

the opportunity to share the true essence of Hawaii with my colleagues and our fellow citizens on the U.S. mainland. We have the honor and privilege of showing you a bit of Hawaii in Washington, DC, until September 2, 2002, and I invite you to share in this wonderful experience.

Mr. President, I yield the floor.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is now closed.

LOCAL LAW ENFORCEMENT ACT OF 2001

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of S. 625, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 625) to provide Federal assistance to States and local jurisdictions to prosecute hate crimes, and for other purposes.

Pending:

Reid (for Biden) amendment No. 3807, to provide reliable officers, technology, education, community prosecutors, and training in our neighborhoods.

The PRESIDING OFFICER. The Senator from Utah is recognized.

Mr. HATCH. Mr. President, let me begin on a point of common ground. We can—each and every one of us—agree that the actions constituting hate crimes are wrong in all respects. Let me state, unequivocally, that as much as we condemn all crimes, a hate crime can be more sinister than a non-hate crime. And let me state, with equal conviction and clarity, that I care about stamping out hate crimes as much as any member of this body. I think everybody know that.

A crime committed not just to harm an individual, but in order to send a message of hatred to an entire community is appropriately punished more harshly, or in a different manner, than other crimes. This is especially true when the targeted community is defined on the basis of immutable traits. The brutal murders of James Byrd in Jasper, TX, and Matthew Shepard, in Laramie, WY, among others, remain seared into our Nation's conscience because of the savagery they suffered solely because of their attackers' irrational and hateful prejudice. The worse a criminal's motive, the worse the crime, and a unanimous Supreme Court recognized as much in upholding Wisconsin's sentencing enhancement for hate crimes. These same considerations also prompted the U.S. Sentencing Commission to establish a sentencing guideline that provides an enhanced sentence for a Federal defendant whose crime was motivated by hate. These decisions are ones we can all applaud.

Not only are the offenses themselves worse, but hate crimes also are more likely to provoke retaliatory crimes. They inflict deep, lasting and distinct

injuries—some of which never heal—on victims and their family members. They incite community unrest. And, at bottom, they are downright un-American. The melting pot of America is the most successful multiethnic, multiracial, and multifaith country in all of recorded history. We should keep our proud heritage of diversity in mind as we consider the atrocities routinely sanctioned in other countries committed against persons entirely on the basis of their racial, ethnic, or religious identity.

So we all should be able to agree that the battle against hate crimes is and must be America's fight. And despite the often contentious partisan rhetoric surrounding the issue of Federal hate crimes legislation, there exists widespread agreement on these fundamental points: Hate crimes are insidiously harmful, they should be vigorously prosecuted, and the Federal Government has a role to play in reducing the incidence of these crimes in our Nation. The dispute, then, centers not on whether Congress should act in this area, but rather on what should be done at the national level.

There is no dispute that hate crimes themselves often involve particularly horrific facts. They rivet our attention and move us to consider almost any measure that would appear to check such bigotry. But the proposed legislation introduced by my good friend from Massachusetts, S. 625, also brings us face to face with the foundations of our constitutional structure—namely, bedrock principles of Federalism that, for more than 2 centuries, have vested States with the primary responsibility for prosecuting violent crimes committed within their boundaries. And on this point we must be crystal clear: every hate crime—every bit of criminal conduct that S. 625 proposes to federalize—is, and always has been, a crime in every jurisdiction throughout our Nation. The question is not whether these crimes can be prosecuted, but who should prosecute them under our constitutional framework.

In other words, S. 625 brings us to a difficult intersection between our well-intentioned desire to investigate, prosecute, and, hopefully, end these vicious crimes, and our unequivocal duty to respect the constitutional boundaries governing any legislative action that we take. We, who are trusted with the awesome responsibility of making our Nation's laws, must scrupulously abide by the rule of law in this process. Congress has a duty to make sure that the legislation it enacts is constitutional. To shrug off that duty is more than just negligent; it invites trouble and may even solicit scorn. A Supreme Court Justice for whom I have the greatest respect, Justice Scalia, said the following just a few years ago:

My court is fond of saying that acts of Congress come to the court with a presumption of constitutionality. But if Congress is going to take the attitude that it will do anything it can get away with, and let the Supreme

Court worry about the Constitution, perhaps the presumption is unwarranted.

So, while all of us would agree that hate crimes are a problem with which Congress must deal, our focus must be on the appropriate and constitutional means to best accomplish that objective.

In the face of some of the recent hate crimes that have riveted public attention—and have unfortunately made the name James Byrd synonymous with Jasper, TX; and the name Matthew Shepard synonymous with Laramie, WY—I am committed in my view that the Senate must speak out and act against hate crimes.

I have long been on record with my view that the Federal Government can play a valuable role in responding to hate crime. In fact, I sponsored the Hate Crime Statistics Act of 1990. But any Federal response—to be a meaningful and lasting one—must abide by the constitutional limitations imposed on Congress, and be cognizant of the limitations on Congress's enumerated powers that are routinely enforced by the courts. I was a prime sponsor of that bill, and I am proud that I was. It was a bill with a lot of controversy at the time. This is more true today than it would have been even a mere decade ago—ever since the U.S. Supreme Court revisited the Federalism doctrine in a string of decisions beginning in 1992.

Having consistently checked the expansion of Federal jurisdiction in areas traditionally reserved to the States over the past decade, the Supreme Court has cast grave doubt over the legitimacy of S. 625. I am not alone in believing that this bill, if passed into law, will be struck down as an unconstitutional invasion into States' rights. I take no pleasure in holding this view. In fact, I was the primary co-sponsor of the Violence Against Women Act of 1994—a law that created Federal jurisdiction over certain serious acts of violence directed at women. Senator BIDEN was a prime sponsor as well and deserves an awful lot of the credit for that particular bill. I felt strongly about that legislation, and I certainly was not happy to see the Supreme Court strike down a portion of that law as unconstitutional. But I respect, as we all must, the Supreme Court's ruling, and we have a duty to take its lesson to heart—whether or not we personally like them.

So there is a serious constitutional concern with S. 625. But, in the frightening climate of terrorism that we live in today, there is a practical consideration that we also cannot ignore. We must ask ourselves what role our Federal law enforcement agencies should play in violent crimes that historically have been prosecuted by State and local officials. The Federal Bureau of Investigation recently has committed a large number of its agents to work exclusively on terrorism cases. The FBI has shifted its focus away from the investigation of general crimes to the

protection of our homeland security. In my view, this is a step in the right direction. I sincerely hope that everybody in this body, and both bodies, can all agree about that.

Now, more than ever, we can see the line between what is truly national and what is truly local. The question is not just what can we do, but rather, how should we allocate our scarce Federal resources? And what message will we be sending the FBI—who has committed to focus on terrorism—by passing, as historians will no doubt conclude, the greatest expansion of Federal power over crimes traditionally prosecuted by State and local governments?

I have given a great deal of personal thought to this matter in attempting to create a Federal response to hate crimes that would be as effective as possible without implicating the very serious concerns created by S. 625. The amendment I intend to propose before this matter is over is one that I believe would not only solve the problem effectively and pragmatically, but also has the virtue of resting on unquestionably sound constitutional ground.

I care deeply about this issue and am committed to a strong, workable, practical, and constitutional Federal solution. It is precisely because of my commitment to this issue that—in the 2 years since this issue last came to the Senate—I have changed certain aspects of my amendment to strengthen the Federal Government's role in the investigation and prosecution of hate crimes. So, while S. 625 remains in precisely the same form as it was when it was offered as an amendment to the Department of Defense appropriations bill in June 2000—despite the concerns that were raised about its scope and constitutionality—I have worked to change my proposal to make it more aggressive and more acceptable to the supporters of S. 625.

