NATIONAL

Hate Crimes And Donald Trump: Why It's So Hard To Prosecute Racist, Hateful Acts

BY **JASON LE MIERE** ON 12/01/16 AT 8:27 AM

Threatening that the horrors experienced by Jews in Nazi Germany would soon be repeated against Muslims in the United States, a letter writer to three mosques in California over the weekend had a clear and chilling message: “Your day of reckoning has arrived. There’s a new sheriff in town — President Donald Trump.”

The episode is just one of hundreds of incidents of hate that have swept the country since Trump defeated Hillary Clinton to become president-elect on Nov. 8. In the 10 days following the election, the Southern Poverty Law Center recorded 867 occurrences of hateful harassment, adding the caveat that the number "almost certainly represents a small fraction of the actual number of election-related hate incidents that have occurred."

Yet even many of the cases that have been documented will not be classified as hate crimes under the law, and even fewer will be prosecuted as such. Problems and inconsistencies exist at every step of the process for prosecuting a crime that is about more than simply an individual's action, but also their motivation. Not only is it a unique challenge in law enforcement but, after Trump's ascendance to one of the world's most powerful positions, the debate over how to police hate crimes is also an increasingly important one.

A hate crime is defined by the FBI 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

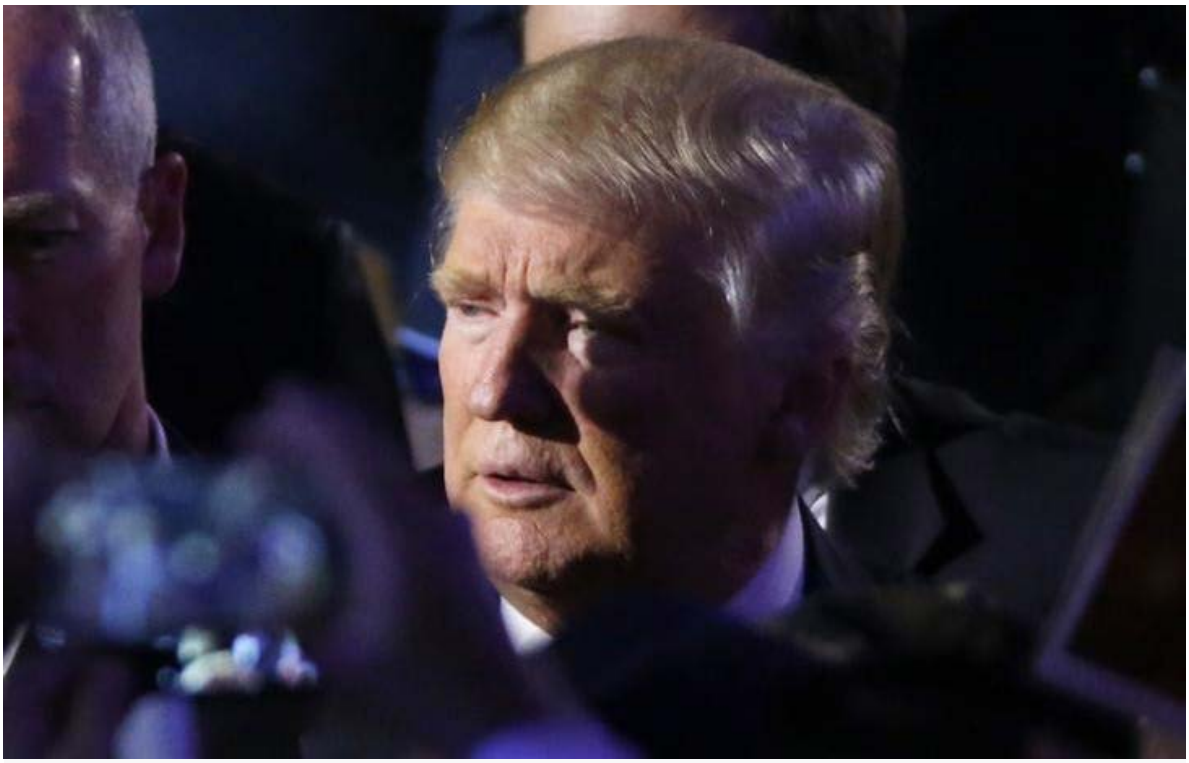
identity.” There can often be a thin line between protecting an individual's right to freedom of speech under the First Amendment and interpreting an incident as a crime. Telling a woman in a hijab to "get out of the country," or giving a Nazi salute to an African American, for example, are not criminal offenses.

