

**Keynote Address of Matt Nosanchuk,
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Hate Crimes Training for Puerto Rico Prosecutors
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Thank you, Reinaldo, for the introduction. I want to offer a special thanks to Attorney General Somoza-Colombani and Sub-Secretary of Justice Eda Serrano for their support of this conference. I also want to thank Reinaldo Rivera and Linda Ortiz for organizing today's important conference, and I would like to recognize the Community Relations Service for its outstanding work. We have been talking about having this conference now for well over a year as another in a series of trainings for law enforcement and community stakeholders on hate crimes enforcement and, in particular, the provisions of the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act. I am honored to have the opportunity today to come before you to represent the Justice Department's Civil Rights Division and discuss one of our highest priorities – hate crimes prevention and enforcement.

In the Civil Rights Division, our work is grounded in three basic principles:

- We expand opportunity and access for all people.
- We ensure that the fundamental infrastructure of democracy is in place – by protecting the right to vote, and by ensuring that communities – including this one – have effective and democratically accountable policing.
- We protect the most vulnerable among us by ensuring they can live in their communities free from fear of exploitation, discrimination and violence.

Using our existing authorities, the Civil Rights Division has confronted the pressing civil rights challenges of the day – in the 1960s that meant combating the vestiges of Jim Crow throughout the South. Today, there are new challenges. These include using our existing authorities to protect students in school from being subjected to severe and pervasive harassment because of their race, religion, national origin, disability, gender, and, in the case of lesbian, gay, bisexual and transgender students, their gender non-conformity.

One of our longstanding responsibilities in the Civil Rights Division, however, is one that still keeps us far too busy today – hate crimes.

We have seen firsthand the devastating impact of hate crimes – and not only on victims and their families. We understand all too well how acts of bigotry can tear entire communities apart. Hate crimes reflect a cancer of the soul, and remind us in the most vicious way possible that we have not yet achieved the ideal of equal justice for all.

When it comes to hate crimes, the more things change, the more they stay the same. Hate-fueled violence continues to plague so many communities across our country. Brutal assaults made more vicious by racial epithets still occur in big cities and small towns. Crosses are still burned on the lawns of people minding their own business. Mosques, synagogues and churches are still burned. Lesbian, gay, bisexual, transgender and transsexual (LGBTT) individuals have been

brutally attacked and in depraved and wanton attacks in communities throughout the nation. Incidents that belong only in our history books still show up in the pages of our daily newspapers.

The FBI reports that in 2010 there were more than 6,600 hate crime incidents reported nationwide. Comparing year by year there has been an increase in sexual orientation discrimination as well as ethnicity/national origin discrimination. From 2005 to 2010, for example, reported hate crimes against LGBT individuals went up by more than 3.5% as a percentage of the total, from 1,017 incidents to 1,277 incidents. And that is only the hate crimes that were reported.

The facts of these cases are shocking.

Take, for example, Monday's verdict in Houston. One of the watershed moments in the civil rights movement occurred when Rosa Parks refused to give up her seat on the bus to a white person and move to the back of the bus, reserved for coloreds only. Her act of defiance, more than half-a-century ago, led to the Montgomery Bus Boycott and altered the course of history. Well, more than 50 years later in Houston, a 29-year-old African-American man didn't even have the chance to board the bus in the first place. While waiting for the bus, the victim was approached by a group of men with white supremacist tattoos who violently attacked him. Two of the men used a racial slur to refer to the victim during the attack, surrounded him and proceeded to punch and kick his face and body. On Monday, a jury found three men guilty of violating the new Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act, and they now each face up to 10 years in prison for this bus stop attack.

In fact, the Justice Department prosecutor who tried the case, Gerry Hogan, was originally scheduled to be here today to participate in the training conference, but the trial prevented him from coming and he sends his regrets at not being able to join all of you here today, but as you'll soon find out when you hear from Jessie Ginsburg, he sent the A-team in his place.

Or take the father and son team in South Carolina who, with a friend, pled guilty to chasing an African American man from a convenience store and threatening him with a *chainsaw*, and then attacking others who tried to help the victim.

Prosecuting hate crimes therefore is a top priority for this President, this Attorney General and the Civil Rights Division. We have ramped up our efforts to prosecute hate crimes, and last year we topped the number of defendants charged and convicted in the previous year.

These crimes are not restricted to a single region. They continue to afflict people across the nation, from California to Maine, from Alabama to Alaska, and from Hawa'ii to Puerto Rico.

And they impact different communities.