There are two main components to my amendment. First, I would propose creating a meaningful partnership between the Federal Government and the States in combating hate crimes. My amendment would permit the Justice Department to assist State and local authorities in investigating and prosecuting hate crimes by providing Federal manpower as well as financial assistance. The original version of my amendment had capped the amount of Federal grants at \$100,000 per case, but the version I propose today removes that ceiling when the need is greater. My amendment contains a completely new provision that would require the Attorney General to designate one Federal prosecutor in every district to act as the Federal liaison for the State and local prosecutions of hate crimes. That Federal prosecutor, will take an active role in helping States prosecute hate crimes, from seeking Federal wiretaps to Federal search warrants. There simply is no reason to believe that State and local law enforcement officials could not prosecute these sorts of cases

effectively with the type of Federal assistance that my amendment provides.

My amendment directly remedies the primary concern of those who advocate broad Federal jurisdiction over hate crimes. Such a broad power grab is required, the argument goes, because State and local jurisdictions often lack adequate funding or resources to effectively prosecute hate crimes. While the record would seem to indicate that States have effectively shouldered the oar on prosecuting hate crimes, I certainly accept the fact that such highly publicized prosecutions might strain a smaller community's resources. My amendment directly cures that potential problem without displacing States from their traditional role in law enforcement.

Let us not fail to note that the overwhelming successful record of local prosecutions of hate crimes—many in jurisdictions where the death penalty not only was available, but also played a central role in securing justice—should stand as a testament to the fact that wholesale Federal intervention is not warranted. There has never been a showing that State and local law enforcement officials have been ignoring or neglecting—much less intentionally failing—their duty to prosecute these heinous offenses. The truth seems quite to the contrary. State and local authorities effectively investigated and prosecuted those who perpetrated the reprehensible murders of Matthew Shepard and James Byrd, Jr. No Amount of federalization—much less the measures called for in S. 625—would have made these persecutions any more successful.

This raises a point that I frankly find somewhat puzzling. During the last floor debates on this issue, Senators KENNEDY, DURBIN, my good friend, and Senator REID from Nevada—good people who I know genuinely care about this issue—kept bringing up the tragic cases of Matthew Shepard and James Byrd as reasons to support S. 625. Yet those offenders were prosecuted efficiently and effectively and, in my view, appropriately with the death penalty, which was actually the sentence imposed on two of the killers of James Byrd. That is something that just couldn't happen under S. 625, which doesn't even provide for the possibility of the death penalty. So, if anything, the Matthew Shepard and James Byrd cases stand as testament to the fact that federalization of hate crimes is both unwarranted and in the case of S. 625, less effective than current state laws.

In any event, before we take the decidedly broad step of making every criminal offense motivated by hatred a Federal crime, we ought to equip States and localities with the resources necessary so that they can undertake these criminal investigations and prosecutions on their own.

The second major component of my amendment proposes to define the problem more precisely. Before we

swing a broadsword into the constitutionally sensitive area of States' rights, we ought to consider carefully whether a scalpel might do the trick. There is a pile of raw data that has been collected pursuant to the 1990 Hate Crime Statistics Act, including a comparison of the records of different jurisdictions—some with hate crime laws, others without. We need to undertake a comprehensive analysis of that data to determine whether there is, in fact, a problem in certain States' prosecution of hate crimes.

Some 45 States and the District of Columbia already have enacted hate crimes laws, and by any measure, they are aggressively and effectively prosecuting these cases. I am certainly open to being persuaded that the States are failing to prosecute these crimes. But neither S. 625 nor the record developed in support of this legislation appear to make such a case. Analyzing the statistics that already exist to see whether there is a real, verifiable problem with state and local enforcement of hate crimes is a simple, efficient and responsible first step that we, as lawmakers, should take before enacting such sweeping legislation.

In sum, we have widespread agreement that the Federal Government must play a role in our Nation's efforts against hate crimes. The role we define must also respect the Constitution and the structure of our government—a structure that, since the inception of our country, assigns to the States the primary role in criminal law enforcement.

Rather than take a precipitous step that would potentially make every criminal offense motivated by a hatred a Federal offense, we should equip States and localities with the resources necessary to undertake these criminal investigations and prosecutions on their own. At the same time, we should undertake a comprehensive analysis of the raw data that has been collected pursuant to the 1990 act.

My amendment is a measured legislative response that would accomplish the goal of letting no hate crime go unpunished—without bearing any risk of being struck down as unconstitutional by the Supreme Court. It is legislation that could and probably would pass into law. We know that S. 625, as written has no chance of enactment. The House will not take this amendments. It simply has too many problems. I hope it is not presented just for political reasons. Instead of having a political issue, we should take a realistic and responsible step toward addressing this problem, which would be passing my version of this legislation.

Mr. President, as we know, on Friday, immediately after calling up S. 625, the hate crimes bill, the Democratic leadership filed for cloture. This was done for the sole reason of thwarting any meaningful debate on a bill that seeks to overhaul and expand thoroughly the role the Federal Government plays in law enforcement.

I agree wholeheartedly that Senator KENNEDY's bill, S. 625, is an important piece of legislation that deserves consideration in the Senate. In the past, I too have introduced competing legislation addressing hate crimes. As someone who has remained as involved in this issue as Senator KENNEDY, at a minimum, I deserve the opportunity to offer amendments relevant to the discussion of hate crimes and to improve this bill. I believe my amendments will in fact improve this bill as it reads currently. Moreover, I believe that a majority of my colleagues not only want to consider these amendments, I believe they would approve of my amendments.

Protecting the safety and rights of all Americans is of paramount concern to all Senators. There are, however, many thoughts as to how to provide this protection. No one is threatening to filibuster this bill. My colleagues and I are honestly trying to force a debate on an issue that affects all Americans. It is curious to me why the Democrats are trying to prevent a substantive debate on hate crimes from going forward. By preventing amendments from being offered and considered, the Democrats are shutting the door on any Republican ideas or alternatives, however constructive they may be.

All Senators have the right to consider thoughtfully legislation that will impact significantly how serious crimes are prosecuted in this country. By filing for closure prematurely, the Democratic leadership is prohibiting Senators the right to debate and have a vote on issues that are important to them and the constituents of their States. It is unconscionable to prevent debate on such an important issue. I ask the Democratic leadership to rethink this position, and I ask Senators to oppose cloture and allow us to consider a reasonable amount of amendments to improve this bill.

I will certainly make every effort to keep the amount of those amendments very limited so that this particular debate does not have to go on and on. I hope we will be able to get that done. I noticed S. 625 not only substantially expands current authority over hate crimes, it adds a number of provisions over what we had at least attempted to do before.

Under current Federal law, it is important to note that it is unlawful to injure, intimidate, or interfere with any person because of his or her race, color, religion or national origin. That is the law today. That has been upheld as constitutional. If the person is participating in certain federally protected activities such as attending school, serving as a juror, traveling in interstate commerce, using public accommodations, or working, that person is protected against injury, intimidation, or interference because of race, color, religion or national origin.

Since 1994, Federal law has required a heavier sentence for persons convicted

of hate crimes. We have already gone a long way to do that.

We will put in the RECORD before this debate is over some of the statistics that have been presented as to whether or not hate crimes, as defined narrowly, are really a significant percentage of crimes that are committed in this country. My attitude is, if one is committed, it is a significant percentage, but we have to be practical as well. It seems to me, since there is no showing—at least there has not been up to this date—that the State and local law enforcement jurisdictions are failing to prosecute hate crimes and prosecute them with vigor, it seems to me we are going too far with S. 625.

I hope our colleagues will pay attention. I think we could really wind up not doing as much against hate crimes as we could if we would make a real effort to try to bring both bodies together. I would like to get this problem solved once and for all, and I would like to do it in a way the vast majority of us can support because I think the vast majority of Members of Congress will support a reasonably written, effective hate crime statute that does not take away the responsibilities of the State and local governments and law enforcement people to prosecute these matters.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I say to the distinguished senior Senator from Utah, this legislation has already passed the House—232 Members voted for it; in the Senate, 61, almost identical legislation.

