

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,

just 11 years after the Constitutional Convention.

So it is clear to me, as obviously it was to Thomas Jefferson, that Congress has a constitutional role to play in terminating treaties. If advice and consent of the Senate is required to enter into a treaty, this body should at a minimum be consulted on withdrawing from a treaty, and especially from a treaty of this magnitude, the termination of which could have lasting implications on the arms control and defense policy of this country. Today the ABM Treaty is the supreme law of the United States. The Senate should not stand by while the administration unilaterally abrogates this treaty.

I am concerned about the message that the Senate's inaction sends to this administration and future administrations about how seriously we will take our constitutional responsibilities with regard to the termination of treaties. As Jefferson noted, a treaty is equal with a law. A law cannot be declared to be repealed by the President alone. Only an act of Congress can repeal a law. Action by the Senate or the Congress should be required to terminate a treaty.

Momentarily, I will seek to bring up a resolution on this issue. The resolution is very simple. It just expresses the sense of the Senate that the approval of the Senate is required to terminate any treaty and states that the Senate shall determine the manner by which it gives its approval to such a proposed termination. Finally, the resolution disapproves of the withdrawal of the United States from the ABM Treaty.

Madam President, I ask unanimous consent that the Senate proceed to the consideration of S. Res. 282, which I submitted earlier today, that the resolution be agreed to, and the motion to reconsider be laid upon the table without intervening action or debate.

The PRESIDING OFFICER. Is there objection?

Mr. HATCH. Madam President, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. FEINGOLD. Madam President, I was not surprised, but I do regret that there has been an objection to the Senate taking up this resolution and expressing its will on this important issue.

I am troubled that the Congress appears willing to cede its constitutional responsibility on this matter to the executive branch. I am concerned about the signal that the Senate's refusal to act sends to the executive branch and what it could mean for the future of other treaties with which this or other administrations may not agree.

The Senate does not grant its advice and consent to ratify treaties lightly, and we should not abrogate our responsibility to express the will of this body on whether the United States should withdraw from treaties. By failing to

act on this important issue, we are granting the executive branch undue license to trample on the constitutional prerogatives of the Senate and to blur the separation of powers and system of checks and balances. I am concerned that the Senate's inaction today tips the scales dangerously in favor of the executive branch.

The PRESIDING OFFICER. The Senator from Florida is recognized.

Mr. NELSON of Florida. Mr. President, I would like to be recognized to address the Senate.

The PRESIDING OFFICER. The Senator is recognized.

THE SHAD PROJECT

Mr. NELSON of Florida. Mr. President, over the course of the last few days, I have learned some rather disturbing news about U.S. servicemen being used as human guinea pigs. It is a project that was carried out in the 1970s aboard ships, the ships in the Pacific, a project known by the acronym of SHAD—S-H-A-D. It was basically using various biological and chemical agents to expose our sailors, supposedly, in an attempt to have a readiness should that kind of an attack occur upon our troops. At that time we were still involved in the Vietnam war.

But with the information that I have received, it is unclear if, in fact, the troops—in this case, the sailors—were told about the test and were, in fact, given the appropriate warnings to get the proper protective gear.

The reason this has come to light—and I want to give credit where credit is due—there is a brave and courageous Congressman in California, Congressman THOMPSON, who has been railing about this issue. But it has recently come to my attention because several of those now retired sailors are being notified by the U.S. Government that they should come in and get examined medically, and some of those former sailors are in the State of Florida.

Now, here is the extent of it. There were some 113 tests that were made. The only ones that have been released thus far are some 12 of the 113 tests. According to the sources I have, in those 12, there were a total of 4,300 sailors who were exposed to these chemical and biological agents that were sprayed on or over the ships in the Pacific in the 1970s. Of those 4,300 sailors, only 622 have been notified and have been notified by mail.

By the way, how it came to my attention is 51 of those 622 happen to reside in the State of Florida.

This, in and of itself, portends some very serious consequences for our country. As a member of the Senate Armed Services Committee, I want to know, now some three decades later, that we are contacting these sailors to come in and get checked medically. I want to know the details.

I want to know who were the military personnel, were there any civilian personnel, and were there any sub-

stances we should know about so that we could give the kind of medical care that would be important as the U.S. Government ought to be protecting the people, particularly the people who served in uniform trying to protect this country.

When this came to my attention last week, I wrote to the Secretary of Defense and asked him for an explanation. I have written to our wonderful chairman of the Armed Services Committee, Senator LEVIN, and asked him to conduct an inquiry and hearing, if necessary, and if it needs to be classified, then we can operate in the Armed Services Committee in a classified manner to find out what the degree of exposure was and what the degree of medical attention should be in order to protect these American citizens.

If that is not enough, I have also had my suspicions aroused because in the 1950s there was a test going on in the old Boca Raton airbase. This was an airbase that during World War II was a training base for flyers. After World War II, in the 1950s, there was research going on at this particular airfield to develop a toxin that would attack and kill the Soviet wheat crop.

Remember, in the 1950s we were immersed in the cold war. We didn't know what to expect. We had the two nuclear superpowers. We were investigating: Could we develop a toxin that, if the United States were attacked, with which we would be able to attack their agricultural supply.

Why was that done in Florida? Well, we don't raise wheat in Florida. So that is one of the reasons Florida was chosen. But in addition to the Boca Raton location, there were other field tests made not only for wheat but perhaps for other substances that I have been able to find out about just in the State of Florida, in locations such as Belle Glade, Fort Pierce, Avon Park, and Panama City.

A couple of months ago, I wrote to the Department of Defense and asked for information about this matter, along with the same line of inquiry which I have just spoken about with regard to SHAD, the gassing of the sailors in the 1970s. I wanted to know: Were people at risk? Were military personnel exposed? Were civilians exposed? And on the 85-acre parcel to the north of what is now Florida Atlantic University, built on the Boca Raton airport, a part of the old airbase, an 85-acre area to the north where this testing was going on, were there toxins that were dumped there? Were there toxins buried there?

Basically, to my inquiry to the Department of Defense a couple months ago, they said they could not tell me because it was classified. Well, the Senate Committee on Armed Services is not only capable but is quite experienced in handling highly classified matters of the Government. The Defense Department had better be forthcoming to let us know if there is a problem, and if there is, what we are going to do about it.