In 2009, President Obama signed into law the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act. To say this act was long in the making would be an understatement. Working

on the Hill before I joined the administration and here at the Justice Department, I was involved in the effort to secure this landmark legislation – and it took more than a decade to get it on the President’s desk.

Let me tell you about the two people after whom the Act was named. James Byrd, Jr. was a 49-year-old African-American man living in Jasper, Texas. On June 7, 1998, he accepted a ride home from three men. Instead of taking him home, they drove him to the remote edge of town where they proceeded to beat him severely, urinate on him, and chain him by the ankles to the back of a pickup truck. Then they drove the pickup truck for three miles, dragging him to his death. An autopsy found that he was conscious while the murderers drove the truck, until his body hit a culvert and he was decapitated.

The three men responsible for this brutal murder-lynching were well-known white supremacists. One of them, John William King, has several racist tattoos and wrote a letter to another of the defendants, Lawrence Russell Brewer, expressing pride in the crime. Both of them were convicted of murder and sentenced to death. This past September, Brewer was executed by lethal injection and right before his death he told a Houston TV station that he had no regrets and would do it all over again.

Matthew Shepard was a 21-year-old gay man studying at the University of Wyoming in Laramie. On October 6, 1998, he went to a local bar, where he met Russell Henderson and Aaron McKinney. The two men offered Matthew a ride home, but instead of taking him there, they drove him in their pickup truck to a remote area outside of town, where he was whipped with the butt of a .357 Magnum, tortured, and tied to a fence and left to die. Some 18 hours later and in a coma, he was discovered by a passer-by. He was taken to a hospital in Fort Collins, Colorado, but because of the severe brain damage and other wounds, doctors were unable to operate, and Matthew remained unconscious and on life support and died six days later.

Henderson pled guilty and testified against McKinney, who was tried and convicted for felony-murder. There was evidence that McKinney and Henderson targeted Matthew because he was gay and McKinney even tried to claim the so-called gay panic defense – claiming that he was rendered temporarily insane by an unwanted sexual advance by Shepard. Because the Shepards decided not to seek the death penalty; both men remain in prison for life.

Were it not for Matthew’s courageous parents – Judy and Dennis Shepard – who made passage of a federal hate crimes law that covers sexual orientation and gender identity their life’s mission during the decade following Matthew’s murder, we might not have a federal hate crimes law today. Their courage to stand up for what is just and what is right – in the face of the incomparable loss of a child – is both an inspiration and a reminder to us all that, as President Obama once said, we are the change we have been waiting for. As law enforcement officers, we have a responsibility to the people we have pledged to protect to do our part to respond to hate-fueled violence when it occurs.

And while the men responsible for the Byrd and Shepard murders were convicted of murder, none of them were prosecuted for committing a hate crime, because neither state had a hate

crimes law at the time the murders occurred. In fact, Wyoming still has no hate crimes law. That meant that an essential part of what happened to James Byrd, Jr. and Matthew Shepard – indeed the very reasons for the attacks – were not fully considered in connection with the crimes.

Hate crimes are different from crimes of opportunity, and throughout a democratic and diverse nation like ours, we all must be able to live and work in our communities without fear being attacked because of what we look like, what we believe where we come from, or who we love. And anyone who is depraved enough to commit such attacks must know that there will be consequences for violently attacking others based on hateful beliefs.

As the LGBTTT community here in Puerto Rico knows all too well, hate crimes also victimize entire communities. These senseless attacks, if they can happen to a neighbor, colleague, friend, or family member, can happen to anyone, which is why it is so important for communities to have confidence that the law enforcement officials who are committed to protecting the community take hate crimes seriously, doing all they can to prevent them from occurring and prosecuting the perpetrators for committing these violent acts when they do.

Prosecuting a case as a hate crime also guards against any revisionist history or collective amnesia. Last year, I had the opportunity to partner with the theater company that produced the plays about Laramie, Wyoming in the wake of Matthew's murder – "The Laramie Project" and "The Laramie Project, Ten Years Later." Both plays were based on individual interviews conducted in Laramie with a range of residents who discussed Matthew and the impact his murder had on the community.

When the theater company returned to Laramie a decade after Matthew's death to research "The Laramie Project, Ten Years Later," they found more than a few residents who asked them why they were dredging up that unpleasant memory and, in any event, Matthew's murder was really just a crime of opportunity committed by a couple of meth addicts who wanted his money or his sneakers. Had there been a hate crimes conviction in Matthew Shepard's case, it would have created a permanent record that Matthew's murder was indisputably a hate crime.