The question was raised as to why there was an effort made to move forward on cloture on this bill. We have lots of things to do. When it was reported in the Congressional Quarterly last Friday morning that they, the Republicans, were going to file 40 to 50 amendments just to slow down the train on this legislation, and they had a wide range of subject matters on all the amendments they were going to file, none of which were related to this hate crime legislation, the majority leader felt we had to move on. That is why the cloture motion was filed.

I also say to my friend, the former chairman of the Judiciary Committee, someone who is certainly knowledgeable of things legal in nature, if cloture is invoked, there is still every opportunity, up to 30 hours, to file any germane amendments. I would say if the Senator wants to improve this legislation, it would have to be with germane amendments, not nongermane amendments. So I hope we can move along. I hope cloture is invoked. The majority leader would be happy to work with the Republicans to come up with legislation they believe is better. But this is a matter that has already moved in both bodies of Congress. We should move forward with it.

AMENDMENT NO. 3807 WITHDRAWN

Mr. REID. Mr. President, I withdraw amendment No. 3807.

The PRESIDING OFFICER. The Senator has that right. The amendment is now withdrawn.

Mr. REID. I thank the Chair.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Mr. President, I would like to speak to this legislation. First of all, I compliment the ranking member on the Judiciary Committee for the points he made, with which I am in agreement. Recall, this bill federalizes two new hate crimes, adding gender and sexual orientation and disability to existing law. It is a far-reaching proposal.

I am sorry, I cannot accept the excuse that has just been proffered by the assistant majority leader with respect to why cloture was filed on this bill some 14 minutes after the bill was brought to the Senate floor. This is unprecedented. With all due respect, I characterize it as a gag rule on Senators, unprecedented in the way the Senate ordinarily, traditionally acts.

As a matter of comity to Members, it is traditional that Members are allowed to debate and offer amendments to legislation. Only rarely is cloture filed—ordinarily, after there has been an attempt to filibuster a bill. The majority then rightly has the opportunity to bring that debate to a close if enough Members are in agreement to do so. It is very rare cloture motions would be filed immediately after bringing the bill to the floor. This does not give Members enough time to debate the bill or offer amendments and have those amendments voted upon. The reason proffered by the distinguished Senator from Nevada was that they had read in a publication that Republican Senators intended to file some 40 amendments to the bill. I suggest that is not appropriate as a reason for immediately invoking cloture. To my knowledge, it has never been done when the Republican majority introduced bills to the floor.

I remember on one occasion a cloture motion was filed almost immediately and there was a great hue and cry from the other side, as a result of which my recollection is the Republican majority, by unanimous consent, extended the time for debate an additional day.

It is, frankly, a breach of the comity that heretofore has characterized the opportunity for debate in this body, to file that cloture motion some 14 minutes after the bill was brought to the floor—especially because this is such controversial legislation. The two votes that previously were cast here were like 50 to 49, and I have forgotten exactly what the other vote was, but this is a highly contentious issue and one which deserves a great deal of thought and debate. I, therefore, am very hopeful our colleagues—whether they agree with the ultimate legislation or not—will agree it is simply unfair to close off debate and amendments at this very early stage of the consideration of such important legislation.

One reason the Senate should not rush to consideration of this bill is because of the very controversial change that it makes to criminalize not a defendant's actions alone, but the defendant's thought process. Think about this for a minute. This legislation focuses not on the defendant's conduct, or even on his intent—on whether he acted purposefully or with knowledge of risk. Rather, this bill criminalizes the defendant's subjective motive. We are moving perilously close, down the path of creating a penalty for thought crimes.

This is not as distant as you might think, considering, for example, the FBI data that is used by advocates of hate crimes laws to justify this bill. In 1999, they report there was a total of 9,430 hate crimes in the United States. Of these, only 19 were murders. By far, the largest category of actual hate crimes against persons, including property crimes and crimes against society, was the crime of intimidation. Yet this crime is so vague and so inchoate that the FBI does not even bother to calculate incidents of intimidation in its overall crime reports.

What exactly does intimidation mean? Does it simply mean something that is perceived as offensive by the hearer? Some groups, in fact, increasingly invoke terms such as "hostile speech" or "climate of violence" to describe speech in favor of traditional morality on social and sexual issues. Would a traditional viewpoint on homosexuality or transsexualism be hostile speech and thus a hate crime? It very likely could be under the definitions here.

One organization, the largest organization of women in the country, the Concerned Women for America, has cited an example of a pastor in New York whose billboard advertisement with a Bible verse on it was taken down by city officials who cited hate crimes principles as the rationale. The CWA also cites a recent incident in San Francisco. The board of supervisors officially approved a resolution urging local media not to run an advertisement by a group.

Again, even those who do not agree with the message of traditional values should at least recognize these groups' right to be heard and to exercise their first amendment right of speech. With this type of legislation, we risk criminalizing this speech.

In addition, it is wrong to treat some victims of violent crimes as more special than others. All victims of violent crime should be equal in the eye of the law. When such a crime occurs, the police should not first have to ask, for example, what the victim's race, religion, or sexual preference is. Nor do the 19 murders classified as hate crimes in the year 2000 nor the 17 in 1999 provide much justification for the legislation when more than 15,000 other murders occurred each year—all crimes under State law. It is not as if we have to add this crime in order to assure there is

punishment for people who commit violence.

Congress should be concerned about all of these victims, not about just a subset constituting one-tenth of 1 percent of the total. Yet that is what we spend our time on in this body.

I note that one of the bill's provisions attempts to justify or provide a constitutional rationale for the bill. I note that section 2 states that Congress has found "the incidence of violence motivated by the actual or perceived race, color, religion, national origin, gender, sexual orientation, or disability of the victim poses a serious national problem" and that the "prominent characteristic of a violent crime motivated by bias is that it devastates not just the actual victim and family and friends of the victim, but frequently savages the community sharing the traits that caused the victim to be selected."

I would like to focus on that in two respects.

First of all, it says this is a national problem. But I note that not all national problems are Federal problems. People are murdered every day in this country. That is a national problem. But States provide the laws under which people are prosecuted, and it is ordinarily by a local or county prosecutor. In other words, not every national problem is a Federal problem.

As I will note later, no less than the Chief Justice of the United States has warned Congress against federalizing every crime and finding a Federal solution to every national problem.

But even more important is the suggestion that only certain kinds of crime victims ought to be of concern to us. It said here that this kind of crime devastates not just the actual victim but frequently savages—and I am not exactly sure what the word "savages" means—the community sharing the traits that caused the victim to be selected. I presume that is the class of victims—people such as the victim.

As the Presiding Officer is well aware, Senator FEINSTEIN and I have had a constitutional amendment before this body for several years to grant rights to victims of crime. We have argued all of these years that victims of violent crime feel themselves frequently savaged by a system which gives a lot of rights to the defendant but, at best, ignores their rights, and sometimes actually results in them being victimized a second time by the judicial system by not getting notice of key hearings and procedures in which they would have an interest in attending, or by not even being able to sit in the courtroom sometimes. This clearly is activity that savages the community that has been victimized.

Anybody who has been a victim of domestic violence can empathize with the other victims of domestic violence. I have gone to many meetings at a lot of centers at which women who have been abused are sitting in a circle sharing their experiences in order that they

be able to cope with and eventually rise above the problem and to understand that they themselves are not the cause of the crime that has been perpetrated against them. They are savaged, all right. They are a group of people to whom we ought to be paying attention. Yet we can't get the support in this body to grant them the rights that are at least somewhat equal to the rights of the accused perpetrators of the crimes upon them. The numerous constitutional amendments which have granted defendants rights should at least be equal in the constitutional rights of these victims of crimes.

I am going to state this in a rather blunt way. It seems to me to be inconsistent, at best, for people to be very concerned about a couple of specific groups of people—transsexuals or homosexuals, for example—that they would believe that other members of their group would feel savaged when someone else in their group has a crime perpetrated upon them but we wouldn't extend that same feeling and that same support and that same kind of action to a vast and much larger number of people who are victimized by crimes every day and for whom there are no victim's rights. We don't designate them hate crimes, and therefore these people have no such rights. I find it discriminatory.

