers and the communities they are sworn to serve and protect at greater risk. It also distracts from the police accountability and anti-discrimination issues that millions of Black Lives Matter protestors have and are continuing to come out into the streets to support.¹

Civil unrest in response to police violence and racism is not a new phenomenon. Studies of civil disturbances in the 1960s and 1970s showed that aggressive and indiscriminate law enforcement tactics were often the determinative factor in instigating, escalating, and spreading violence. So if the goal is to make protests less violent, scapegoating ill-defined and amorphous enemies—whether calling them “outside agitators,” “Antifa,” “violent anarchists,” or “Violent Antifa Anarchist Inspired”—isn't the solution.² Policy makers and law enforcement officials should instead embrace objective research regarding protest policing practices, and reject the escalating violence model many federal, state, and local law enforcement agencies are currently using.

Historical Perspective and Research

Protests are disruptive by nature, as their purpose is to draw public attention to issues that are otherwise easily overlooked. The late Rep. John Lewis famously called this getting into “good trouble.”³ He recognized that civil disobedience—refusing to comply with unjust laws or law enforcement orders—is an honorable and often necessary method to drive positive social change. For officials responsible for defending law and order, however, such disruption presents a challenge.

The First Amendment guarantees the rights of speech, assembly, belief, petition, and the press because these freedoms are essential to a vibrant democracy. But because law enforcers are defenders of establishment powers, they have a natural tendency to view protests against government policies—and particularly protests against police activities—as security threats rather than legitimate political activism. They often mistake civil disobedience for anarchy and bring an indiscriminate and disproportionate level of force to bear to clear the streets and restore “order.” 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 often provokes more violence.

Arizona State University professor Edward R. Maguire's 2015 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."⁴ Four presidential commissions established to study police actions in civil disturbances in the 1960s and 1970s—which it should be noted were significantly more violent and deadly than anything we're currently experiencing—recommended that law enforcement move away from the escalating force model designed to suppress protests in favor of a negotiated management model designed to protect and facilitate them. 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, mirrors tactics we're 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."⁵

Just as in the past, 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. By forgetting the lessons learned from these previous civil disturbances, law enforcement leaders are putting the public and their own officers at risk of escalating violence and unrest.

Police Violence and Bias Undermine Legitimacy

Recent research indicates that individuals are more likely to resist and defy law enforcement if they perceive police actions as illegitimate or unjust.⁶ Unfortunately such evidence is accumulating daily. North Carolina lawyer T. Greg Doucette and mathematician Jason Miller have compiled a dataset documenting over 800 incidents of police violence against protesters captured on video by activists and journalists since George Floyd's death.⁷ The videos show police using tear gas, pepper spray, batons, and "less-lethal" munitions indiscriminately, often targeting protesters who pose no threat, as well as journalists, legal observers, bystanders, and elected officials.

Scores of journalists have been arrested, pepper sprayed, and shot with "less-lethal" projectiles during these protests, leading a spokesperson for the United Nations to publicly call on U.S. police to show restraint.⁸ Reports to the Freedom of the Press Foundation indicate at least thirty journalists have been attacked, tear gassed, and shot with projectiles by Department of Homeland Security (DHS) officers in Portland over an eight-day period.⁹ Last week, the American Civil Liberties Union asked a federal court in Portland, Oregon, to issue contempt citations against DHS and the U.S. Marshals Service for violating a previously issued temporary restraining order prohibiting them from assaulting and dispersing journalists and legal observers. "This administration claims to be protecting the federal courthouse," the ACLU of Oregon's interim legal director said, "but it won't obey the orders coming out of it."¹⁰

More than 60 people have suffered serious head injuries from the improper use of "less-lethal" police munitions, including fractured skulls, brain damage, and loss of vision.¹¹ DHS policy defines "less-lethal" force as that which "is not likely nor intended to cause death or serious bodily injury."¹² But a 2017 international study of injuries resulting from "rubber bullets, plastic bullets, bean bag rounds, baton rounds, and other projectiles used in crowd control situations" found that almost 3% suffered fatal wounds and another 15% were permanently injured.¹³ Given this data, these munitions do not qualify as "less-lethal," and should therefore be regulated under law enforcement agencies' lethal force policies.

