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Remarks of

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"Hate in the Information Age"
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"Hate on the Internet and the American Legal System"

Good morning. My name is Mark Potok. I work at the Southern Poverty Law Center, a civil rights organization located in Montgomery, Alabama, in the United States. At the Center, we have been tracking, studying and initiating civil lawsuits against extremist hate groups for the last two decades. During this time, we have built the largest data base on these groups and their activities in the world. In order to educate the public and law enforcement about the nature of white supremacist and other hate groups, we publish the *Intelligence Report*, and send it free to almost 50,000 law enforcement officers, among others. A large part of my job at the Center is editing the *Intelligence Report*.

Over the last 20 years, the Center has developed strategies for successfully suing hate groups and their leaders for the criminal activities of their members. These suits, brought on behalf of the victims of hate groups, have effectively put a number of hate groups in the United States out of business. At the moment, we are preparing to go to trial in two cases – one against a neo-Nazi group known as Aryan Nations and another against one of the largest Klan groups now operating in the United States, the American Knights of the Ku Klux Klan.

We are here today to discuss the role of the Internet in promoting intolerance and to examine potential legal remedies to address the problem. In the past few years, the Center has been intensively monitoring the Internet and the increasingly important role it plays in recruitment and propagandizing for hate groups. We have seen how this technology has been adopted wholesale by such groups, and the remarkable and unprecedented access this has afforded these groups to

teenagers and other potential recruits, both in the United States and in Europe. This access is all the more frightening because of changes in how the Western world parents its children.

When I was a child growing up in rural Vermont in the northeastern United States, misbehaving children were typically sent to their rooms to consider, in isolation, the error of their ways. Today, when parents send an errant child to his bedroom, little Johnny is not alone. With a few clicks of his computer mouse, he can join a large crowd of people who want to be his friends. He meets them in Internet chat rooms, on Web pages where their propaganda is posted, on E-mail lists where messages are forwarded to large groups of people. Too often, what these "friends" are offering up to Johnny -- whose parents today are often both working, or too busy to monitor his activities closely -- is a smorgasbord of violent hate propaganda. The people who want to talk to our children are Tom Metzger, the head of the racist White Aryan Resistance in California, Matt Hale, leader of the neo-Nazi World Church of the Creator, and a host of other professional white supremacists and revolutionaries. And English isn't the only language they're communicating in. A growing number of American hate sites are posting materials in German, French, Swedish and other languages. In some cases, sites run by European groups are hosted on U.S. servers to avoid European speech laws.

Although American extremists dabbled with crude computer bulletin boards during the late 1980s and early 1990s – mainly as a means of internal communication -- it was not until March 1995 that the first World Wide Web hate site went up. The site was known as Stormfront. It was run by former Klansman Don Black, who had earlier served time in federal prison for plotting to invade a small Caribbean island. Black correctly foresaw that the Internet would allow hate groups to directly reach millions of people for the first time, and indeed, a veritable explosion of hate sites followed. By early this year, the annual count of hate sites conducted by the Southern Poverty Law Center -- including only U.S.-based sites with explicitly hateful material – had reached 305.

The leading reason for this growth is obvious. A few years ago, a Klansman needed to put out substantial effort and money to produce and distribute a shoddy pamphlet that might reach a few hundred people. Today, with a $500 computer and negligible other costs, that same Klansman can put up a slickly produced Web site with a potential audience in the millions.

In the 1980s, American groups like the White Aryan Resistance tried to recruit racist Skinheads as the "shock troops" of the movement. The result was a number of deaths and a larger number of people hurt -- but no real advancement of white supremacy as a political movement.

Today, the aging cadre of white supremacist leaders recognize this lack of progress and are concentrating instead on a different kind of youthful recruit: the bright, college-bound teenager who is seen as a potential leader and movement-builder of tomorrow. The Net gives racists unprecedented access to precisely these teens, who live in their parents' homes and have computers in their bedrooms.

These children are largely middle- and upper-middle-class youths who wouldn't be caught dead at a Klan rally -- or whose parents would make sure they weren't. The Net, with its promise of privacy, lowers any social inhibitions they might have had about consorting openly with racists and other haters. Where these teens would likely have met social disapproval if they expressed anti-Semitic or racist ideas at home or in school, they are able to propound such ideas over the Internet in a welcoming environment. Unlike older forms of debating ideas -- in public forums or classrooms or even over the family dinner table -- talk on the Internet is often limited to those who already agree with one another. There is no real exchange of ideas on www.whitepower.com.