In this Senate body, we never characterize the motives of legislation. It is a very dangerous thing to do, and I resent it. In no way do I characterize the motives of anyone offering this particular amendment. But I ask them to stop and think for a moment about whether it is fair to single out a very small group of people who have a very large lobbying voice for special protection as victims of hate crimes because the group they are a part of feels savaged when they are the victim of a crime. That is the Federal nexus. That is the basis upon which the constitutionality of this action rests, and I submit it is inadequate under our Constitution. But that is the alleged basis. We will do it there, but we will not give rights to the vast majority of people who are victims of violent crime in this society.

Do we not believe or do we not understand that they feel savaged as well? Is their lobbying voice just not as strong? I don't know what it is. But it is unfair.

Let me turn to two other points before I close.

It is obvious to me from the legislative history—I am not elaborate at this point but just to note this—that using the word "gender" rather than "sex" is a very intentional and very specific choice of words. The bill is intended to take the unprecedented step of making transsexuals and transvestites a federally protected class. There are those who think this is a good idea. I cannot imagine what the Founders—the people who wrote our Constitution—would think of such a provision. But I believe Congress should accept that not all

human impulses are necessarily healthy, that not every desire should be pursued, and that, in any event, these kinds of activities should not be singled out as constitutionally protected given the large number of people in this country who have very different points of view of what is right and wrong. We single out minority action I gather as being constitutionally protected because we are concerned about what the majority would do. In so doing, I believe we pervert the language of the Constitution.

That gets to the next point: the constitutional overreach of this bill. The bill is almost certainly unconstitutional and beyond Congress's powers. The first new offense, justified as an exercise of Congress's 13th amendment power to outlaw the incidents of slavery, fails because it is not tied to the exercise of civil rights or access to public accommodations. The second new offense, justified under the commerce clause, goes too far when it punishes noneconomic violent crime simply because of the use of a weapon that has allegedly traveled in interstate commerce.

The bill also unnecessarily contributes to Congress's federalization of criminal law—a point to which I alluded earlier and on which I said I would expand. This is a process that places great burdens on our Federal courts and undermines their role as a forum for addressing uniquely Federal issues.

I mention the Chief Justice of the United States, Justice Rehnquist. He has repeatedly warned the Congress against unnecessarily creating new Federal criminal offenses, especially where the matter has traditionally been addressed and can be addressed by State courts. The Chief Justice expounded on this problem in his 1998 Year-End Report of the Federal Judiciary. I believe this is important enough to quote at length.

He said:

The number of cases brought to the Federal courts is one of the most serious problems facing them today. Criminal case filings in Federal courts rose 15 percent in 1998—nearly tripling the 5.2 percent increase in 1997. Over the last decade, Congress has contributed significantly to the rising caseload by continuing to federalize crimes already covered by state laws.

The trend to federalize crimes that traditionally have been handled in state courts not only is taxing the Judiciary's resources and affecting its budget needs, but it also threatens to change entirely the nature of our federal system. The pressure in Congress to appear responsive to every highly publicized societal ill or sensational crime needs to be balanced with an inquiry into whether states are doing an adequate job in these particular areas and, ultimately, whether we want most of our legal relationships decided at the national rather than local level. Federal courts were not created to adjudicate local crimes, no matter how sensational or heinous the crimes may

be. State courts do, can, and should handle such problems. While there certainly are areas in criminal law in which the federal government must act, the vast majority of localized criminal cases should be decided in the state courts which are equipped for such matters. This principle was enunciated by Abraham Lincoln in the 19th century, and Dwight Eisenhower in the 20th century—matters that can be handled adequately by the states should be left to them; matters that cannot be so handled should be undertaken by the federal government.

As is very clear by the language of the statute itself, that is not the test used for determining whether or not prosecutions will be held by the Federal Government for these crimes.

The Federal courts are already overwhelmed with existing Federal offenses, at the same time that this Senate is dragging its feet on filling the Federal court vacancies that currently exist, or even holding votes on new judges. Yet here we go creating a whole new set of Federal offenses for crimes that are already proscribed by State law. No doubt the Federal judiciary is watching this debate and thinking to itself, about the Congress, "there they go again."

It bears emphasis that the States not only already punish the crimes we are dealing with here as violent crimes; in addition, 45 States and the District of Columbia already have laws punishing hate crimes. What we are doing is creating a double redundancy, a new Federal offense for hate crimes that are already punished in two different ways at the State level.

Nor is it fair to accuse the States of inadequately enforcing their laws in this area. For example, consider the first and third incidents cited in the committee report for this bill involving murder in Humboldt, NE, and in Yosemite Park, CA. The committee report relies on these incidents to supposedly show the need for a new Federal law. But what these incidents show, instead, is how this law is unnecessary and redundant. Indeed, it would punish these offenses less severely than they have been punished under State law.

In the Nebraska crime, prosecutors sought and obtained the death penalty. In the Yosemite case, they are currently seeking the death penalty. Yet had either of these offenses instead been prosecuted under the law envisioned by this bill, the death penalty would not have been an option. The bill provides for no death penalty, even for the most brutal murders. And we call this an appropriate reaction to something we detest so much, something we call a hate crime, that we are willing to bend the Constitution to make it a new Federal offense.

The death penalty would not have been available under this bill, either as a deterrent or as leverage to secure a life sentence during plea bargaining, which is frequently why the death pen-

alty can be successful. So why do we need a Federal law to provide less punishment than is already available under State law?

Finally, this bill would explicitly allow the same defendant to be punished twice for the same crime, based solely on a Federal official's determination that the State sentence that the defendant is already serving has somehow left Federal interests "unvindicated."

Although the Supreme Court has been willing to ignore such double prosecutions, Congress, at least, should recognize the unfairness of allowing a defendant to be tried twice punished twice, by two different courts, for the same crime.

Since I see my distinguished colleague from Wisconsin in the Chamber, and because I have such respect for him, for the sense of fairness that he has exhibited over and over in the Judiciary Committee, on which we both sit, while I know he is an ardent supporter of the legislation, I would just ask him, and other colleagues, with whom I have had good dealings over the years, to acknowledge the fact that it is inappropriate for us to have debate on this important matter cut off so soon after the filing of the bill—14 minutes after the bill was brought to the floor, cloture was invoked—to have very little opportunity to present amendments and to have the nature of those amendments restricted.

I could be wrong, but I have been told by staff that even making these crimes' punishment subject to the death penalty would be ruled not germane. I cannot believe that. But if that is true, it shows you how restrictive the cloture rule would be.

I would ask my colleague, and any others who are supporters of this bill, to consider, on something so important, that we should not be invoking cloture so soon in the process but should allow those of us who have constructive suggestions—as in the case of the alternative mentioned by the Senator from Utah—that those of us who have amendments, including those which I would like to offer, to have an opportunity to debate and offer those amendments, and have them acted upon in the way that has traditionally been done in this body.

If it is the case, as the distinguished assistant majority leader said, that we have a lot of other business that we need to get to, then maybe we should not have brought this particular bill at this time. If it is so important, then we need to have the time to debate it. If it takes a back seat to issues that are more important, then we should not have brought it up at this point. I do not think we can have it both ways.

I would ask my colleagues for the same kind of fairness that has been offered to them when the majority was held by another party, and to give us more time to debate and consider amendments on this legislation, and not to proceed with cloture at such an early time in the legislative process.

I thank the Chair and yield the floor.
The PRESIDING OFFICER (Mrs. CARNAHAN). The Senator from Wisconsin.

Mr. FEINGOLD. Madam President, I thank the Senator from Arizona for his kind words. I am in the Chamber with regard to another matter, but I look forward to discussing this issue at a later time.

(The remarks of Mr. FEINGOLD are printed in today's RECORD under "Morning Business.")

Mrs. MURRAY. Madam President, I join my colleagues today to speak in support of S. 625, the Local Law Enforcement Enhancement Act.