The use of tear gas and pepper spray against peaceful protesters has also been so pervasive and indiscriminate (and particularly dangerous during a viral pandemic) that

local judges have issued orders limiting its use by police in Portland, Oregon; Oakland, California; Denver, Colorado; Dallas, Texas; and Seattle, Washington.¹⁴

Perceptions of police bias also undermine law enforcement legitimacy. The restrained law enforcement reaction to violent rallies staged by white supremacist and far-right militant groups beginning in 2016, in which counter-protesters were stabbed, shot, and killed, stands in stark contrast to the aggressive, militaristic responses to relatively peaceful protests led by people of color, such as the 2015 Black Lives Matter protests and 2016 Standing Rock protest in North Dakota. The U.S. Justice Department brought felony charges against more than 200 people arrested at the 2017 anti-Trump Disrupt J20 protests because they happened to be on the same block when windows were broken.¹⁵ Yet, relatively few arrests were made during the obscenely violent Unite the Right rally in Charlottesville, Virginia, where many counter-protesters were seriously injured, one fatally, in a vehicle attack. This pattern repeated across 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 a wounded Black journalist.¹⁶ Likewise, Police in Anaheim, California arrested seven anti-racism protesters at a KKK rally in 2016, but not the Klansman who stabbed three people.¹⁷

During a series of violent demonstrations led by far-right militants and white supremacist groups in Portland, Oregon, from 2016 through 2019, local police and DHS agents treated violent members of the far-right groups with a light touch, while conducting mass arrests and indiscriminately shooting rubber bullets, flash bangs, pepper spray, and tear gas at anti-racist and anti-fascist counter-protesters, inflicting serious injuries.¹⁸ At one demonstration, DHS officers clad in riot gear were captured on video using members of far-right militia groups to assist them in arresting anti-racist protesters.¹⁹

A draft report of an Independent Police Review investigation of the Portland Police Bureau's 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."²⁰ 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.²¹ The PPB later claimed the texts were intended to gather intelligence and cooperation from the far-right group to prevent violence at the rallies.²²

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. But 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.²³ 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 department policies.²⁴ During the protests following George Floyd's murder, several police officers around the country have been seen wearing patches, clothing, insignia, or otherwise demonstrating an apparent affinity for far-right militant groups, as will be documented in a forthcoming Brennan Center report.

Danger of Misinformation

While the best way to reduce violence at protests is by controlling the law enforcement response, this doesn't mean that there aren't individuals and groups of individuals that pose threats to public safety. The vast majority of the millions of people have participated in Black Lives Matter protests since the police killing of George Floyd have not engaged in acts posing a threat of death or serious bodily injury. A small number of people have engaged in serious violence, however, and it is important that law enforcement identify these assailants and address their crimes in a forthright manner.

The first requirement is to distinguish between civil disobedience and violence. A July 16, 2020, DHS press release blaming "violent anarchists" for putting Portland "under siege" mentioned graffiti twenty times and broken windows six.²⁵ While vandalism of government property is unfortunate, it doesn't justify a violent law enforcement response. Law enforcement should be more concerned about vehicle

ramming attacks against Black Lives Matter protesters, a tactic that has been regularly promoted in right-wing media, both before and after the Charlottesville murder of Heather Heyer. These vehicle incidents number over 66 since May 2020, many of which were perpetrated by malicious individuals expressing hatred toward the protesters.²⁶ They have resulted in several serious injuries and at least three deaths.

Moreover, since few of the incidents of vandalism documented in the DHS press release resulted in arrests, it is unclear how it knows that the perpetrators were anarchists. Many people of varying ideologies have attended these protests, including those supporting the Black Lives Matter movement and those opposing it.

Armed white supremacists and far-right militants have made appearances at dozens of the recent Black Lives Matter and police accountability protests, playing various roles.²⁷ Some have claimed they are there to support law enforcement and protect business owners from the protesters, others to defend the protesters from police violence. There are also people with no political agenda, most peaceful but some not, who come to the protest to participate in the spectacle. Attributing violent acts to a particular group or movement without evidence is dangerous, as it misleads law enforcement about actual threats and spreads unwarranted public fear.²⁸

The Trump administration has amplified this misinformation, blaming “Antifa” for the protest violence and threatening to designate it as a domestic terrorism organization.²⁹ “Antifa” is not an organization, however, and there are no reported U.S. homicides resulting from anti-fascist actions for at least the last 25 years, so it would not be an appropriate target for such a designation if such authority existed (it doesn’t).³⁰ This fallacious rhetoric from the head of government is dangerous because it signals to violent 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. Far-right militants have mustered in large numbers in cities across the nation in response to social media hoaxes alleging “Antifa”-planned activities in these locations.³¹