As Jessie Ginsburg will tell you, the new law, 18 U.S.C. Section 249, enables us to prosecute cases involving hate crimes motivated by race, ethnicity, religion and national origin without having to show that the defendant was engaged in a federally protected activity, which is what is required under the hate crimes statute, 18 U.S.C. Section 245, which was passed shortly after the assassination of the Reverend Martin Luther King, Jr.

And the new law now empowers the Justice Department and U.S. Attorneys to prosecute, for the first time, hate crimes committed because of a person's sexual orientation, gender, gender identity or disability.

The law is remarkable not only because of the new protections it provides, but because it marks the first time that the words, "sexual orientation" and "gender identity" appear in the U.S. Code to protect the civil rights of LGBT individuals.

The responsibility to enforce the new law belongs principally to the Criminal Section of the Civil Rights Division, and we are working closely with the FBI's Civil Rights Unit and U.S. Attorney's offices throughout the nation to inform federal, state and local law enforcement about the law's new provisions. We've held dozens of trainings throughout the country to engage law enforcement and community leaders about the law's provisions, and to ensure that first responders – and we have a number of first responders with us here today – are prepared to effectively investigate hate crimes based on the victim's actual or perceived sexual orientation and gender identity.

In our trainings on the new law, we have been fortunate to have the participation of Matthew Shepard's parents and Sheriff Dave O'Malley, who was the police chief in Laramie at the time of Matthew's murder and oversaw the investigation. Sheriff Dave has been an especially compelling speaker at these conferences, because he describes the evolution of his own thinking and attitudes. Before Matthew's murder, he was a homophobic guy who didn't think there was any such thing as a hate crime. But his experience overseeing the police investigation of the case opened his eyes and converted him into a champion for a federal hate crimes law, and he agreed to travel all over the country for us to motivate his colleagues in law enforcement to examine their own biases and take combat hate crimes prevention and enforcement as seriously as he does.

So far, the Division has indicted nine cases charging a total of thirty-four defendants, and convicted fifteen defendants under the law. And as we speak, Justice Department investigators are examining a number of open matters every part of the law, including the provisions protecting those victimized because of their actual or perceived sexual orientation or gender identity.

With respect to prosecutions, it was at a training conference like this one – held in Little Rock, Arkansas in the summer of 2010 – where a local police officer who attended learned enough about the Shepard-Byrd law to report an incident to the FBI that became the first case under the Shepard-Byrd law resulting in a trial and conviction.

The defendants targeted five Hispanic men who had pulled into a gas station. After the victims left the gas station the defendants pursued them, threatened them by waving a tire wrench from the truck and hurled racial epithets. They ran into the victims' car repeatedly, causing the victims' car to cross into oncoming traffic, skid off the road, crash into a tree and ignite. The victims sustained serious injuries but luckily there were no fatalities. And the defendants' hatred was matched only by their stupidity, because they were apprehended when their car ran out of gas after the incident.

We will vigorously enforce the law whether the target of hate was a single individual or the targets were the many racial minorities who were among the 2,000 people attending the Martin Luther King, Jr. Unity March this past January in Tacoma, Washington. They were the intended victims of a bomb placed alongside the parade route by Kevin Harpham, a white supremacist. A prototypical lone wolf, there was nothing foreshadowing his planned attack, but through the vigilance of everyday citizens, and close cooperation among federal, state and local law

enforcement officials, the plan unraveled and Harpham was brought swiftly to justice on charges that included the Shepard-Byrd law. On December 20, Harpham was sentenced to 32 years in prison and court supervision for the rest of his life.

Then there are two recent cases that chillingly echo the James Byrd, Jr., and Matthew Shepard cases themselves.

Last month, three young men in Jackson, Mississippi pled guilty in the brutal murder of a 47-year-old African-American man. On a number of occasions the young men drove around Jackson looking for African-Americans to assault and on a fateful day in June 2011, James Craig Anderson was in the wrong place at the wrong time. The men surrounded him, waited for one of the other defendants to arrive and ran over Anderson in their Ford pickup, bragging about it on a cellphone afterwards. The case is a shocking reminder of how hate-fueled violence still manifests itself in unthinkable ways today.

And last week, the Department achieved a significant milestone with the announcement of the first Shepard-Byrd Act prosecution involving an attack on an LGBT victim in Harlan County, Kentucky. According to the indictment, the two men charged enlisted the help of two women to lure Kevin Pennington, who is gay, into their truck so that they could transport him to a secluded area and assault him. According to the indictment, the defendants drove Pennington to a secluded area of Kingdom Come State Park and assaulted him. The men are charged both with a hate crime and kidnapping and, if convicted, face a maximum penalty of up to life in prison. The two women have pled guilty to aiding and abetting the hate crime and kidnapping.

