

folks are opposed to that idea; they want more and more Government and more and more Government employees. Those things that are not certified Government things ought to be dealt with in the private sector.

So I know these are general comments and you don't have an answer for all these issues, but there is a frustration that builds as you go through everything we look at every day, and more and more bills being talked about.

As an example, we are going to have hearings this afternoon on the Park Subcommittee, which I used to chair. I love parks. But there need to be some criteria as to what a national park should be. Failing having criteria, what they say in every community that has an area they would like to develop and set aside is, let's get the Federal Government to take it over and let it be some kind of a Federal park. It is not a Federal park just by its definition. But I understand when we are working for something in our States—some call it pork, and some call it other things, but it doesn't matter—we don't look at the broad picture, we just look at that. It is difficult.

So I am hopeful we can take a long look at what we are doing and, as opposed to simply dedicating ourselves to an election in 2002—to which I think you will find many of these things are very related—let's take a little longer look at where we are going to be. That is really our job for the future. These young pages sitting here, where are they going to be 20 years from now? We have some responsibility to look at that. I think it is a very strong responsibility.

So I hope we can put our emphasis a little more on our responsibility as the Federal Government, how we can best do that, what it means in the future, how we can help build the strength of local and State governments so that it will be close to the people and the people can indeed have a real role in what is being managed in their area.

Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. KENNEDY. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

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

#### LOCAL LAW ENFORCEMENT ACT OF 2001

Mr. KENNEDY. Madam President, as I understand it, the time between now and 11:45 a.m. is equally divided, and at 11:45 a.m., we will vote on the cloture motion on the hate crimes legislation.

The PRESIDING OFFICER. The Senator is correct.

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

The assistant 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:

Hatch amendment No. 3824, to amend the penalty section to include the possibility of the death penalty.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Madam President, I wish to briefly review where we are on this issue involving releasing the other arm of the Federal Government to fight hate crimes.

This is an issue that has been before the Congress since 1997. We reported the legislation out of the committee in 1999. It is the year 2002, and we still, in this body and in the House of Representatives, have been unwilling, unable to pass legislation that is going to permit the Federal Government to fight terrorism at home. That is what hate crimes are all about.

I am always surprised that we are unable to break the logjams. This legislation has been before the Senate. We voted on this legislation about a year ago as an amendment to the Defense authorization bill. The vote was 57 to 42.

So we had strong bipartisan support for that legislation. Then we get to the conference and the Republican leadership in the House of Representatives said no.

What we really need is to have the legislation passed free and clear, meaning no amendments attached to the legislation, in spite of the fact that 232 Members of the House of Representatives, Republicans and Democrats, understood as well that we ought to be fighting hate and terror at home. That is what this is all about, whether we are going to deal with the insidious hate crimes that continue to exist in this country and which, in too many instances, are not prosecuted.

We have the strong support of those in the law enforcement area. Twenty-two State attorneys general support it; 175 law enforcement, civil rights, civic, and religious organizations; and 500 diverse religious leaders from across the Nation.

We have to ask ourselves: Why are we really being blocked from permitting the Senate to address an issue which we have already addressed and which is in great need at home? And that is the hate crime issue.

It is an outrage that Congress continues to be AWOL in the fight against hate crimes. Hate crimes are terrorist acts. They are modern-day lynchings designed to intimidate and terrorize whole communities.

Our Attorney General in this past year has said:

Just as the United States will pursue, prosecute and punish terrorists who attack America out of hatred for what we believe, we will pursue, prosecute and punish those who attack law abiding Americans out of hatred for who they are. Hatred is the enemy of justice, regardless of its source.

In the same speech:

Criminal acts of hate run counter to what is best in America, our belief in equality and freedom. The Department of Justice will aggressively investigate, prosecute and punish criminal acts of violence and vigilantism motivated by hate and intolerance.

Our message this morning is unambiguous and clear. The volatile poisonous mixture of hatred and violence will not go unchallenged in the American system of justice.