In every corner of our country, communities have been trying to respond to hate crimes. Despite great gains in equality and civil rights throughout the last century, too many Americans are subjected to discrimination, violence, and even death because of who they are. The Federal Bureau of Investigation has documented over 8,000 incidences of crime motivated by bias in the United States in 2000. Crimes motivated by the victim's race, color, religion, sexual orientation, ethnicity, national origin, disability, or gender. These crimes attack the values and rights of every American, yet today there is no federal law stopping these crimes.

Passing the bill before us will give us more tools to fight this special brand of crime. I am pleased to join with many of my colleagues as a co-sponsor of this important legislation. The legislation we are considering would expand the definition of a hate crime and improve prosecution of those who act out "their hate" with violence. If someone harms any person because of the victim's race, gender, ethnicity, color, religion, national origin, disability or sexual orientation, they will be punished.

It is important to note that the prosecutor would still have to convince a jury beyond a reasonable doubt that the criminal act was motivated by prejudice, and states would be involved in helping to determine whether a defendant would be charged with a Federal hate crime. The bill would also importantly require the FBI to document and report hate crimes committed against women.

Previously the FBI was only required to collect data from crimes committed because of a person's race, religion, sexual orientation, disability and ethnicity. This bill will allow us to know the "who," "what" and "why" so we can work to end these crimes against women.

I know some of my colleagues have argued that the states are doing an adequate job of handling hate crimes on their own, and I commend the States for their efforts, but I believe the Federal government has an important role in this as well. At the Federal level, we already prosecute many crimes that are motivated by prejudice. We need to strengthen these Fed-

eral hate crimes laws and increase the role of the federal government in ending this violence.

It wasn't that many years ago that we stood up for equality and justice by forcing the States and private citizens to end segregation and discrimination. Now we must do the same for hate crimes against our citizens.

Madam President, we are a Nation of laws. We are a Nation that respects the individual and individual liberty. We are a Nation that rewards hard work. We are a Nation that tolerates and celebrates our diversity. These are some of our most cherished values. We cannot allow hate crimes to threaten our fellow citizens and undermine our democracy. I urge my colleagues to support this important piece of legislation.

I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

AMENDMENT NO. 3824

Mr. HATCH. Madam President, I call up amendment No. 3824 and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Utah [Mr. HATCH] proposes an amendment numbered 3824.

Mr. HATCH. Madam President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To amend the penalty section to include the possibility of the death penalty)

On page 10, strike line 14 and all that follows through page 11, line 23, and insert the following:

both:

"(B) shall be imprisoned for any term of years or for life, fined in accordance with this title, or both, if the offense includes kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill; and

"(C) shall be punished by death or imprisonment for any term of years or for life, or both, if death results from the offense.

"(2) OFFENSES INVOLVING ACTUAL OR PERCEIVED RELIGION, NATIONAL ORIGIN, GENDER, SEXUAL ORIENTATION, OR DISABILITY.—

"(A) IN GENERAL.—Whoever, whether or not acting under color of law, in any circumstance described in subparagraph (B), willfully causes bodily injury to any person or, through the use of fire, a firearm, or an explosive or incendiary device, attempts to cause bodily injury to any person, because of the actual or perceived religion, national origin, gender, sexual orientation, or disability of any person—

"(i) shall be imprisoned not more than 10 years, fined in accordance with this title, or both;

"(ii) shall be imprisoned for any term of years or for life, fined in accordance with this title, or both, if the offense includes kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill; and

"(iii) shall be punished by death or imprisonment for any term of years or for life, or both, if death results from the offense."

Mr. HATCH. Madam President, it remains my view that S. 625 is a misguided invasion into an area historically and constitutionally reserved to State and local law enforcement authorities. But let me say now S. 625 is also flawed on its own merits. One of S. 625's most egregious shortcomings is that while it purports to send a message the Federal Government is going to be tough on hate crimes, it actually threatens to weaken the punishment currently available under many State laws for the perpetrators of violent hate crimes.

In the successful State and local prosecutions of the killers of James Byrd, Matthew Shepard, and Billy Jack Gaither, prosecutors and law enforcement officials in Texas, Wyoming, and Alabama were able to consider seeking the death penalty. So they did. Let's pause to consider why they did so.

James Byrd, who was African American, was beaten unconscious, chained to the back of a pickup truck, and dragged 4 miles down rural roads by men who had links to a white supremacist group.

Billy Jack Gaither, who was gay, was bludgeoned with an axe handle, had his throat slit, and then was thrown on a pile of tires and set on fire by men who cited Gaither's sexual orientation as their motivation for the killing.

Matthew Shepard, who was gay, was kidnapped, beaten so severely that his skull was fractured a half dozen times, tied to a fencepost, and left to die by two men who hated homosexuals.

I have no hesitation in concluding that State and local officials acted appropriately in seeking the death penalty for these most heinous of crimes. In the case of James Byrd, they successfully obtained the death penalty for two of the three defendants. In the case of Matthew Shepard, the possibility of the death penalty led to an early plea bargain that resulted in life sentences for both defendants. And in the case of Billy Jack Gaither, the possibility of the death penalty caused one of the two defendants to plead guilty and testify for the Government at the trial, after which he was sentenced to life in prison. The other killer was eventually convicted and ultimately sentenced to life in prison after the victim's family requested that the death penalty not be imposed.

Right now, in a case currently pending in northern California, State prosecutors are pursuing capital charges against two brothers charged with murdering a gay couple. And there is more. I could go on. I have three charts that show just some of the hate crimes cases prosecuted by State and local prosecutors where the death penalty was used successfully.

The facts speak for themselves, and I will not go through these cases one by one. I ask unanimous consent that the crimes noted on these charts be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

| Victim | Defendant | Jurisdiction | Facts | Penalty |
|---|-----------------------------|------------------|--|--|
| James Byrd | Lawrence Russell Brewer ... | Texas | Beat Byrd (an African-American) unconscious, chained him to the back of a pickup truck and dragged him for miles down rural roads. | Death Penalty. |
| | John William King | Texas | Beat Byrd (an African-American) unconscious, chained him to the back of a pickup truck and dragged him for miles down rural roads.. | Death Penalty. |
| | Shawn Allen Berry | Texas | Beat Byrd (an African-American) unconscious, chained him to the back of a pickup truck and dragged him for miles down rural roads.. | Death Penalty Available. Sentenced to life in prison.. |
| Roxanne Ellis and Michelle Abdill | Robert Acremant | Oregon | Shot Ellis and Abdill (a homosexual couple) to death as they lay gagged in the back of his truck. | Death Penalty. |
| Vasudev Patel | Mark Stroman | Texas | Shot Patel (an Indian man) after 9/11 because Stroman thought Patel looked Middle Eastern. | Death Penalty. |
| Billy Jack Gaither | Steven Mullins | Alabama | Bludgeoned Gaither (a homosexual man) with an axe handle, slit his throat, threw him on top of a pile of tires and set him on fire. | Death Penalty Available. Pled guilty. Sentenced to life in prison without parole. |
| | Charles Butler Jr. | Alabama | Bludgeoned Gaither (a homosexual man) with an axe handle, slit his throat, threw him on top of a pile of tires and set him on fire. | Death Penalty Available. Sentenced to life in prison without parole only because the victim's parents requested that the prosecution not seek the death penalty. |
| Sasezley Richardson | Jason Powell | Indiana | Fired 12 shots at Richardson (an African-American) in an attempt to "earn" a spider-web tattoo from the Aryan Brotherhood. | Death Penalty Available. Pled guilty and testified for the State in order to avoid the death penalty. Sentenced to life in prison without parole. |
| | Alex Witmer | Indiana | Drove the truck from which Powell fired 12 shots at Richardson (an African-American) in an attempt to gain acceptance into the Aryan Brotherhood. | Death Penalty Available. Pled guilty. Sentenced to 85 years in prison. |
| Gary Matson and Winfield Mowder | Benjamin Williams | California | Shot to death Matson and Mowder (a homosexual couple) | Death Penalty Available. Prosecution ongoing. |
| | James Williams | California | Shot to death Matson and Mowder (a homosexual couple) | Death Penalty Available. Prosecution ongoing. |
| Matthew Shepard | Aaron McKinney | Wyoming | Kidnapped Shepard (a homosexual college student), beat him so severely that his skull was fractured a half dozen times, tied him to a fence post and left him to die. | Death Penalty Available. Sentenced to two consecutive life terms. Avoided the death penalty by agreeing not to appeal the life sentences. |
| | Russell Henderson | Wyoming | Drove the truck into which Shepard (a homosexual college student) was lured, helped tie him to a fence, and, at the very least, stood by while Shepard was beaten senseless. | Death Penalty Available. Pled guilty in order to avoid the death penalty. Sentenced to two consecutive life terms with no possibility of parole. |

Mr. HATCH. Madam President, none of these results—none of these death-penalty-eligible cases shown on these charts—would have been possible under S. 625—not one of them. This legislation, while federalizing hate crimes, would not allow capital punishment for those who murder savagely out of bigotry, prejudice, or hatred. The practical effect of S. 625 is to substantially weaken existing State law. In fact, even 18 U.S.C. section 245, the current Federal law that specifically addresses hate crimes, provides for the death penalty.