Even when the line is crossed into illegality, there is no uniform method for prosecuting hate crimes in the United States. Indeed, there are five states that don’t have any laws specifically against hate crimes. One of those is South Carolina, where Dylann Roof is accused of killing nine black parishioners at a church in Charleston last year. Rather than the state, it was down to federal prosecutors and current attorney general Loretta E. Lynch to bring hate crime charges against Roof.

"I think most experts will agree that there is a vast amount of under-reporting," said Oscar Garcia, deputy district attorney for San Diego's Hate Crimes Unit. "Victims and witnesses are reluctant to come forward and there’s so much discretion involved whether the police mark it on a report as a suspected hate crime."

The federal law against hate crimes was significantly strengthened by the 2009 passing of the Matthew Shepard and James Byrd Jr. Hate Crimes Prevention Act. It extended a law first created at a very basic level by the Civil Rights Act in 1968 to include crimes motivated by a victim’s actual or perceived gender, gender identity, sexual orientation or disability. It also removed the provision that the victim must be engaged in a federally protected activity, such as voting or attending school, at the time of the attack.

Thirteen years in the making, only in President Barack Obama's first year in office was it finally signed into law, having been held under threat of veto by his predecessor, President George W. Bush. During debates on the subject, one of the most vocal opponents was Alabama Sen. Jeff Sessions, the man who next year is set to become the most senior law enforcement official in the country having been selected by Trump for the post of attorney general.



President-elect Donald Trump is shown at his election night rally in Manhattan, New York, Nov. 9, 2016. Photo: Reuters/Jonathan Ernst

His appointment adds to concerns that Trump's administration will make the prevention, recording and prosecution of such incidents even more difficult than under the current patchy legal framework between local, state and federal departments.

As it is, the exact extent of the problem Sessions is likely to inherit is hard to pin down. The 1990 Hate Crimes Statistics Act required the Justice Department to collect data on hate crimes, which it publishes annually through the FBI. However, those figures are incomplete due in no small part to the fact that 20 states do not have any requirement to collect their own data on hate crimes.