That is what this legislation is all about, to try to make sure we are going to prosecute these acts of violence that are based upon bigotry and hatred and that affect not only the individuals who are involved but also affect the whole community.

Many of us thought, after September 11 and after the extraordinary loss of lives, after the extraordinary acts of heroism, there was a new spirit in America. I believe that to be so. I think it is true. It is reflected in so many different areas. We are reaching out to understand our communities. We are reaching out to understand our neighbors and friends. We have a strong understanding that America, in many respects, is closer, bonded together in order to try to resist the acts of terror that are at home but also understand the values which are important to each other.

Within that spirit, it is amazing to me that we as a country are so prepared to assault those cells of hatred as they exist in other parts of the world and refuse to address them at home. That is what this legislation is really all about. That is why we need this legislation. It is very simple.

I see my friend and colleague. I reserve the remainder of my time, and I yield such time as he may consume to the Senator from Oregon.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. SMITH of Oregon. Madam President, each day I have detailed in the Senate RECORD another hate crime. Again, these are always violent, they are always sickening, but they always happen to an American citizen. These citizens are not different from you and me. They are Americans. They may be black, they may be gay, they may be disabled, female or of Middle Eastern descent, and yet they are all Americans. We are all, in that important aspect, the same.

I will detail a heinous crime that occurred in the State of Oregon in 1995. I have spoken about this horrible crime before in this Chamber. A 27-year-old Stockton, CA, man murdered a Medford, OR, couple: Roxanne Ellis, 53, and Michelle Abdill, 42. The women, who ran a property management business together, disappeared on December 4, 1995, after showing a man an apartment for rent. He shot them both in the head. The bodies were left bound and gagged in the truck bed. The Stockton man later confessed, saying he had targeted the women because they were lesbians, and he figured they would not have families that would miss them.

I believe the government's first duty is to defend its citizens, to defend them

against the harm that comes out of hate. The Local Law Enforcement Enhancement Act of 2001 is now a symbol that can become substantive. I believe that by passing this legislation we can change hearts and we can change minds.

I have noted, starting Friday, continuing most of the day Monday and today as well, that the opponents of this bill, I think, truly have an argument against the larger category of hate crimes. Their argument should not be the inclusion of these new categories of Americans whose minority subjects them to greater vulnerability. This is easy to demonstrate in crime statistics. An argument can be made that hate crimes are inappropriate, that all crime is hateful. This is an argument that has been made many times and in several cases that have reached the U.S. Supreme Court, but the Supreme Court has upheld the category of hate crimes.

So the question for us then becomes: Why not extend them to new categories of Americans who are demonstrably more vulnerable to crime? I argue once again that we should vote in the affirmative to include these new categories. I call on my colleagues to support it.

I have heard many arguments being propounded as to why we should not proceed. I believe we should proceed. I believe we should invoke cloture and get on with a final vote on this bill.

I will say, in defense of my colleagues, particularly our Republican leader, TRENT LOTT, in the rare case when he would invoke cloture early on a bill, he was roundly criticized by our friends on the other side. I wish cloture had not been invoked as quickly in this case so we might have a better chance of winning this vote. I say to my colleagues, this may be their only vote. I am given to understand that this bill will be pulled down if cloture is not invoked, and I think that is a very unfortunate development, because the time to do this is now, and the time to have effectively argued this is beginning Friday, Monday, today, and this week.

So I will be very disappointed, as one who has been present each of these days making this case, if this bill is pulled down because cloture is not invoked.

There may well be some good ideas that could be brought forward, but I think personally it is easy to distinguish between the meritorious arguments that can be made, such as some that Senator HATCH has been making, versus those that are designed to create political TV ads and to pull down this bill. It takes courage in the Senate to push the case, to make the case, and to stay with the case until this body has had time to work its will, but I fear that may not be allowed to occur now, which I regret. I wish more Senators had come the last 3 days to argue on the merits of this bill.