President Trump’s misleading rhetoric sends the same signal to police, fueling a dangerous political bias. To a large extent, a bias against anti-fascists already existed in law enforcement, so these words fell on fertile soil and led to a diversion of

resources from real threats. A review of dozens of law enforcement intelligence reports leaked from a government contractor show numerous poorly-sourced and sensationalized warnings about potential Antifa violence, such as a reported plot to stage brick piles in cities throughout the country to throw at police.³² After a fake Antifa Twitter account set up by a white supremacist group indicated that buses with thousands of antifascist soldiers were heading to a Chicago Black Lives Matter protest, police reportedly shut down highways and sent helicopters out to find them.³³ An FBI intelligence document and a Maine law enforcement intelligence fusion center distributed information taken from a satirical website as evidence that Antifa was paying people in Bitcoins to commit violence at protests.³⁴ FBI agents have also sought to prove the president's "Antifa" allegations by interviewing arrested protesters, but there remains no evidence to support Trump's claim that antifascists are a significant factor in the protest violence.³⁵ This lack of evidence may explain the rhetorical turn toward blaming "violent anarchists," a similarly amorphous term that serves more as a label for any protester the government doesn't like.

But this misinformation in law enforcement intelligence doesn't just divert investigative resources, it potentially blinds them to real threats. Though law enforcement intelligence reports highlight potential threats from anarchists and Black activists, white supremacists and far-right militants regularly kill far more people, including police officers.³⁶ Intelligence reporting this spring warned of threats to law enforcement from "Boogaloo Bois," a relatively new right-wing accelerationist movement bent on instigating a new civil war. Nonetheless, the government's focus from the president and the attorney general down to agents on the street, remained on Antifa.³⁷ After an unknown assailant shot two Federal Protective Service (FPS) officers in Oakland on May 30, 2020, killing one, a June 6th FBI situation report about protest violence did not mention the Boogaloo as a potential threat to law enforcement.³⁸ The same day that the FBI issued the report, one of the men who killed the FPS officer ambushed and killed a Santa Cruz County deputy, throwing pipe bombs that injured other deputies to effect his escape. The assailant scrawled his affiliation with the Boogaloo movement in his own blood on a parked car before being apprehended by a courageous citizen.³⁹

There is evidence white supremacists also infiltrated the protests to cause violence that would be blamed on Black Lives Matter or Antifa. A June 5, 2020 Minneapolis law enforcement intelligence bulletin reported that the white supremacist-affiliated

motorcycle gang members posed as Antifa while inciting civil disturbances in Minneapolis. Their goal, according to the bulletin, was “to portray Antifa as a greater threat than it actually poses.”⁴⁰ Law enforcement officials in Minneapolis now believe the black-clad “umbrella man” who began vandalizing the store that was the first structure to burn after the George Floyd murder was a Aryan Cowboy motorcycle gang member bent on stoking “discord and racial unrest.”⁴¹ The mayor of Richmond, Virginia, also alleged that white supremacists stoked violence at a July 25, 2020 protest while marching “under the banner of Black Lives Matter.”⁴² In a potentially even more dangerous situation, a heavily-armed man with a Nazi SS lightning bolt tattoo and outfitted with tactical military clothing allegedly impersonated a DHS officer to join a police skirmish line facing off against Las Vegas protesters.⁴³

Yet the government’s focus inexplicably remains disproportionately slanted toward finding Antifa and violent anarchists rather than far-right militants, which undermines the safety of the public and the police.⁴⁴

Recommendations

The good news is that an effective blueprint for reducing violence at protests already exists. Policies requiring police to abandon the escalating force model and only use force only when necessary to stop people engaging in activities that imminently threaten serious bodily harm have worked in the past to reduce violence at protests.

Police already know how to manage protests without unnecessary force, as we have seen with disruptive demonstrations by armed far-right protesters. No militarized riot police went in with tear gas and flash bangs to disperse the militia groups that occupied the Malheur Wildlife Refuge for 41 days.⁴⁵ Nor against those protesting gun safety measures in Virginia and state stay-at-home orders in Michigan, where armed militants stormed and occupied the state legislature.⁴⁶ It is unclear why law enforcement officials feel the need to use much greater force against unarmed people protesting police violence and racism, and they should be forced to reckon with this disparity.