When a teenager visits one of the many Holocaust denial sites, for instance, he or she is not typically confronted with crude expressions of anti-Semitism. Instead, the visitor finds well-written essays by allegedly renowned historians, analyses by a putative gas chamber "expert" concluding that there were no Nazi death camps, and so on. There is nothing to suggest that all serious historians find such theories to be pure malarkey. In the same way, organized white supremacist groups often put up Web materials that portray the groups not as haters, but as simple "white pride" civic groups concerned with social ills. Add to that some of the high-tech bells and whistles these sites often include -- arcade-style games, chat rooms, bulletin boards, music, real-time videos and so on -- and it becomes understandable how these sites can be genuinely attractive, especially for rebellious teens.

Consider, for example, the "Creativity for Children" Web site put up by Matt Hale's neo-Nazi World Church of the Creator. The title page, which says its purpose is to awaken white youth to "our fight," is written in childlike handwriting, a kind of Sesame Street for haters. On another site, you've invited to play "Sieg Heil," a computer game where you become an Aryan hero battling to thwart scientists creating a "cross-bred" race. On a third, you can watch a real video of Skinheads taunting an apparently retarded black man.

A growing number of hate sites are carrying clips or even entire songs from white power bands. You can't find this kind of music, which features extremely racist and violent lyrics, in your

local record store. But you can hear tracks from many of these CDs by visiting certain Web sites, and you can order them over the Net. Along with the propaganda found on hate sites, this racist music -- some 50,000 CDs of which are sold in the United States annually -- can be very effective at reaching young people. There are reports that the two students who attacked Columbine High School last spring were fans of "extreme music" genres known as Gothic/Black Metal/Death Metal, music that was always violent and rebellious, but which today is increasingly influenced by white power themes. It seems clear that the Columbine killers found plans for building pipe bombs and other weapons on the Internet.

The growth of hate on the Net is not close to peaking. The cost of computers continues to fall, and access to the Net continues to skyrocket. In 1981, the ARPANET – the predecessor to today's Internet – linked a mere 300 military and educational computers. By 1996, nearly 10 million computers were part of the system. Today, there are about 350 million Internet users worldwide and nearly 8 million Web sites. Within the next five years, the number of Internet users will more than double.

For Americans, the first and most important legal question raised by the appearance of hate and pornographic material on the Internet was how the First Amendment would be applied to cyberspeech. U.S. courts have long distinguished between print and broadcast media. The former is the freer medium, with no prior censorship allowed and broad freedoms to print anything short of criminal threats or materials within the narrow legal definition of "obscenity." (Of course, other laws, such as those surrounding libel and fraud, also are applicable.) But in the case of broadcast media, the courts have traditionally found that the public has an interest in regulating the air waves, largely because of the limited number of broadcast frequencies available and the "invasive" nature of radio and TV (a viewer or listener could easily stumble across unexpected material). Thus, for example, it is permissible to restrict pornographic films on television to late night hours, even if the films do not meet the definition of "obscenity."

How would the Internet be seen? In June 1997, the U.S. Supreme Court voted 7-2 to invalidate portions of the Communications Decency Act (CDA), a law that punished the Internet transmission of "indecent" materials (the material did not have to rise to the level of "obscenity") in a manner that would allow minors to see it. The court rejected the government's arguments that the Net should be as highly regulated as broadcast media, instead seeing it as a "vast democratic for[um]" that more closely resembled print media. It found that the Internet was not "invasive" –

users rarely encounter objectionable content "by accident," and such content is normally preceded by warnings. In short, the Internet received the court's strongest free speech protections.

Because Internet speech is entitled to broad protection under U.S. law, it is clear that general political propaganda on the Internet will not be curbed by American courts. Under American case law, it is perfectly permissible to denigrate racial minorities or even to advocate the violent overthrow of the government some time in the indefinite future or in general terms. Only when advocacy amounts to "incitement to imminent lawless action" can it be punished. And the definition of incitement is extremely narrow. Under American law, it is perfectly legal to advocate the political idea that "all police should be killed." On the other hand, it probably would amount to criminal incitement to tell an excited individual to "go kill that police officer over there."