Every day I have entered a hate crime in the CONGRESSIONAL RECORD to

demonstrate the need for this legislation. If by having a hate crimes law that covered James Byrd, the Federal Government was able to be helpful to the officials of Texas, why not have a hate crimes law that could have helped the police officers of Wyoming to pursue and prosecute the case against Matthew Shepard? This is about permitting the Federal Government to show up to work. This is about the Federal Government standing with the American people and saying, as to these values, as to opposing crimes so horrible and callous, we will stand united with law enforcement at every level, locally and federally.

This is not an effort on the part of the Federal Government to subvert State law or local police processes. This is an ability to enhance them, to backstop them, to make sure we get the job done. It is a law that is 30 years old. It is a law that ought to be expanded because of our experience. It is a law that we ought to vote on in its final form when this week's work comes to an end.

Mr. KENNEDY. Will the Senator yield?

Mr. SMITH of Oregon. I am happy to yield.

The PRESIDING OFFICER (Mr. EDWARDS). The Senator from Massachusetts.

Mr. KENNEDY. The Senator makes a very good point that Congress went on record 32 years ago that we were going to have a Justice Department that was going to prosecute hate crimes. We have addressed that particular issue. We have made the decision.

During the more than 30 years since the current hate crimes law was passed, the Federal Government on average, has prosecuted only four hate crimes per year. By working cooperatively, state and federal law enforcement officials have the best chance of bringing the perpetrators of hate crimes swiftly to justice.

Now, as the Senator points out, another frequent argument we hear against the hate crimes bill. Opponents argue that the law is unnecessary because these crimes already are prosecuted at the State level. In the past thirty years, Congress has enacted dozens of federal drug and gun laws that criminalize conduct that already is illegal under state law. We didn't pass these laws because States were failing to their job, but rather because we believed that the Federal government had an important role to play in helping States combat violent crime. Our motivation in passing the hate crimes bill is no different.

The most important benefit of both state and federal criminal jurisdiction is the ability of state and federal law enforcement officials to work together as partners in the investigation and prosecution of serious hate crimes. When federal jurisdiction has existed in the limited areas authorized by current law, the federal government's resources, forensic expertise, and experi-

ence in the identification and proof of hate-based motivations have often provided valuable investigative assistance to local authorities without usurping the traditional role of states in prosecuting crimes.

We made a judgment, and even though there were State laws, we were going to pass this because there was an important interest in doing it.

Can the Senator find anything more important than trying to attack the basic core, the bias and hatred that motivates people to commit these crimes and make sure that we have a Justice Department that will be able to fight this with both arms, rather than one arm tied behind its back?

Mr. SMITH of Oregon. I agree with the Senator. We are in a war on terrorism in this world. It is entirely appropriate to focus on the war on terrorism at home. President Bush has proposed a more seamless process by which we backstop as a Federal Government local and State police and all law enforcement in our ability to protect the American people.

I believe government should help Americans as it finds them. Where there is a clearly demonstrated need, particularly as to gays and lesbians, we should show up to help. I believe the Senator would agree with me that in the case of James Byrd, where this African-American brother was dragged to death in a hate crime, the Federal Government, because the statute permits the category of race, was helpful. It did not subvert the local pursuit and prosecution of the murderers of James Byrd. We backstopped it. We brought the good offices and the resources and the expertise to be helpful to Texas in that case.

Come with me to Wyoming, sir, and you will talk to officers that introduced themselves to me as Republican police officers. They did not need to identify their party but their point to this Republican Senator was that this is not a partisan issue. They could have used the help. This became a case that so consumed Laramie, WY, that their limited resources were simply exhausted by one case. They would love to have had the Federal Government show up to work but the Federal Government was statutorily prohibited from coming to help.