Clearly, law enforcement intelligence operations need greater oversight to check the politicization, bias, and disinformation that infects these analytical systems. Reps.

Raja Krishnamoorthi (D-IL) and Peter Welsh (D-VT) have already sent a letter to the directors of the FBI and CIA seeking information about who is responsible for the spread of the Antifa hoaxes. The leak of thousands of intelligence reports produced by and for state and local intelligence fusion centers reveals that these systems are not secure.⁴⁷ But the leak also shows the necessity of stronger oversight and public accountability.

Courts have already begun restricting law enforcement use of tear gas, pepper spray, and less-lethal munitions, which will help if these orders can be enforced. These efforts should be supported in policy, as part of a broader police reform effort designed to reduce all police violence.

The Brennan Center supports H.R. 7120, the Justice in Policing Act of 2020, which recently passed the House. It is a positive first step toward equal justice for all by banning racial profiling and chokeholds, and establishing a nationwide police misconduct registry, among other measures. We hope it can be strengthened by limiting police use of intrusive surveillance technologies and military equipment.

¹ Larry Buchanan, Quoctrung Bui, and Jugal K. Patel, “Black Lives Matter May be The Largest Movement in U.S. History,” *New York Times*, July 3, 2020, <https://www.nytimes.com/interactive/2020/07/03/us/george-floyd-protests-crowd-size.html>.

² See, Jesse Paul and Jennifer Brown, “Federal Prosecutors in Colorado are Looking to Charge Criminal ‘Agitators’ at Denver’s George Floyd Protests,” *The Colorado Sun*, June 1, 2020, <https://coloradosun.com/2020/06/01/federal-prosecution-protesters-denver-george-floyd/>; Jesse Walker, “The Rise and Fall and Rise Again of the ‘Outside Agitator’ Story,” *Reason*, June 1, 2020, <https://reason.com/2020/06/01/the-rise-and-fall-and-rise-again-of-the-outside-agitator-story/>; @benjaminwittes (Benjamin Wittes), TWITTER, July 26, 2020, <https://twitter.com/benjaminwittes/status/1287343604038598656>.

³ See, Joshua Bote, “‘Get in Good Trouble, Necessary Trouble’: Rep. John Lewis in His Own Words,” *USA Today*, July 18, 2020, <https://www.usatoday.com/story/news/politics/2020/07/18/rep-john-lewis-most-memorable-quotes-get-good-trouble/5464148002/>.

⁴ Edward R. Maguire, “New Directions in Protest Policing,” *Saint Louis University Public Law Review*, 67, 77, (2015), <https://cvpcs.asu.edu/sites/default/files/content/products/NewDirectionsInProtestPolicing.pdf>.

⁵ Edward R. Maguire, *New Directions in Protest Policing*, 75.

⁶ Edward R. Maguire, *New Directions in Protest Policing*, 88-91.

⁷ @greg_doucette (T. Greg Doucette), TWITTER, July 25, 2020, https://twitter.com/greg_doucette/status/1287139409905754113; “George Floyd Protest – Police Brutality Videos on Twitter”: https://docs.google.com/spreadsheets/u/1/d/1YmZeSxpz52qT-10tkCjWOwOGkOql7Wd1P7ZMlwMW0E/htmlview?pru=AAABcq6DI8*mlHYeMno9jXWUp3Svb_KZA#.

⁸ Siobhan O’Grady, “U.N. Human Rights Office Calls on U.S. Police to Limit Use of Force,” *Washington Post*, July 24, 2020, <https://www.washingtonpost.com/world/2020/07/24/un-human-rights-office-calls-us-police-limit-use-force/>.

⁹ Trevor Timm, “DHS Agents Have Reportedly Injured At Least 30 Journalists in Portland,” *Freedom of the Press Foundation*, July 24, 2020, <https://freedom.press/news/dhs-agents-are-suspected-attacking-or-injuring-least-30-journalists-portland/>.

¹⁰ Press Release, “Federal Agents in Portland Repeatedly Attacked Clearly-Marked Journalists and Legal Observers in Violation of Court Order,” *American Civil Liberties Union*, July 28, 2020, <https://www.aclu.org/press-releases/aclu-asks-court-hold-federal-agents-contempt-violating-restraining-order>.