It is truly ironic that S. 625's failure to provide for the death penalty actually represents a decided benefit to those who would commit these heinous crimes, and it takes away some of law enforcement's most important pretrial bargaining techniques in order to get one or more witnesses to these crimes to testify or one or more participants to testify against the others. Not only would this legislation undermine existing State laws, but it would substantially weaken their protections and weaken law enforcement's ability to get to the bottom of some of these crimes. In consequence, this legislation would be less likely to deter future hate crimes as well as many State laws on the books today.

If we as an institution are serious about addressing the problem of hate crimes, then we must permit for the possibility of the death penalty as being the appropriate punishment in some of these cases. If we are to take these sorts of cases away from State and local law enforcement officials who have been doing such a thorough and effective job prosecuting them with the possibility of the death penalty, then our Federal prosecutions must be equally well equipped and prepared to do as good a job as State and local officials have done.

That is why it would only make sense to support my amendment to provide for the possibility of the death penalty in appropriate cases if you support the underlying bill.

I noticed the distinguished Senator from Oregon is here, and I yield the floor.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. SMITH of Oregon. Madam President, I have every day put into the CONGRESSIONAL RECORD the details of a hate crime. These are always violent, they are always sickening, but they also happen to an American citizen. They happen sometimes because the victim is black, gay, disabled, female, or even of Middle Eastern descent. And yet they are all Americans. So they ought to have the concern of all in the Senate.

I wish to speak again on the Senate floor about another crime. It is gruesome. It happened just a year ago, and it involved a young Navajo boy by the name of Fred Martinez, Jr. He had gone to a local rodeo. He was openly gay; apparently also transgender; again, of Navajo descent. He was found south of Cortez, CO. He had died after being repeatedly hit on his head with a rock and left in a small canyon, possibly suffering for an extended period of time before dying.

Police investigated this murder as a hate crime. The perpetrator of this crime, who was recently sentenced, allegedly bragged he "bug-smashed a fag."

The victim's mother told the press that she believes her son was killed because he identified himself as transgender. He occasionally dressed as a girl. In the mind of his murderer, Fred deserved to die for such conduct.

I believe the Government's first duty is to defend its citizens against hatred, against the harms that flow from a hate-filled heart. I stand in support of the Local Law Enforcement Enhancement Act of 2001 to make sure that should it ever happen again to a Fred Martinez, or anyone else, it will not go unresponded to by law enforcement at every level. That is really what this bill is about.

I have listened to my colleagues and their concerns about this legislation,

and I stand to express my disagreement with parts of what they say.

What is the role of the Federal Government? Some have suggested that we have no place here, that this is the role of the local and State law enforcement. I believe the role of the Federal Government is whatever is necessary to make sure that justice is done, not to overtake local and State authorities but to help, to contribute, to backstop, to provide resources, to provide skills that sometimes are uniquely had by the Federal Government.

I just came from a press conference with Sheriff David O'Malley from the State of Wyoming. He was the local law enforcement official who pursued and ultimately helped in the prosecution of the murderers of Matthew Shepard. It was, frankly, his visit to my office, with the mother of Matthew Shepard, Judy Shepard, that persuaded me to take another look at this issue.

Sheriff O'Malley made clear to me that he was a conservative Republican, but he was for Federal hate crimes legislation because he could have used the help. The horror of that young man's murder so galvanized national opinion and the focus of the media that their little Laramie, WY, law enforcement was overwhelmed by the national scope of this tragedy. Frankly, they did end up prosecuting it well, doing it right, convicting these murderers, but his point was the Federal Government should have been able to show up: We could have used the help.

In the case of James Byrd in Texas, another hideous case, where a black man was dragged to death, in that case, because our Federal hate crimes law already covered issues of race, the Federal Government was able to show up to work and were exceptionally helpful in the pursuit and the prosecution of the murderers of James Byrd.

My response then is, what role is there for the Federal Government? Whatever role is necessary to assure that justice is done. I would like to see the Federal Government show up to work and express the great heart and the values of the American people.

As I listen to some of my colleagues' complaints, I frankly think they make, on occasion, some very valid points. But their point should not be against including gays, gender, and the disabled. Their argument is really against the whole category of hate crimes, this Federal law we have had for over 30 years. Since 1968, we have had Federal hate crimes legislation. As I pointed out, it helped in the case of pursuing the murderers of James Byrd. It did not help in the case of Matthew Shepard.

My point to them is, why oppose its expansion? Why don't they go after race, religion, and national origin? If it is good for those categories, why is it not good for these new categories? That is a question I simply have not yet had answered.

Questions as to constitutionality have been raised, and there may be a point I am missing, but this issue has been fully vetted by the U.S. Supreme Court.

In two cases, *RBA v. The City of St. Paul*, and *Wisconsin v. Mitchell*, these cases clearly demonstrate that a hate crimes statute may consider bias motivation when that motivation is directly connected to a defendant's criminal conduct. We are not going after speech. We are not going after thought. We are going after conduct.

As with any criminal law, in any criminal act there are elements of the crime. This is yet another element. It is not the crime, but it is an element in making up the category of the crime. By requiring this connection to criminal activity, these statutes do not chill protected speech and do not violate the first amendment. In *Wisconsin v. Mitchell*, the Supreme Court made clear that:

The First Amendment does not prohibit the evidentiary use of speech to establish the elements of a crime or to prove motive or intent.

So it seems clear to me that one can say whatever they want about gays, transgenders, and women. They are not prohibited from doing that. If they act on it, that can be an element in determining whether this falls under the Federal hate crimes law.

So those who oppose this, I really think their argument is not towards its expansion but against the law as a category itself. So their amendment should be to get rid of this as a category. I will not be voting for that. I would not suggest anyone do that because I believe our hate crimes law truly does reflect the big heart of the American people. All crime is hateful. That is a given. We grant that. But when an attack is made on a Navajo homosexual boy, and he is thereby a part of a crime which victimizes a much larger community, what is wrong with our saying, as a people, we want every level of government—the local, the State and the Federal Government—to help to pursue and prosecute such crime? I cannot see the problem with it.

I think the argument that is being made is against the whole statute of hate crimes. It should not be made against gays and lesbians, but it is.

I would like to draw the attention of my colleagues to the case of Mark Bangerter from Boise, ID. He was the victim of a brutal attack, and he wrote the Justice Department and asked for help in pursuing those who had been hurtful to him.

The Justice Department writes back to him saying:

Dear Mr. Bangerter: This letter is in response to your report that on April 15, 1998, you were the victim of a vicious attack by an unidentified individual who apparently believed that you were homosexual. According to the information you provided Special Agent Joseph W. Hess, Jr., on May 12, 1998, the attack caused you severe facial injuries and total blindness in your left eye. Your case was thoroughly discussed with the United States Attorney's office in Boise, Idaho, in an effort to explore prosecutive possibilities under existing Federal hate crime laws. I must regrettably inform you that as a result of those discussions, it was determined that sexual orientation does not fall within the listed elements of hate crimes. Therefore, the Federal Bureau of Investigation lacks the statutory authority to investigate the attacks against you. I strongly encourage you to recontact the Boise Police Department and request that an investigation be fully conducted. Sincerely yours.