Mr. KENNEDY. I ask the Senator one additional question, and we will hold our time with the agreement of the Senator to have the last 10 minutes. Does the Senator believe the Federal Government has less of an interest in combating hate violence against gays and lesbians than hate violence based on race?

Mr. SMITH of Oregon. It has the same interest in defending the American people regardless of their minority, their race, religion, their culture, their sexual orientation, their disability, their agenda.

It seems to me the government's business is not to pick between who among its citizens it will defend, but

that under the banner of equal protection and due process we defend all citizens. As our founding documents make clear, we are created equally.

Mr. KENNEDY. The Senator makes a point on race, religion, on gender, sexual orientation, on disability. This legislation goes to the core of the bias and hatred and addresses that. It gives the Justice Department the tools to be able to prosecute those. I thank the Senator.

How much time remains?

The PRESIDING OFFICER. There are 11 minutes remaining and the other side has 2 minutes remaining.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, last Friday, immediately after calling up S. 625, the hate crimes bill, the Democratic leadership filed for cloture, I believe within 15 minutes after they called it up.

No one is filibustering this bill. In fact, there have only been 20 amendments filed to be considered.

I expected this bill to be debated. We hoped the minority or anyone in the majority, who so chooses, who wants to try to modify this bill and make it better, would have the opportunity to do so. We all know, if cloture is invoked, for the most part, all we can do is make motions to strike. Almost everything will be held to be nongermane and therefore not debatable, unless we get a supermajority to overcome the point of order.

All we are asking is for our side to be given an opportunity to present amendments that may improve this bill.

It is astonishing to me that cloture would be filed on a bill of this magnitude, a bill that has been hotly contested for very legitimate reasons, basically for the purpose of foreclosing any amendments on one side, including my substitute amendment, which I think almost anyone would have to admit is a reasonable amendment. I don't know whether it would be accepted as a substitute or not, but it ought to at least be debated and voted up or down.

I filed an amendment yesterday that preserves the death penalty as an option in hate crime cases. It seems to me that is an option we would not want to deny law enforcement. One would think you would want to give them that additional prosecutorial tool in hate crime cases that result in death of the victim.

We can cite countless cases where, because of the threat of the death penalty, because it is a statutory option, people have pled guilty, accepted life imprisonment, and the matter was solved prior to trial, which preserves judicial resources.

We also know, that when the death penalty is an option, in many cases law enforcement officials can break down one of the conspirators to plead guilty and to become a witness, and an effective witness at that, against the other perpetrators of the heinous murders.

But, if this bill passes, it specifically excludes the death penalty. It specifically takes away those powers of the Federal Government as a tool to resolve some of these matters.

As everybody knows, I am not a big fan of the death penalty. I think it should be used very, very narrowly and only under the most stringent of circumstances. I think it is too widely used today. But it at least ought to be an option that a prosecutor can use to obtain confessions, cooperation from witnesses and, of course, use as a penalty for those who commit really heinous crimes that are proven beyond a reasonable doubt.

On Friday, immediately after calling up S. 625, the Democratic bill, the Democratic leadership immediately filed for cloture, as though anybody wants to filibuster this. I doubt seriously that all 20 amendments would be called up, but with a limited amount of amendments we could finish this bill by Thursday, 2 days from now.

It is an important bill. Everybody admits it. Why would you foreclose to me, the ranking member of the Judiciary Committee, the right to debate an effective substitute that may improve this bill and at least have a vote so those who agree with me can have their vote.

I point out to my distinguished colleague from Massachusetts that it was he and I who passed the Hate Crimes Statistics Act in the early 1990s. I was the Republican Senator who came forward and helped to get that done.

This bill has proved effective in showing there are hate crimes in our society. We know that if the two of us got together, along with the distinguished Senator from Oregon, we could probably resolve the conflicts so we would not have to wait another 5 or 6 years to have hate crimes legislation pass. But, no, there is no desire to try to resolve these matters. There is a desire to invoke cloture, cut off basically all effective debate and all amendments including the amendment of the ranking member, cut off the amendment with regard to imposing or at least requiring the death penalty, and any number of other relevant amendments. For what? Because they want this bill at all costs, when they know that the House leadership will not accept it without further amendment.