¹¹ Liz Szabo, Jay Hancock, Kevin McCoy, Donovan Slack and Dennis Wagner, “Fractured Skulls and Lost Eyes: Police Break Their Own Rules When Shooting Protesters With ‘Rubber Bullets,’” *USA Today and Kaiser Health News*, June 22, 2020, <https://www.usatoday.com/in-depth/news/nation/2020/06/19/police-break-rules-shooting-protesters-rubber-bullets-less-lethal-projectiles/3211421001/>.

¹² U.S. Dept. of Homeland Security Memorandum, *Department Police on the Use of Force*, Sept. 7, 2018, 10, https://www.dhs.gov/sites/default/files/publications/mgmt/law-enforcement/mgmt-dir_044-05-department-policy-on-the-use-of-force.pdf.

¹³ Lisa Szabo, et al, “Fractured Skulls and Lost Eyes,” June 19, 2020, <https://www.usatoday.com/in-depth/news/nation/2020/06/19/police-break-rules-shooting-protesters-rubber-bullets-less-lethal-projectiles/3211421001/>; Rohini J. Haar, et. al, “Death, Injury and Disability from Kinetic Impact Projectiles in Crowd-control Settings: a Systematic Review,” *BMJ Open*, (2017), <https://bmjopen.bmj.com/content/7/12/e018154>.

¹⁴ Steve Benham, “Judge Orders Limited Use of Tear Gas by Portland Police,” *KATU 2 News*, June 9, 2020, <https://katu.com/news/local/portland-tear-gas-use-severely-restricted-under-court-order>; Jon Kawamoto, “Federal Court Order Restricts Oakland Police Use of Tear Gas, Rubber Bullets,” *East Bay Times*, July 30, 2020, <https://www.eastbaytimes.com/2020/07/30/federal-court-order-restricts-oakland-police-use-of-tear-gas-rubber-bullets/>; Keith Coffman, “Denver Police Ordered to Limit Use of Tear Gas and Plastic Bullets in Protests,” *Reuters*, June 5, 2020, <https://www.reuters.com/article/us-minneapolis-police-denver-idUSKBN23D08O>; Veronica Gonzalez, Cassandra Jaramillo, and Hayat Norimine, “Federal Judge Temporarily Bans Dallas Police, City From Using Tear Gas, Less-Lethal Ammunition During Protests,” *Dallas Morning News*, June 12, 2020, <https://www.dallasnews.com/news/courts/2020/06/12/federal-judge-temporarily-bans-dallas-police-city-from-using-tear-gas-less-lethal-ammunition-during-protests/>; Mike Carter, “Judge Bars Seattle Police From Using Tear Gas, Force Against Non-violent Protesters,” *Seattle Times*, June 12, 2020, <https://www.seattletimes.com/seattle-news/judge-bars-seattle-police-from-using-tear-gas-force-against-nonviolent-protesters/>.

¹⁵ Sam Adler-Bell, “With Last Charges Against J20 Protesters Dropped, Defendants Seek Accountability for Prosecutors,” *The Intercept*, July 13, 2018, <https://theintercept.com/2018/07/13/j20-charges-dropped-prosecutorial-misconduct/>.

¹⁶ Sam Levin, “California Police Worked With neo-Nazis to Pursue ‘Anti-racist’ Activists, Documents Show,” *The Guardian*, Feb. 9, 2018, <https://www.theguardian.com/world/2018/feb/09/california-police-white-supremacists-counter-protest>; Sam Levin, “Stabbed at a neo-Nazi Rally, Called a Criminal: How Police Targeted a Black Activist,” *The Guardian*, May 25, 2018, <https://www.theguardian.com/world/2018/may/25/neo-nazi-rally-california-stabbing-police-target-black-activist>; Sam Levin, “How a California Police Officer Protected neo-Nazis and Targeted Their Victims,” *The Guardian*, Jan. 25, 2019, <https://www.theguardian.com/us-news/2019/jan/25/california-police-neo-nazis-antifa-protest>.

¹⁷ DKelsin, “7 Charged in Anaheim KKK Melee, But Not Stabby Klanner Not One of Them,” *OC Weekly*, July 1, 2016, <https://www.ocweekly.com/7-charged-in-anaheim-kkk-melee-but-stabby-klanner-not-one-of-them-7305812/>.