But while general advocacy is protected, there are limits to certain other forms of speech. In the last few years, we have seen an increasing number of legal cases dealing with threats made over the Internet and related material. The outcome of these cases has made it clear that the protection offered to Internet speech under the First Amendment has its limits.

On Sept. 20, 1996, a former student at the University of California at Irvine sent an E-mail message to 62 Asian students. It said, in part, "I personally will make it my life career to kill everyone of you personally. OK? That's how determined I am," and was signed, "Asian Hater." The case brought against Richard Machado, then 19, was the first U.S. prosecution of an E-mail threat.

Machado was initially tried on 10 counts of interfering with a federally protected activity – in this case, going to school. The charges were brought under the auspices of the federal Hate Crime Sentencing Enhancement Act of 1994, which increases penalties for crimes committed on the basis of certain status characteristics like race. Although the first case resulted in a mistrial, Machado was eventually convicted of two misdemeanor counts and sentenced to a year in prison. Legal analysts said later that the case showed that threats made on the Internet were no different than those made by telephone or mail.

Some analysts support the idea of new legislation that would increase penalties for threats made over the Internet. Although he has not personally endorsed that position, Michael Gennaco, who prosecuted Machado for the federal government, has sounded some of the arguments for doing so. Gennaco argues that E-mail threats are "particularly frightening." The victims, he points out, receive the messages almost instantaneously and know their tormentor is thinking of them at

that very moment. Because the threat is not accompanied by any visual cues like body language, it is difficult to gauge its seriousness. Others point out that E-mail threats are particularly easy to send out in mass quantities.

In any event, the Machado case was followed by others – a disproportionate number of which seemed to occur on or around college campuses. Just months after winning the Machado conviction in 1998, the federal government prosecuted the sender of anti-Hispanic E-mail death threats to 67 students and employees of California State University in Los Angeles, the Massachusetts Institute of Technology and other institutions. Eventually, Kingman Quon, an Asian-American student, was convicted of sending the E-mail, which said, in part, "I hate your race. I want you all to die. … I'm going to come down and kill your wetback, affirmative action ass." Quon was sentenced to serve two years in federal prison.

Last year, a federal court in Oregon ruled on an Internet lawsuit that may signal the beginning of an expansive view of what constitutes a "threat" over the Internet. The suit was filed by Planned Parenthood, an abortion rights group, and several physicians who provide abortions. It targeted 12 hard-line abortion opponents for helping to create printed "Wanted" posters featuring abortion doctors and an Internet site called "The Nuremberg Files." The site, amid graphics of dripping blood, carried a list of some 225 abortion providers and, in many cases, their home addresses, phone numbers, automobile descriptions and license numbers, and other personal details clearly helpful to anyone who wanted to kill them. When an abortion doctor was killed – seven have been murdered in the United States since 1993 – a line was drawn through his name. Those wounded had their names listed in gray. While the site and posters did not specifically advocate murder, the site was linked to a letter from a convicted doctor-killer describing the joy he felt when murdering his victim. The theory of the lawsuit was that publicizing the names of doctors violated a federal law meant to protect the public's access to abortion facilities. The defense called it free speech.

In hearing the case, the federal judge said that jurors should consider the "alleged threats … in light of their entire factual context, including the surrounding events and the reaction of their listeners." Whether or not the alleged threats were "true threats" would then be determined by the "objective, speaker-based test." That is, the jury would need to decide if a "reasonable" person would foresee that the targets of the "threats" would interpret them as a serious expression of intent to do harm.

The jury thought so. On February 2, 1999, it awarded the plaintiffs a $107.9 million judgment –- whopping, even by American standards. The judge who presided over the case, Robert E. Jones, said that the "wanted" posters and Web site were "blatant and illegal communication of true threats to kill." In addition to roundly endorsing the jury verdict, he ordered defendants to stop publishing "Wanted" posters and contributing information to the Nuremberg Files Web site. Some think the ruling may be overturned on appeal.

Another Internet case that fell short of an explicit death threat came up in 1998 in Pennsylvania. Former Klansman Ryan Wilson, whose ALPHA HQ site bills itself as "the racial, political/paramilitary arm of the Aryan people," put up a photograph of fair housing advocate Bonnie Jouhari, who is white, and a co-worker. Labeling Jouhari a "race traitor," the site went on to say: "Traitors like this should beware, for in our day, they will be hung from the neck from nearest tree or lamp post." It referred to Jouhari's biracial daughter from a previous marriage, Dani, as a "mongrel." Using computer animation techniques, the site also electronically manipulated a photograph of Jouhari's office – she worked at a local human relations council – to make it appear to be blowing up.