So it makes you wonder if this is not done primarily for political reasons instead of working together to try to come up with legislation that literally would work to resolve these problems.

I agree with the distinguished Senator from Oregon. There is no excuse for anybody to abuse, mutilate, kill, or otherwise commit violent conduct against anybody in our society, let alone gays and lesbians. I do not think that is justified, that anybody could get away with that. And we ought to do whatever we can to stop it.

The fact remains that State and local law enforcement are dealing with the problem. We have challenged the other

sides to give us examples, if they know any, where local law enforcement, local prosecution has not done the job. I am sure they may be able to come up with a few isolated examples, but I have not heard any yet.

We have had only 1 day of debate on this very important subject yesterday, and it was only a matter of a couple of hours. This is a bill that seeks completely to overhaul and vastly expand the role of the Federal Government in law enforcement. The attempt to prematurely cut off debate on a bill of this magnitude makes a mockery of the role of the Senate as a deliberative body.

If the distinguished Senator from Oregon is correct, if cloture is not invoked today—and I do not believe it should be—that this bill will be brought down, that would be a travesty because we could pass this bill by Thursday. There is not a soul in this body who is filibustering this bill, as far as I know. It just makes a mockery of the Senate as a deliberative body. I think the rush to ward off amendments can only lead to the conclusion it was done for sole purpose of thwarting any meaningful debate and avoiding some tough amendments because there is a wide disparity of viewpoint here with regard to the death penalty. But even if you are against the death penalty, you ought to realize the efficacy of having it there as a threat to criminals against hate crimes—yes, against gays and lesbians, to select that category—they might have to suffer the ultimate penalty because of what they have done.

In most cases the death penalty will not be imposed, but it will be used to obtain confessions, pleas, and cooperation from witnesses.

Again, I want to talk about the television show *Law and Order*. Although it is a fictional show, it really does portray how law enforcement uses the death penalty to obtain cooperation and confessions, to get people to testify against others, including their co-conspirators. If you really want to do something about hate crimes, let's do it the right way and do it by amendment, amending this bill so the House will have to consider it. They are not going to accept this bill in its current form and Senator KENNEDY knows that. I know that. The distinguished Senator from Oregon knows that.

I think Senator KENNEDY would agree with me that this bill deserves more than a single day of debate—or I should say 2 hours or so yesterday—before Senators are precluded from filing amendments.

I agree wholeheartedly that Senator KENNEDY's bill, S. 625, is an important piece of legislation and should be given consideration in the Senate.

In the past I, too, have introduced legislation addressing hate crimes and I intend to offer a viable substitute amendment.

As someone who has remained interested in this issue, as Senator KENNEDY

is and I am, I believe at a minimum I should have the opportunity to offer amendments relative to the discussion of hate crimes and to this bill. This opportunity, of course, can only be ensured if today's cloture vote fails and the leadership then agrees to work this out. Let's get a time agreement. Let's have limited amendments, and I think we can get our side to agree to that.

I believe my amendments will in fact improve this bill as it reads currently. Moreover, I believe the majority of my colleagues not only want to consider my amendments but would also approve my amendments. Protecting the safety and rights of all Americans is the paramount concern to all Senators. To not have a vote on the death penalty? For the first time, remove that as a consideration in these tough cases? If you really want to do something about hate crimes you ought at least to have the death penalty on the books.

There are, however, many differing thoughts about how to best provide the protection. No one is threatening to filibuster this bill. Relying on unsubstantiated rumors of machinations to file numerous irrelevant amendments is insufficient justification to cut off debate. The fact is, only 20 amendments were filed yesterday.