¹⁸ Maxine Bernstein, “‘Kettling’ of Counterprotesters Last June Not Legally Justified, Review Says,” *The Oregonian*, May 31, 2018, updated Jan. 30, 2019, https://www.oregonlive.com/portland/2018/05/portland_police_oversight_repo.html; and Jason Wilson, “Portland Far-Right Rally: Police Charge Counterprotesters With Batons Drawn,” *The Guardian*, Aug. 5 2018, <https://www.theguardian.com/us-news/2018/aug/04/patriot-prayer-to-carry-guns-at-portland-rally-as-fears-of-violence-rise>; Christopher Mathias and Andy Campbell, “Violent Proto-Fascists Came to Portland. The Police

Went After the Antifascists,” *Huffington Post*, Aug. 5, 2018, https://www.huffpost.com/entry/portland-patriot-prayer-proud-boys-police-antifascists_n_5b668b7de4b0de86f4a22faf.

¹⁹ Arun Gupta, “Playing Cops: Militia Member Aids Police in Arresting Protester at Alt-Right Rally,” *The Intercept*, Jun. 8, 2017, <https://theintercept.com/2017/06/08/portland-alt-right-militia-police-dhs-arrest-protester/>.

²⁰ Katie Shepherd, “Portland Police Saw Right-Wing Protesters as ‘Much More Mainstream’ Than Leftist Ones,” *Willamette Week*, Jun. 27, 2018, <https://www.wweek.com/news/courts/2018/06/27/portland-police-saw-right-wing-protesters-as-much-more-mainstream-than-leftist-ones/>.

²¹ Katie Shepherd, “Texts Between Portland Police and Patriot Prayer Ringleader Joey Gibson Show Warm Exchange,” *Willamette Week*, Feb. 14, 2019, <https://www.wweek.com/news/courts/2019/02/14/texts-between-portland-police-and-patriot-prayer-ringleader-joey-gibson-show-warm-exchange/>.

²² Maxine Bernstein, “Portland Cop’s Chatty Texts to Patriot Prayer Spur Outrage but are Standard Police Strategy, Experts Say,” *The Oregonian*, Feb. 16, 2019, <https://www.oregonlive.com/crime/2019/02/police-experts-weigh-in-on-portland-lieutenants-controversial-text-messages-with-patriot-prayer-leader.html>.

²³ Frank John Tristan, “Rise Above Unmasked: A Former Weekly Intern Recalls How His Surf City Assault Became an FBI Criminal Probe Into an Alt-Right Group,” *OC Weekly*, Nov. 8, 2018, <https://www.ocweekly.com/rise-above-unmasked-a-former-weekly-intern-recalls-how-his-surf-city-assault-became-an-fbi-criminal-probe-into-an-alt-right-group/>; R. Scott Moxley, “DA Whitewashed neo-Nazi Assault in Assault Trial From 2017 Trump MAGA Rally,” *OC Weekly*, Aug. 21, 2019, <https://www.ocweekly.com/white-supremacist-antifa-trump/#.XV4Die38AR.twitter>.

²⁴ Rachel Kurzius, “D.C. Police Can’t Determine Whether Officers Who Fist Bumped Proud Boy On July 4 Violated Policy,” *DCist*, Feb. 7, 2020, <https://dcist.com/story/20/02/07/officers-who-fist-bumped-proud-boy-on-july-4-didnt-violate-policy-d-c-police-determine/>.

²⁵ Dept. of Homeland Security Press Release, “Acting Secretary Wolf Condemns The Rampant Long-Lasting Violence In Portland,” July 16, 2020, <https://www.dhs.gov/news/2020/07/16/acting-secretary-wolf-condemns-rampant-long-lasting-violence-portland>.

²⁶ Grace Hauck, “I Would Be Very Careful in the Middle of the Street: Drivers Have Hit Protesters 66 Times Since May 27,” *USA Today*, July 9, 2020, <https://www.usatoday.com/story/news/nation/2020/07/08/vehicle-ramming-attacks-66-us-since-may-27/5397700002/>; Ari Weil, “Protesters Hit By Cars Recently Highlights a Dangerous Far-Right Trend in America,” *NBC News*, July 12, 2020, <https://www.nbcnews.com/think/opinion/seattle-protester-hit-car-latest-casualty-dangerous-far-right-trend-ncna1233525>; Barnini Chakraborti, “St. Louis Man Allegedly Dragged to Death by FedEx Truck During Protest: Reports,” *Fox News*, May 30, 2020, <https://www.foxnews.com/us/st-louis-man-allegedly-dragged-to-death-by-fedex-truck-reports>

²⁷ “Mapping Paramilitary and Far-Right Threats to Racial Justice,” *Political Research Associates and the Institute for Research and Education on Human Rights*, Jun. 19, 2020, <https://www.politicalresearch.org/2020/06/19/mapping-paramilitary-and-far-right-threats-racial-justice>.