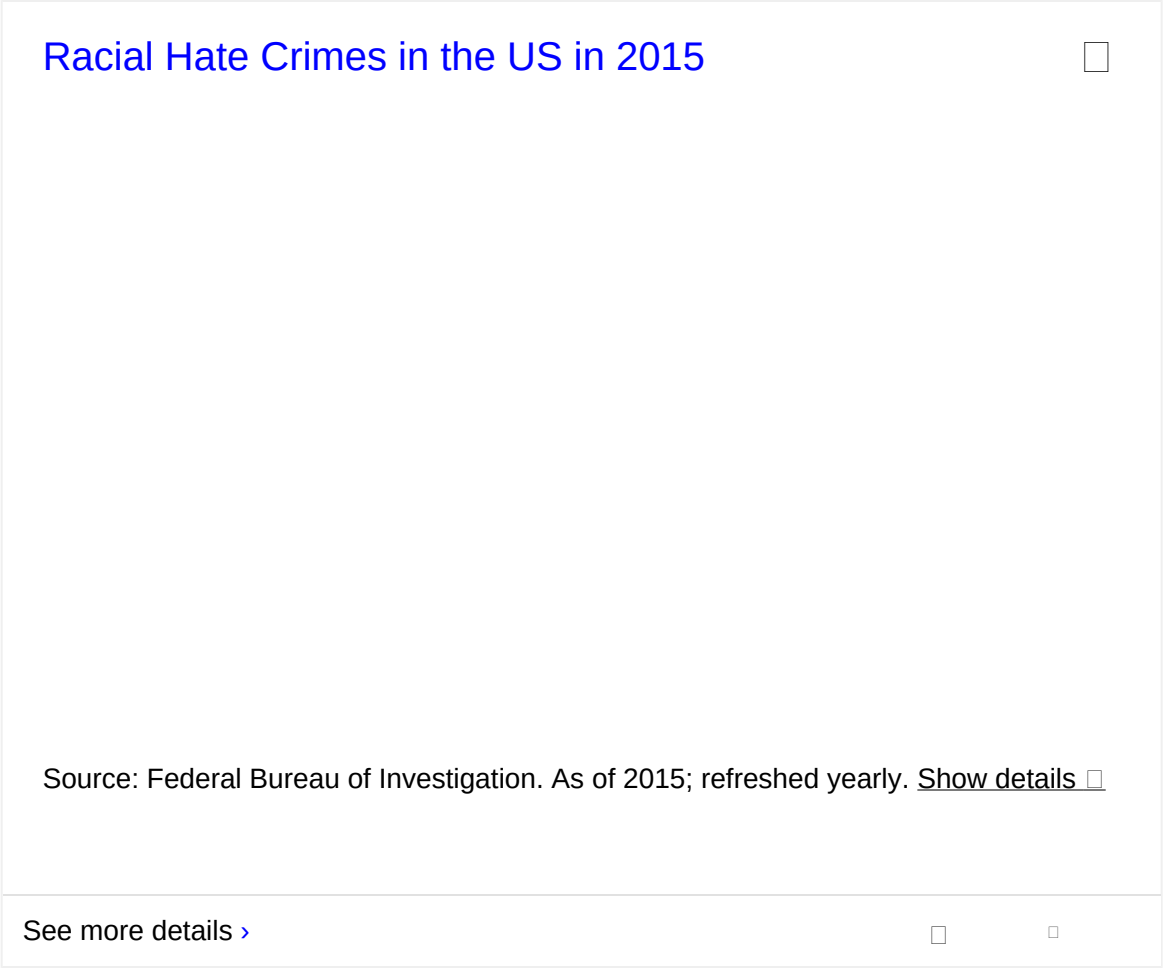
Charlotte, the scene of the 2015 mass shooting in South Carolina, recorded just two hate crimes in all of 2013. As extraordinary as that may seem, a total of 87 cities with populations over 100,000 people, including Miami, Portland and Honolulu, either failed to report hate crime statistics to the FBI in 2015 or reported having zero such incidents.

When the FBI reported earlier this month that the number of hate crimes in 2015 had risen by 6.8 percent from the previous year to 5,850, it was

understandably interpreted as a serious concern. However, the Bureau of Justice Statistics, which includes crimes that weren't reported to police, has found that number to be vastly higher. For 2012, the most recent year for which records are available, it reported the number of hate crimes as 293,800.

With no requirement to report, the stark difference in figures can in part be put down to basic logistical failures on the part of some local law enforcement agencies, according to Mark Potok, senior fellow at the Southern Poverty Law Center.

“We found that a huge number of state police officials were simply filling in zero when they did not get reports by the deadline,” Potok told International Business Times.



But issues exist even before it comes to reporting figures. Investigating an incident as a hate crime involves adding a whole extra element to what could otherwise go down as a straightforward offense.

"Sometimes the evidence isn’t there or [police] didn’t ask the right questions in initial interviews with the victim," Potok said. "Sometimes they’ve got a local prosecutor, this sometimes happens in southern states, who don’t believe in hate crime laws and they know they're not going to be prosecuted as such anyway so why bother to go the extra step to try to figure out motive when you already know subject A punched subject B in the nose."

The same lack of understanding often exists on the part of the victim. And even when they do realize their civil rights have been violated, there can be an unwillingness to speak up. That appears particularly true in a post-election climate that has not only been cited as a cause for the recent surge in incidents of hate, but also as an extra factor in making victims hesitant to involve the authorities.

Along with victims, witnesses are now also growing wary of retaliation, said Garcia.