As I have said at our trainings, and want to emphasize especially here today, the success of the new law will not be measured by the number of federal prosecutions alone. It will also be measured by the existence of collaboration among federal, state, commonwealth, and local law enforcement to aid states and localities in prosecuting cases under their own laws and hate crimes statutes.

For example, the Justice Department closely monitored the recent prosecution of a defendant from Shreveport, Louisiana, who used a pool cue to attack a gay man in a local club – shouting anti-gay threats before the attack took place. It turned out that the state penalties provided for such offenses were more than double what federal statutes would have allowed. And, as a result – after the defendant pled guilty to aggravated assault and a hate crime under Louisiana state law – he was sentenced to 23 years in prison.

We are also aware of and have been monitoring the numerous incidents of violence that have taken place involving LGBTTT individuals here in Puerto Rico. In fact, I brought colleagues from the Civil Rights Division and FBI together in Washington to meet with a transsexual community advocate from Puerto Rico Washington at the end of January. We heard about the numerous incidents of violence here involving the transsexual community. Today's conference today is just one of the ways that we are following up in response to the significant concerns expressed at that meeting.

We hope that today's training will advance in some way efforts to bring justice for these victims, assure the LGBTTT community that their rights are being safeguarded, their lives are being protected, and steps are being taken to prevent further violence from occurring.

Regardless of whether we use state or federal laws to obtain tough sentences, the prosecution of hate crimes must be one element in a broader effort of community engagement and empowerment. And that is why I am here today. We need prevention, intervention and reporting strategies to move communities forward in a meaningful way.

Those of us working in law enforcement must work together with community leaders to spread tolerance and understanding, and to combat this devastating trend. We must work to eradicate from our communities the kind of ignorance and fear that lead to hateful acts of violence. Of course, when those acts do occur, we must continue to work together to bring justice.

In the case of hate crimes, we cannot bring justice, develop prevention and enforcement strategies, and change a community's climate when we do not recognize or know that a hate crime has occurred. That is why reporting hate crimes is a shared responsibility. There are several facets to reporting. It is vitally important that police departments document hate crimes by voluntarily reporting to the FBI, so that the Bureau can include the incidents in the annual report mandated by the Hate Crimes Statistics Act.

There's progress to report here. In the most recent hate crimes statistics report by the FBI, for 2010, almost 15,000 law enforcement agencies throughout the nation reported hate crimes, the largest number in the 20-year history of the FBI's annual hate crimes report. Yet, only 13 percent of the agencies collecting data reported a single hate crime to the FBI, the lowest number to report one or more hate crimes since the 2002 report. This means that there literally were thousands of law enforcement agencies that did not report hate crimes to the FBI, including three agencies in cities with populations of 250,000 or more, and at least 12 agencies in cities with populations from 100,000 to 250,000.

To give a sense of the disparities, in 2010, law enforcement agencies in California reported 1,331 hate crimes, those in New Jersey reported 557 hate crimes, those in Massachusetts reported 360 hate crimes, agencies in Texas reported 202 hate crimes, those in Illinois reported 116, those in Georgia reported 19, and those in Wyoming reported 2. And in a previous year, Alabama reported 0 hate crimes. We cannot undertake effective prevention or education if we don't understand the scope or nature of hate-motivated attacks.

But law enforcement agencies aren't the only entities with the obligation to report hate crimes. There's another type of reporting that is critical too – the responsibility of individuals and communities to report hate crimes to federal and state law enforcement so that they can be investigated. Victims will be hesitant to report hate crimes to law enforcement agencies if there is a history of mistrust or a sense that the report won't be taken seriously. And we can't investigate a hate crime if we don't even know that one has occurred.

That is why at every one of the training conferences in which we have participated, we have emphasized the importance of reporting.

The bottom line is that all of us have a vital role to play in our nation's continuing effort to protect the rights of all individuals. Our communities are better, fairer, safer, and less violent thanks to our collective efforts to protect civil rights using all of the enforcement and prevention tools at our disposal.

Significant challenges remain, but at the Department of Justice we remain ready and willing to work with you ensure an effective and informed response to hate crimes that occur in Puerto Rico. Thank you for the opportunity to speak to you today and for your commitment to creating a safer, more tolerant nation.