²⁸ Mara Hvistendahl and Alleen Brown, “Law Enforcement Scoured Protester Communications and Exaggerated Threats to Minneapolis Cops, Leaked Documents Show,” *The Intercept*, June 26, 2020, <https://theintercept.com/2020/06/26/blueleaks-minneapolis-police-protest-fears/>.

²⁹ Contrary to President Trump’s claims, internal DHS documents acknowledged that law enforcement has little knowledge of the motives of protesters. In a memo regarding the Portland protests, the Counterterrorism Mission Center warned ““we have low confidence in our assessment that sustained violence against government personnel and facilities in Portland, Ore., since May reflects the enduring threat environment in the region because we lack insight into the motives for the most recent attacks.” Zanno Kanno-Youngs, Sergio Olmos, Mike Baker, and Adam Goldman, “From the Start, Federal Agents Demanded a Role in Suppressing Anti-Racism Protests,” *New York Times*, July 28, 2020, <https://www.nytimes.com/2020/07/28/us/federal-agents-portland-seattle-protests.html>

³⁰ Lois Beckett, “Anti-fascists Linked to Zero Murders in the U.S. in 25 Years,” *The Guardian*, July 27, 2020, <https://www.theguardian.com/world/2020/jul/27/us-rightwing-extremists-attacks-deaths-database-leftwing-antifa>. Attorney General William Barr added to the public confusion about the nature of “Antifa” in testimony before the House Judiciary Committee last week. Under questioning from Rep. Matt Gaetz, Barr said Antifa “can best be thought of, I think, as an umbrella term for what is essentially a movement comprised of loosely

organized groups across the country. In some areas of the country there are a number of groups and there are sort of centers of activity. The groups, as I say, are loosely organized, but they are definitely organized, but since they have an anarchic temperament they don't get along very well with each other, so I'm not suggesting it's a national organization that moves nationally. They tend to get organized for an event and there's a lot of organization right before an event occurs, but we see a lot of the organization during the mob violence." *Oversight of the Department of Justice*, Hearing before the Committee on the Judiciary, House of Representatives, Judiciary Committee, 116th Cong., July 28, 2020, *unofficial transcript available at Rev.com*: <https://www.rev.com/blog/transcripts/house-judiciary-committee-hearing-of-attorney-general-barr-transcript-july-28>.

³¹ Shawn Boberg and Dalton Bennett, "Militias Flocked to Gettysburg to Foil a Supposed Antifa Flag Burning, an Apparent Hoax Created on Social Media," *Washington Post*, Jul. 4, 2020, https://www.washingtonpost.com/investigations/hundreds-of-armed-men-went-to-gettysburg-to-defend-it-from-a-phantom-antifa-flag-burner-created-on-social-media/2020/07/04/206ee4da-bb05-11ea-86d5-3b9b3863273b_story.html.

³² Ryan Devereaux, "Leaked Documents Show Police Knew Far-Right Extremists Were the Real Threat at Protests, Not 'Antifa'," *The Intercept*, July 15, 2020, <https://theintercept.com/2020/07/15/george-floyd-protests-police-far-right-antifa/>.

³³ Quinn Myers, "How Facebook Misinformation Turned a White Supremacist Conspiracy Into a Police Action," *MEL Magazine*, June 2020, <https://melmagazine.com/en-us/story/how-facebook-misinformation-turned-a-white-supremacist-conspiracy-into-police-action>.

³⁴ Nathan Bernard and Caleb Horton, "Satirical 'Protest Jobs' Website Was Source of Official Warnings About Leftist Violence," *Mainer News*, July 23, 2020, <https://mainernews.com/satirical-protest-jobs-website-was-source-of-official-warnings-about-leftist-violence/>.

³⁵ Meg Kelly and Elyse Samuels, "Who Caused the Violence at Protests? It Wasn't Antifa," *Washington Post*, June 22, 2020, <https://www.washingtonpost.com/politics/2020/06/22/who-caused-violence-protests-its-not-antifa/>.