Had Mr. Bangerter said, please pursue these criminals because I am black, they would have been able to do that. He said, please pursue them because I am gay, and the Federal Government was not able to do that.

I think that is wrong, and the overwhelming heart of the American people calls upon us to expand an existing constitutional law and to cover these people who, because of their minority status, are more likely victims of crime. Again, if there is a problem with this, it says to the whole category of crime it should not be a problem just because we would include these newly identified minority groups in America; they are certainly deserving of the protection of this law, the values behind this law, which frankly are denied to them now and ought not to be any longer.

I am sorry I have to bring our attention to yet another hate crime in this country, but I suggest it is another reason we ought to act and we ought to do so quickly.

Senator HATCH raises a valid point. I am loathe to see this legislation slowed up. I hope the House will take it up. Perhaps the point he is raising can be resolved then. It is important for this Senate to act this week on this issue.

I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Madam President, 95 percent of all criminal activities are prosecuted by State and local law enforcement and are prosecuted well. That is the way it ought to be done. That is what is expected to be done. Our laws already cover virtually every-

thing, from a civil rights standpoint, that I mentioned earlier today; that is, race, color, religion, and national origin. Do I think gay people ought to be attacked, brutalized, and mistreated? Heavens, no. I believe these matters have been taken care of at the State and local law enforcement levels. If they are not, they should be. We should do that. My amendment that I will offer provides the money, the facilities, and the ability for the State and local law enforcement people to do it if they need extra help.

I do not think a case is made that we should give protective status to anyone other than for race, color, religion, or national origin, unless we can show that State and local law enforcement is not doing its job. If they are not doing the job, I am the first to support, the first to come out and say nobody should be mistreated. The law should cover everyone.

I made the point, however, that under current law, the Matthew Shepard case and the James Byrd case—two of the most flagrant examples of vicious, unforgivable conduct—these cases were handled well by State and local law enforcement. And, because the prosecutors had the death penalty to hold over these defendants, these criminals, these vicious racists, they were able to force some of the witnesses to cooperate, which helped result in a conviction in one of the trials.

In the case of Matthew Shepard, they obtained a guilty plea immediately, and thus, preserved judicial resources and saved taxpayers extensive amounts of money. The guilty plea was entered into to avoid the death penalty. Having that bargaining tool is a crucial part of law enforcement.

This bill does not preserve this tool. That is one of the most glaring defects in this bill.

There are no demonstrated problems with State and local enforcement of hate crimes.

I am aware of only one time when hearings were held on this legislation. Those are the ones that I, as chairman, scheduled in 1999. Deputy Attorney General Eric Holder conceded in his testimony that an analysis of the hate crimes statistics that have been collected needs to be conducted to determine whether State and local authorities are failing to combat hate crimes. Eric Holder testified that the statistics we have are, to use his term, "inadequate."

In fact, there has been never been a showing that state and local law enforcement officials have been ignoring or neglecting—much less intentionally failing—their duty to prosecute these heinous offenses.

Because we don't know the real facts on this critical issue, we have a duty to find out before we pass such sweeping, constitutionally suspect legislation.

I have only learned of a handful of cases—less than a dozen, some of which stretch back almost two decades—where state and local officials are alleged to have failed to investigate or

prosecute hate crimes. This is far from compelling evidence in a system of justice where, according to the most recent FBI statistics, citizens report some 11 million criminal complaints in one year, and state and local law enforcement officials make some 14 million criminal arrests.

These numbers make another important point. State and local law enforcement officials process the overwhelming majority of all crimes—some 95 percent of all criminal activity. There are good reasons for that. Frankly, they do every bit as good a job as Federal prosecutors.

If we really want to do something about hate crimes, on a Federal level, we should at the least allow for the death penalty so law enforcement and prosecutors can obtain immediate cooperation and guilty pleas, and so defendants will have an incentive to testify against fellow perpetrators, which results in bringing these matters to an end quickly without high costs.

In most cases, the death penalty would probably not be imposed, but the fact that it could be imposed is a very important element in getting to the bottom of a lot of these cases.

We are talking about a very important set of issues. It is nice to be emotional; it is nice to talk about how big our hearts should be. I don't think anyone can claim they have a much larger heart than I have. I have proven it through all the years. The fact is, there is a reason our Founding Fathers wanted State and local law problems prosecuted by State and local prosecutors. They are the people closest to them; they are the people who understand the neighborhoods; they are the people who understand the cities; they are the people who understand the people. They do every bit as good a job as the Federal prosecutors do.

I feel deeply about these matters. I don't want anyone to be hurt by hate crimes. It is not right. No one should care what their orientation is. It is just not right. I have to say, if the State and local law enforcement people were not doing their job, it would be another matter.

My colleague, Senator SMITH of Oregon, cited an incident in Idaho where the victim asked the FBI to step in and assist in the prosecution. They said they could not because there was no applicable federal statute. As I understand it, there is no allegation that the crime was not prosecuted by State officials. In fact, I understand they received a conviction in that case.

A lot of this is based on emotions. I would like to address the issue from a law enforcement basis that makes sense, that really does the job. That is why I filed this amendment on the death penalty, because that is one of the great tools Federal and local prosecutors have. The very fact that they might have to face the death penalty if they roll the dice and go to the jury, it is one of the great tools that forces people to come clean. It is also a great

tool in causing others to testify against their co-perpetrators. Take that tool away and I suggest we will be harming the efforts to try to solve the problems of hate crimes and criminal activity.

What is wrong with this bill? It goes way beyond what is necessary and makes almost every case that is now prosecuted at the State and local level a Federal crime. The fact is that almost all crime involves hatred. I know the distinguished Senator from Massachusetts tried to prevent including every rape as a hate crime. But the bill is written so broadly that it looks to me as though they are making all rape cases, all cases with sexual allegations, hate crimes, prosecutable by the Federal Government, even though the State and local prosecutors are totally capable of prosecuting these cases.

I suggest the absence of a quorum.

Mr. SMITH of Oregon addressed the Chair.

The PRESIDING OFFICER. Will the Senator withhold his request?

Mr. HATCH. Yes.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. SMITH of Oregon. Madam President, I would like to state for the record my belief that there is not a Senator in the Senate with a bigger heart or better heart than ORRIN HATCH. It is a great privilege to serve with him. He and I just differ about the appropriateness of the Federal involvement.

I think the Federal involvement in the statute we proposed will be minimal, but it will be allowable. It will be rare that the Federal Government is brought in. But, again, it took a Republican from Wyoming, Laramie, WY, the sheriff, to come and tell me, just in a practical way, how helpful it would have been if Federal resources and involvement had been included in the prosecution of the Matthew Shepard case.

If in the case of James Byrd it was appropriate, why not in the case of Matthew Shepard? Moreover, why should we not, at this time in our Nation's history, say to the gay and lesbian community: We care. We do have a big heart. We have a way to include you. And this is the barest of minimums that we ought to do in their behalf.

I think if you are a Navajo gay boy in a lonely Colorado canyon near a small town where local law enforcement is ill-equipped to assure justice is done, that it is entirely appropriate for us now to make available the law enforcement arm and resource and authority of the U.S. Government.

I do not wish to subvert in any way the local law enforcement that is the bulwark against crime in this country. Indeed, that is why we call this the Local Law Enforcement Enhancement Act. We are simply trying to enhance the pursuit and prosecution and punishment of those who would commit the most malignant kinds of crime in America.

At a time when this Nation is in a war against terrorism abroad, it is not inappropriate for us to focus as a Congress upon terrorism committed at home. What happened to Matthew Shepard was terrorism. I think it is appropriate for the Federal Government to say it can help in this instance as well.