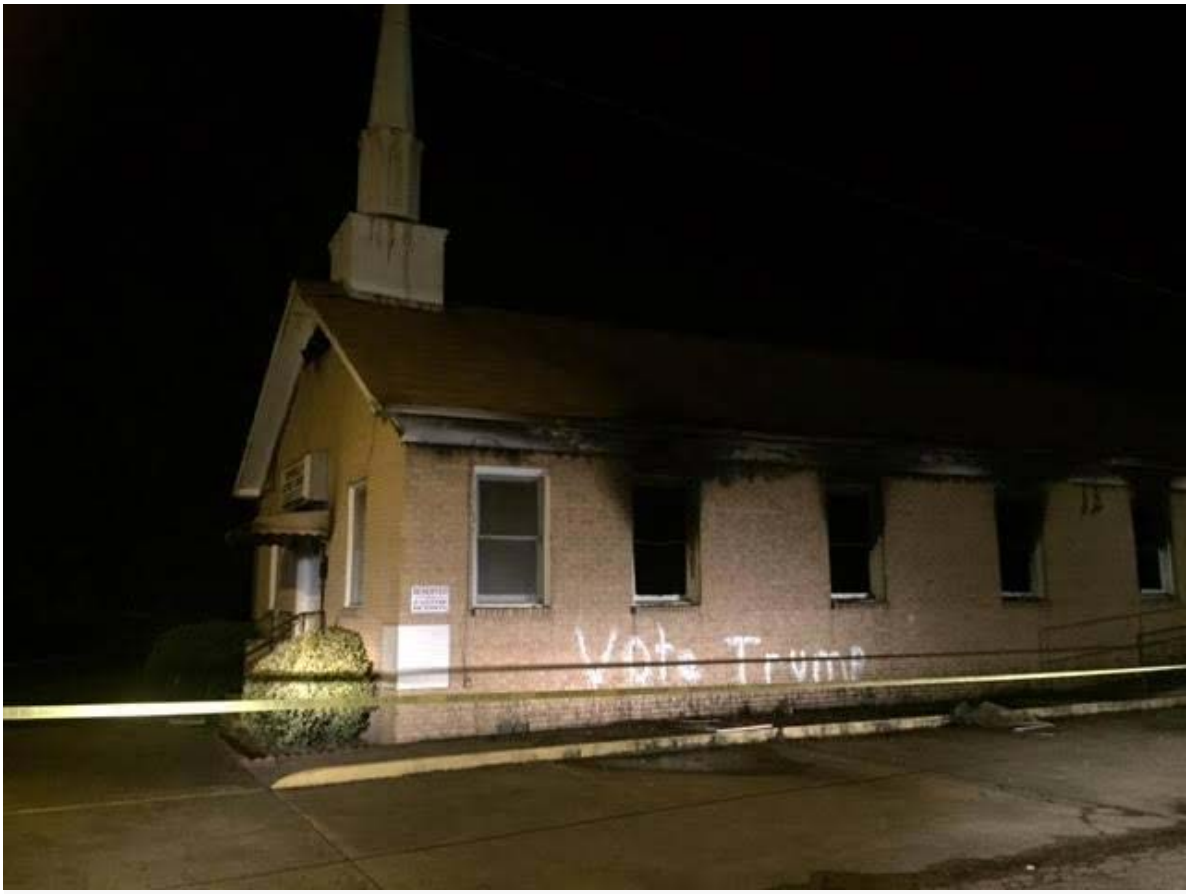
"Maybe they're fearful that their face is going to be plastered up there, maybe they're fearful, especially if it’s anti-Muslim, they don’t want to be perceived as being pro-Muslim," he said, recounting a recent case where the employees of a restaurant were unwilling to cooperate after a Muslim customer was physically attacked by three other patrons. "That’s kind of something different I hadn’t seen before."

Even if a conviction for a hate crime can be achieved, there is no guarantee that an adequate sentence will be forthcoming. As it stands, sentencing for hate crimes is entirely discretionary and no extra punishment is required to be imposed as it is many states, say, in the case of gang membership. In California, for example, there are mandatory prison sentences for different levels of crimes committed as part of gang activity.

It meant that in San Diego a man only received probation for beating up two African-Americans in his neighborhood bar because they were black. Eight months later, he attacked a Hispanic man in front of his wife and young child, telling him to "get out of the country." Again, the judge

handed down only a probationary sentence. The man was later shot and killed by a Hispanic gang member.

"I don’t think it is [strong enough] especially with what’s happening currently post-election," Garcia said of the current legislation. “I would hope that they would put more teeth into it. I think that would instill a sense of fear in those who are prone to commit these crimes to think 'yeah I'm definitely going to get more penalty if I'm apprehended and prosecuted for these offenses.'"