My colleagues and I are trying to engage in a sincere debate on this issue that affects all Americans. It is curious to me why the Senate Democrats are trying to block a substantive debate on hate crimes. By preventing relevant amendments from being offered and considered, the Democrats are shutting the door on any Republican ideas or alternatives, however constructive they may be. At least we should be entitled to a vote on a limited number of amendments. We could agree to that. Every Senator has the right to consider, thoughtfully, legislation that will have a significant impact on the way serious crimes are prosecuted in this country. By filing for cloture prematurely, the leadership is denying all Senators the right to debate and have a vote on issues that are important to them and the constituents of their States. Simply stated, it is wrong to foreclose debate on this very important bill.

I ask the Democratic leadership to rethink their strategy and unreasonable position. I strongly urge Senators to oppose cloture on this bill. I agree with my colleague from Massachusetts, every hate crime is a tragic reflection on our society and we need to address the problem. But no one has made the case to me that the local authorities are not effectively prosecuting these cases. We have asked them to. I believe the proper role of the Federal Government is to assist, not supplant, local law enforcement authorities. That is the approach I have taken in my alternative, which will not even be able to be considered if cloture is invoked today.

Let me just take a moment to review some of these cases that we have been

talking about. Take the Roxanne Ellis and Michelle Abdill case here. This is the one that the distinguished Senator from Oregon, if I remember correctly, was referring to. Roxanne Ellis and Michelle Abdill. The defendant was Robert Acremant, the jurisdiction was Oregon. Acremant, shot Ellis and Abdill, a homosexual couple, to death as they lay gagged in the back of his truck—truly a heinous, vicious, reprehensible act.

What happened to this defendant? Was he let go because the Federal law enforcement authorities and prosecutors did not have this hate crimes bill? Not at all. The local law enforcement brought him to trial and he received—guess what—the death penalty. That doesn't sound to me like he is getting away with a hate crime.

Let's go down through a few more. James Byrd—we have heard a lot of about James Byrd and we ought to hear a lot about it. It was a terrible, heinous act that was committed in Texas by three defendants, Lawrence Russell Brewer, John William King, Shawn Allen Berry.

They beat Mr. Byrd, an African-American, unconscious. They chained him to the back of a pickup truck and dragged him for miles down rural roads. That is what all three of these heinous criminals did. What happened to them? Let me tell you. Because the death penalty was available, Shawn Allen Berry pled guilty and became a witness against the other two, who both received the death penalty. That doesn't sound to me like the Federal Government was needed in that case.

The fact of the matter is, the State and local officials said: Enough is enough. We are not going to tolerate this kind of activity, this type of action. The death penalty, because it was available for these crimes—a defendant pled guilty and was sentenced to life in prison without parole. The other two defendants received the death penalty. All we ask is that we be permitted to offer my substitute amendment which preserves the death penalty. I can't imagine that amendment would fail on this bill and it would improve this bill by leaps and bounds.

Matthew Shepard, we have heard a lot of talk about Matthew Shepard and yes, State prosecutors and law enforcement, who believe, as we do, that hate crimes should be prosecuted. In the Shepard case, the two defendants were Aaron McKinney and Russell Henderson. They 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. The defendant Henderson drove the truck into which Shepard, a homosexual college student was lured, helped tie him to a fence—and at least stood by while Shepard was beaten senseless.

What happened? Henderson pled guilty in order to avoid the death penalty. He was sentenced to two consecutive life terms with no possibility of

parole. Aaron McKinney was sentenced to two consecutive life terms. He avoided the death penalty by agreeing not to appeal the life sentences. Had the death penalty not been there, who knows what would have happened? I think they had the defendants dead to rights, but it certainly did help in both of these cases to have the death penalty available.

Another case involved the homosexual couple, Gary Matson and Winfield Mowder. The defendants, Benjamin Williams and James Williams, shot Mr. Matson and Mr. Mowder to death. The death penalty was available and the prosecution is ongoing in both cases.