The attorney general of Pennsylvania – the state's top law enforcement officer – filed a civil lawsuit accusing ALPHA HQ and Wilson of publishing terroristic threats, ethnic intimidation and harassment. The state won the case by default in December 1998 after Ryan failed to appear in court, leading to a court order barring Wilson and the site from posting any threats against Jouhari and other human-rights workers in the state. But it was too late for Jouhari. She had fled the state after receiving other threats.

Still, the ALPHA case wasn't over yet. This January, U.S. Housing and Urban Development Secretary Andrew Cuomo, a Cabinet officer in the Clinton Administration, brought criminal civil rights charges against Wilson and ALPHA. Wilson and his group were accused of violating the Fair Housing Act, a federal civil rights statute meant to ensure Americans equal access to housing. Part of Jouhari's job, Cuomo noted, was helping people file discrimination complaints under the housing act. Intimidating her, officials say, effectively amounted to interfering with others' federal fair housing rights. The charge against Wilson carries fines of at least $22,000 plus compensation for Jouhari.

The case – believed to be the first time a federal agency has acted to bring criminal charges against a Web hate site operator -- is set for trial on April 18.

Other cases like these have been cropping up around the nation. In January, for instance, state officials began an investigation after Mississippi Klan leader Jimmie Maxey allegedly posted a message about state Attorney General Michael Moore on the site of the Alabama White Knights of the Ku Klux Klan. The message attacked Moore for reopening an old case against a leading Klansman of the 1960s, adding, "it is Moore who has earned the death sentence for treason against the white race." Shortly after the posting was found, state investigators searched Maxey's home and confiscated his computer.

Legislative bodies as well as the courts have tried to tackle the problems posed by hate speech on the Internet. In the last year, U.S. senators have attempted – unsuccessfully so far –- to force public libraries to use Internet filtering software capable of screening out hate and pornography sites on computers used by children; to require Internet service providers (ISPs) to offer such software to their customers free or at cost; and to make it a crime to 'teach or demonstrate" how to make explosives and other destructive devices. The state of Arizona, on the other hand, did pass a law in 1999 that mandates that public schools and libraries use filtering software. The institutions will be required to either put software on their computers or buy Internet access from an ISP that provides software.

This completes a survey of the major legal issues currently surrounding the Internet and hate sites and propaganda in America. Although the U.S. Supreme Court has said that the Internet is more like the print media than the broadcast media for First Amendment purposes, the contours of the law are by no means settled. As the Internet becomes more and more pervasive, more cases like the Planned Parenthood case in Oregon and the ALPHA HQ case in Pennsylvania will test the boundaries of the law, and more legislative initiatives can be expected.

What can be done about hate on the Net, aside from the legal remedies discussed in this paper? One approach is that taken by companies and nonprofit agencies that have developed software designed to filter out hate sites. But these software developers are probably fighting a losing battle. Hate sites today are frequently booted off private servers with "no-hate" policies like America On-Line, and so their Web addresses tend to change very frequently as they move around to new servers. This means that constant changes are required to update the filtering software, which in turn requires a large force of programmers and monitors. Even if the programmers could keep up, the fact is that many computer-savvy teens are probably going to be capable of finding technical ways of getting around the filters.

Finally, one can ask parents to monitor every moment their kids are on the Net, but this is, I think, unrealistic. With large numbers of single-parent families, with a huge proportion of women now members of the work force, and with people in general working longer hours to make ends meet, it is difficult to picture the parent who has time to keep track of all his or her child's Net explorations.

The only real inoculation is communication. Parents need to talk to their children about these sites and what they represent. Hate sites that claim there was no Holocaust, for example, can serve as a catalyst for a discussion of what Nazi Germany was all about. Extreme homophobia like that displayed on www.godhatesfags.com can be used to talk about sexual differences between people. The alternative is to try to ignore these sites and to hope your child does not come across them -- a hope that is increasingly unrealistic. History shows us that ignoring ugly social problems like racism does not make them go away. On the contrary, burying one's head in the sand is a sure way to guarantee the spread of hate.