Hopewell Baptist Church in Greenville, Mississippi, was burned and vandalized with pro-Donald Trump graffiti on Nov. 1, 2016. Photo: Angie Quezada/Delta Daily News

The issue was even more confused before the passing of the 2009 act when there was no single piece of legislation dedicated to hate crimes. Arguing against the act at the time, Sessions, who was denied a federal judgeship by the Senate in 1986 over alleged racist comments, suggested that federal involvement should be limited.

“When we now carve out a different class of people that may also deserve that kind of protection, we need … to explain why these cases are such that they are not being adequately prosecuted by state courts, why they're not being adequately prosecuted throughout the system, and why we need to have the federal government take over prosecutions that they have not taken over before,” Sessions said. “People are concerned with how we are picking and choosing the people who receive the extra protection.”

Michael Lieberman, Washington Counsel for the Anti-Defamation League, helped lead the effort to pass the 2009 act. He said the potential for hate crimes to spark wider public unrest is reason enough for them to be treated as special cases.

“Not that many crimes can result in a riot, but hate crimes can,” he said. “Every major law enforcement organization and every major civil rights organization were on the same side [in supporting the legislation]. These laws really can have a deterrent impact and they really can tamp down community disorders.”

While the recently released FBI data for 2015 demonstrated a worsening problem, the Southern Poverty Law Center's real-time count has illustrated the number of incidents directly related to the election. And the organization, which tracks hate groups, is not alone in its efforts.

Launched in the wake of the spate of reports since the election, Harass Map works closely with research teams at Harvard University, the Massachusetts Institute of Technology and Northeastern University, and relies on individuals to enter reports of incidents that have already been detailed by the media.

“There is a clear and obvious need for us to track the hate crimes and create manageable data in order to affect policy and action,” Vanessa Diaz, a postdoctoral fellow at the University of California, Los Angeles' Bunche Center for African American Studies who co-founded Harass Map, told IBT. “We’re hoping to be able to get help and services to different communities and have the data as a way to affect policy during the Trump presidency. [To use] the data to establish what kind of work

needs to be done to address these concerns, where it needs to be done and for whom it needs to be done."

Sparked into action by such reports, some elected officials have already recognized that work needs to be done. Last week, New York Gov. Andrew Cuomo announced he was creating a special police unit to tackle what he described as an "explosion" in hate crimes since the election.

"The ugly political discourse of the election did not end on Election Day," Cuomo said. "In many ways, it has gotten worse, [turning] into a social crisis that now challenges our identity as a state and as a nation and our people."

Hate Crime Rates in 2015

Source: F.B.I. Uniform Crime Report. As of 2015; refreshed yearly. Show details

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Meanwhile, Sen. Richard Blumenthal of Connecticut has revealed plans to submit legislation mandating tougher sentences for those convicted of hate crimes. Included in his legislation will be incentives and resources for

law enforcement to report hate crimes and a provision allowing victims to report them anonymously.

Extra initiatives have also been launched in recent days in Delaware, Maryland and Massachusetts, while In San Francisco, undercover officers are being sent into neighborhoods to see if they become victims of hate crimes.

In California, Lt. Governor Gavin Newsom has called on local authorities to establish a zero-tolerance approach toward hate in schools. According to the Southern Policy Law Center's data, K-12 schools have been the most common location for incidents of hate, with 183 in the 10 days post-election.

In a survey conducted by the Southern Poverty Law Center of 10,000 teachers, counselors, administrators and other school workers, 90 percent responded that their school's climate had been negatively affected by the results of the election. Eighty percent, meanwhile, reported increased anxiety on the part of students concerned about the impact of the election results on themselves and their families.