³⁶ Kate Irby, "White and far-right extremists kill more cops, but FBI tracks black extremists more closely, many worry," *McClatchy*, January 24, 2018, <https://www.mcclatchydc.com/news/nation-world/national/article196423174.html>. White supremacists and other far-right militants, on the other hand, have killed at least 51 police officers since 1990. It should be noted that the federal government does not keep an accurate record of how many people far-right militants kill each year. Advocacy groups, journalists, and academics attempt to collect data, but these counts vary widely. See, Michael German and Sara Robinson, "Wrong Priorities on Fighting Terrorism," *Brennan Center for Justice*, October 31, 2018, 15, https://www.brennancenter.org/sites/default/files/2019-08/Report_Wrong_Priorities_Terrorism.pdf.

³⁷ Ryan Devereaux, "Leaked Documents Show Police Knew Far-Right Extremists Were the Real Threat at Protests, Not 'Antifa'," <https://theintercept.com/2020/07/15/george-floyd-protests-police-far-right-antifa/>.

³⁸ Federal Bureau of Investigation, "Preventing Violence and Unlawful Activity in Protection of Lawful Protest," June 6, 2020, <https://www.documentcloud.org/documents/6982454-FBI-June-6-George-Floyd.html>.

³⁹ Amy Larson, "FBI Documents Describe Motive of Santa Cruz Deputy's Killer and Boogaloo," *KRON*, June 17, 2020, <https://www.kron4.com/news/bay-area/fbi-documents-describe-motive-of-santa-cruz-deputys-accused-killer-and-boogaloo/>.

⁴⁰ Multi-Agency Command Center (MACC) Situation Report, "Intelligence/Operational Situation Report #22, June 5, 2020, <https://www.documentcloud.org/documents/6957654-Multi-Agency-Command-Center-Situation-Report-for.html>.

⁴¹ Libor Jani, "Minnesota Police Say 'Umbrella Man' Was a White Supremacist Trying to Incite George Floyd Rioting," *Star-Tribune*, July 28, 2020, <https://www.startribune.com/police-umbrella-man-was-a-white-supremacist-trying-to-incite-floyd-rioting/571932272/>. The "umbrella man," who reportedly had previous convictions for domestic violence and assault, escaped scrutiny for this incident until police received a tip last week. He is also under investigation for an incident that took place a month after the protests began, in which white supremacist motorcycle gang members harassed a Muslim woman and her daughter.

⁴² WTVR TV Web Staff, “Police Chief Believes Antifa, Boogaloo Boys Were at Richmond Riot, *WTVR.com*, July 26, 2020, <https://www.wtvr.com/news/local-news/antifa-white-supremacists-boogaloo-boys-blamed-for-richmond-riot-saturday-july-25>.

⁴³ David Ferrarra, “Armed Man at Black Lives Matter Protest Charged With Impersonating Officer,” *Las Vegas Review Journal*, June 12, 2020, <https://www.reviewjournal.com/crime/armed-man-at-black-lives-matter-protest-charged-with-impersonating-officer-2051755/>.

⁴⁴ Nate Gartrell, “Authorities Charge Alleged Santa Cruz Deputy’s Killer With Assassinating Federal Cop in Oakland, Link Attacks to Boogaloo Movement, *The Mercury News* June 16, 2020, <https://www.mercurynews.com/2020/06/16/santa-cruz-deputys-alleged-killer-charged-with-assassinating-federal-cop-in-oakland-ambush/>.

⁴⁵ “Oregon Standoff Timeline: 41 Days of the Malheur Refuge Occupation and the Aftermath,” *The Oregonian*, February 14, 2017, updated January 9, 2019, https://www.oregonlive.com/portland/2017/02/oregon_standoff_timeline_41_da.html.

⁴⁶ Louis Casiano, “Michigan Protesters Storm State Capitol in Fight Over Coronavirus Rules: Men With Rifles Yelling at Us,” *Fox News*, April 30, 2020, <https://www.foxnews.com/us/michigan-lansing-coronavirus-protest-capitol-guns-rifles>.

⁴⁷ Letter from Reps. Raja Krishnamoorthi and Peter Welsh to Director Gina Haspel, Central Intelligence Agency, and Director Christopher Wray, Federal Bureau of Investigation, July 14, 2020, <https://www.documentcloud.org/documents/6988498-CIA-FBI-Inquiry-7-14-20.html>.