So if there are flaws in this bill, let's fix them in conference. But let's advance this bill because it is the right time and it is the right way in which to do it.

Again, I deeply respect the motives of the ranking member of the Judiciary Committee. I know his heart. It is as good a heart as there is in the place. I know he feels as I do when people are victimized. I think he is genuinely trying to find the right procedural way to get the Federal Government involved in helping.

But all you have to do is go to small town America where many of these horrible acts are committed and ask them if they couldn't use the helping hand of the Federal Government. I think they will tell you overwhelmingly: Yes, and it is about time you showed up to help.

So I urge my colleagues to vote for S. 625. Now is the time and it is about time. I yield the floor.

The PRESIDING OFFICER (Mr. CARPER). The Senator from Utah.

Mr. HATCH. I appreciate the remarks of my distinguished friend about the way he feels about these matters. I feel precisely the way he does. We are very close friends. I don't think you can find closer friends in the Senate. I think most people who know me know that I have very deep feelings that no one should be brutalized in our society, regardless of what their sexual orientation is.

But this is a big step. If we take this bill without the death penalty, then we are actually reducing the ability of law enforcement to go after these people and to get cooperation from other witnesses and from co-perpetrators.

One of my favorite programs on television happens to be "Law and Order." If you watch that, you will see the prosecutors regularly use the death penalty as a tool. While fictional, this television show is based substantially on what goes on in real life. Most attorneys who watch the show are pretty impressed with the program. I am one of them. You will notice in many cases that they will use the potential of being subjected to the death penalty to get one or more of the perpetrators to testify against the others. Frankly, it is very effective on this show and in real life.

I, for one, believe that the death penalty should be used only in the most narrow of circumstances. But I believe it is a tool that would certainly help in prosecuting hate crimes. It would certainly help almost every prosecutor who wants to go after violent criminals who act in concert. It certainly helps our State and local prosecutors, and it

would help the Federal prosecutors. But in this particular bill that has been introduced by my distinguished friend from Massachusetts, the death penalty is taken out of the hands of Federal prosecutors.

So all we are doing in this intellectual, political exercise, in many respects, is tying the hands of Federal prosecutors, while immensely expanding the Federal jurisdiction over virtually all crimes that are called "hate" crimes—in complete disregard for the fact that 95 percent of all prosecutions are prosecuted at the State and local level, and are prosecuted well.

I know the distinguished Senator from Oregon cited the Bangerter case. The people who attacked Bangerter and hurt him were prosecuted and convicted, as I understand. There are bound to be maybe four or five cases over the last decades that weren't prosecuted. But that doesn't justify giving this wholesale expansion of state authority to the Federal prosecutors.

One of the things I personally chatted about with the current Chief Justice and other Justices on the Court—one of the things I personally discussed with them—is their concern about the continual increase of the number of statutory Federal crimes when there is no evidence that the State and local prosecutors are not doing their job. The amendment I intend to file at a later time, which will be a substitute for the bill of the distinguished Senator from Massachusetts, provides for the tools and the help for those small communities, such as the one in Colorado that distinguished Senator from Oregon referred, to prosecute these crimes.

Although there is no evidence that they can't do it or that they aren't doing it, my amendment makes sure that hate crimes will and can be prosecuted by providing resources.

If my friend from Oregon is truly only concerned with enhancing local law enforcement—this bill, ironically, is called the Local Law Enforcement Enhancement Act. This bill takes away the authority of local law enforcement and puts it in the hands of Federal prosecutors when there is no evidence they need to do that. Nor is there any indication that we should turn over this kind of responsibility to Federal prosecutors, nor that they should have the right to come in and overrule local prosecutors in the process who are doing the job.

If my colleague from Oregon is truly only concerned with enhancement of local law enforcement, I hope he will vote for my substitute which will be offered later in this debate.

That is what my substitute will do—enhance and not supplant local State prosecutors. I will discuss that in detail later, and hopefully we will be able to bring it up and get a time agreement whereby we have a limited number of amendments. And that will certainly be one of them. If we win, we win. If we lose, we lose. But at least we will have

debated it, and we will have had a chance to improve this bill by leaps and bounds.

During our last debate on hate crimes, Senator KENNEDY criticized me for arguing against the federalization of hate crimes when I have supported providing Federal jurisdiction in other, completely unrelated areas, such as computer fraud or class actions. This is the classic apples versus oranges argument.

In those other cases, there has never been any serious question that the proposed Federal jurisdiction would be constitutional. I consider every piece of legislation on its own merits.

The distinguished Senator from Massachusetts, a noted opponent of the death penalty, nonetheless has voted in the past for legislation that provides for the death penalty. My conviction that S. 625 is unconstitutional is in no way inconsistent or contradictory.

Whether or not a State may have a specific law prohibiting hate crimes does not mean that they are failing to vigorously prosecute them. Every hate crime, every bit of criminal conduct that S. 625 proposes to federalize is and always has been a crime in every jurisdiction throughout our Nation, crimes which have been effectively prosecuted by State and local prosecutors.

When we challenged the Clinton administration and the then Deputy Attorney General, Eric Holder, to come up with any examples where local prosecutors were not taking care of these problems, they could not do it.

In fact, prosecutors sometimes do not like to charge a crime as a hate crime—especially when the penalties are no different because they have to prove an extra element: The motive of the defendant to commit the crime based on bias. That is an extra element that would have to be proven, and it makes it tough to get convictions in some of these cases.

It is no answer to say that a State may not have a hate crime or may not be charging enough cases under a specific hate crime law. The real question is, Are States failing to prosecute hate crimes? The answer is a resounding no.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

UNANIMOUS CONSENT AGREEMENT—S. RES. 272

Mr. REID. Mr. President, I ask unanimous consent that at 5:45 p.m., today, the Senate proceed to the consideration of S. Res. 272, regarding the delivery of signatures to the Cuban National Assembly; that the substitute amendment be agreed to; and the Senate vote on the resolution, as amended;

that following the vote, the amendment to the preamble be agreed to, the preamble be agreed to, as amended, without further action or debate.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. REID. Mr. President, I ask for the yeas and nays on the vote.

The PRESIDING OFFICER. Is there objection to it being in order to request the yeas and nays at this time?

Without objection, it is so ordered.

Is there a sufficient second?

There appears to be.

The yeas and nays were ordered.

Mr. REID. Mr. President, I also announce, on behalf of the majority leader, this will be the only vote this evening.

The PRESIDING OFFICER. The Senator from Wisconsin is recognized.

UNANIMOUS CONSENT REQUEST— S. RES. 282

Mr. FEINGOLD. Madam President, in 3 days' time, the United States will withdraw from the 1972 Anti-Ballistic Missile Treaty. And it appears that we will do so without a significant debate on this issue in the Senate. For 30 years, the ABM Treaty has been the foundation upon which our strategic relationship with Russia has rested. So I am troubled that this historic treaty is about to be dissolved without so much as a hearing or even any debate in this body. I also regret that the President made this important decision without consulting with the Senate. I find this troubling on both constitutional and policy grounds.

Article II, section 2 of the Constitution states that the President "shall have the Power, by and with the Advice and Consent of the Senate, to make Treaties, provided that two thirds of the Senators present concur. * * *" The Constitution is silent on the process by which the United States can withdraw from a treaty, and the record of the Congress and the executive branch is mixed.

But, the intent of the Framers, as explained by Thomas Jefferson, is clear. In section 52 of Jefferson's Manual, he writes, "Treaties are legislative acts. A treaty is the law of the land. It differs from other laws only as it must have the consent of a foreign nation, being but a contract with respect to that nation." And article II, section 3 of the Constitution states that the President shall "take Care that the laws be faithfully executed. . . ."

Jefferson continues, "Treaties being declared, equally with the laws of the United States, to be the supreme law of the land, it is understood that an act of the legislature alone can declare them infringed and rescinded. This was accordingly the process adopted in the case of France in 1798." It is worth noting that four signers of the Constitution were serving in the Congress when this first treaty termination occurred—by an act of Congress—in 1798,