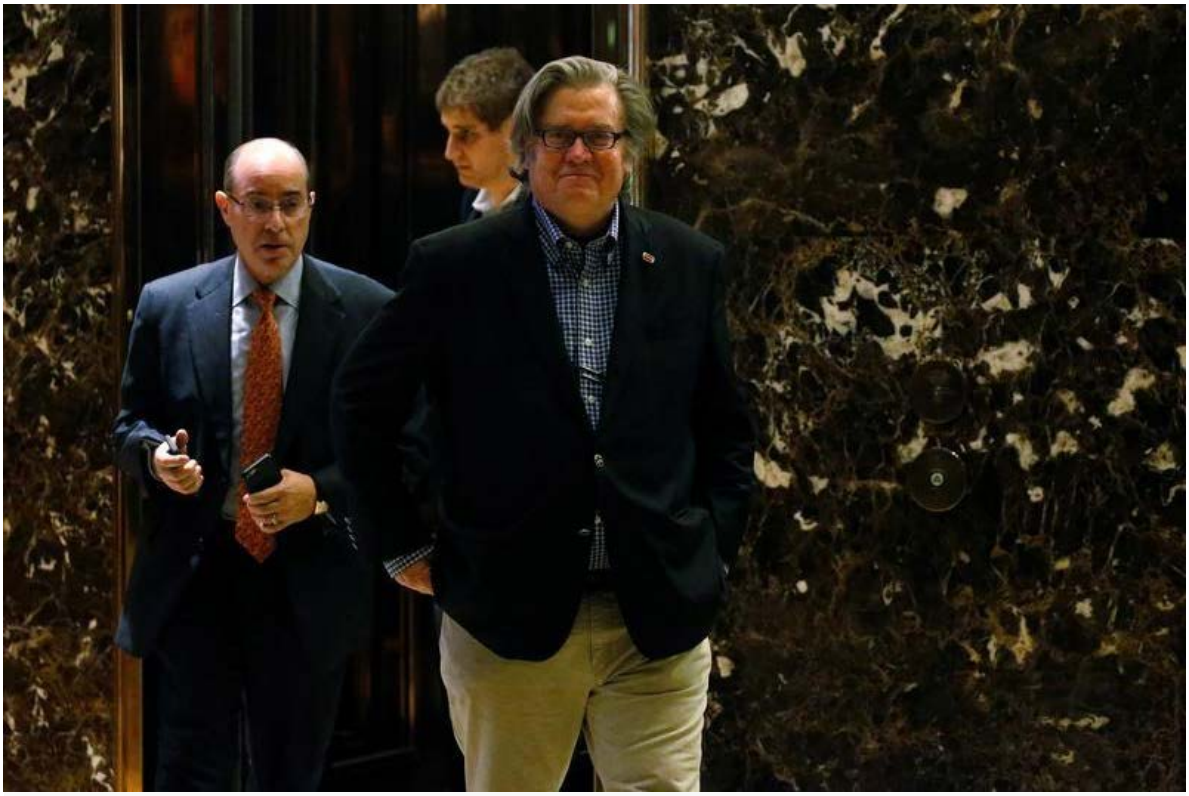
"We're seeing things like middle school students blocking Latino and Latino-looking students from entering a lunch room or a classroom chanting 'build a wall," Diaz said, describing one such reported incident.

Trump has repeatedly promised to build a wall along the entire U.S.-Mexico border. He has also called for a ban on all Muslims entering the U.S., as well as a registry to be set up of Muslims already in the country and strict surveillance of mosques.

"I think it has evoked a lot of fear," Corey Saylor, director of the department to monitor and combat Islamophobia at the Council on American-Islamic Relations, said. "Parents in particular. I'm hearing from a lot of parents, whose kids are coming to them, [saying] 'When are the camps coming? Are we going to be deported?'"

Trump's actions since the election have done little to calm those fears. As well as the selection of Sessions, the Republican has appointed Steve

Bannon, the head of Breitbart Media, which he once called a "platform for the alt-right," an offshoot of conservatism combining white nationalism, racism and populism.



Campaign CEO Stephen Bannon departs the offices of Republican president-elect DonaldTrump at Trump Tower in New York, New York, Nov. 11, 2016. Photo: Reuters/Carlo Allegri

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"What we've seen is people feeling like they are able to publicly express hatred of any minority at all," Potok said. "It's as if Pandora's Box has been opened and these beasts have come leaping out. It's celebratory violence announcing the arrival of white nationalists, or their friends at least, in the White House."

The Southern Poverty Law Center said it has so far received around 675,000 signatures on petitions calling on Trump to rescind his appointment of Bannon and to distance himself from white nationalists.

For his part, Lieberman, of the Anti-Defamation League, insists he and others are ready to hold Trump's administration and, in particular, Sessions, to account over their handling of hate crimes.

"Enforcement of civil rights laws should not be a discretionary thing that some people think is a good idea and others don't," Lieberman said. "These are the laws of the land and we're going to work as hard as we possibly can to hold any confirmed attorney general to full and fair enforcement of the full range of civil rights laws."

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