In another Texas case, the defendant Mark Stroman was tried for shooting Vasudev Patel, an Indian man, after 9/11, because Stroman thought Patel looked middle eastern. The local officials prosecuted the case and he received the death penalty.

In the case of Sasezley Richardson, an African-American, Jason Powell and Alex Witmer fired 12 shots at him in an attempt to "earn" a spider web tattoo from the Aryan brotherhood. The defendant Witmer drove the truck from which Powell fired 12 shoot at Richardson. Because the death penalty was available, Powell pled guilty and testified for the State in order to avoid the death penalty. He was sentenced to life in prison without parole. In the case of Alex Witmer, the death penalty was available, and he pled guilty and was sentenced to 85 years in prison. What if that death penalty had not been available? Who knows whether they could have convinced one defendant to testify against the other.

The next chart begins with the case of Amanda Milan, who was stabbed to death for being a transgender woman. The defendants in this case were Duayne McCuller and Eugene Celestine in New York.

In this case Eugene Celestine gave McCuller the knife with which to kill Milan. The prosecution is currently ongoing, and both are facing the possibility of life in prison.

In another case, the victim, Billy Jack Gaither was bludgeoned to death because he was homosexual. The two defendants, Mullins and Butler, attacked Gaither with an ax handle, slit his throat, threw him on the top of a pile of tires, and set him on fire.

Because the death penalty was available, Mullins pled guilty prior to trial and was sentenced to life in prison without parole. Butler was sentenced to life in prison without parole only because the victim's parents requested that the prosecution not seek the death penalty. But because it was available, they were able to bring these cases to conclusion and these two heinous criminals were sentenced to life because neither wanted to go through a trial where they knew they could get the death penalty. By obtaining pleas prior to trial, the prosecutors saved scarce taxpayer dollars.

In a Virginia case, Danny Lee Overstreet, was killed by the defendant, Ronald E. Gay when Gay went on a shooting rampage in a gay bar, killing Overstreet and wounding six others. Because the death penalty was available, he was sentenced to four life terms.

I have a lot of empathy for those on the other side of this issue at this time who want to pass legislation to address some of these hate crimes. They would like to give the Federal Government more authority. I am not against that. But I would like to have a bill that will pass both Houses. I would like to have a bill that will go to work tomorrow, or the next day, or 2 months from now, when it passes both Houses and is signed by the President, which will really do something about these crimes. I want a bill where there is a threat of the death penalty so we can get pleas and save the taxpayers' money.

Frankly, these cases are important cases. In almost every case that the proponents of this piece of legislation bring up—in almost every case—the State and local law enforcement—in fact, in every case, to my knowledge—they have done the job. My substitute amendment would give them the tools, the money, and so forth to do the job even better.

I would like the opportunity as ranking member of the Judiciary Committee to be able to offer some amendments that should have votes. If I lose, I lose. If I win, I win. But the fact of the matter is that we ought to at least have this opportunity to debate it.

I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, how much time do I have left?

The PRESIDING OFFICER. Eleven minutes.

Mr. KENNEDY. I yield myself 4 minutes.

With regard to the procedure, there have been two occasions when the majority leader has requested that we have a debate on this legislation and have relevant amendments. That process and that procedure were objected to by the other side.

First of all, during the more than 30 years that the existing hate crimes statute has been on the books, the federal government has never tried a hate crime case in which it sought the death penalty. There is nothing in our bill that prohibits a State with the death penalty from seeking that punishment if the State decides to prosecute the hate crime. The fact remains that nothing in our bill would allow the federal government to take jurisdiction away from a State that wants to prosecute a hate crime and seek the death penalty.

It is interesting. During this debate, we know exactly what our situation is. If you talk about race, national origin, and religion, they are protected, if they fall within the six categories. But sex-

ual orientation is not. Disability is not protected. Neither is gender. Even in the amendment offered by the Senator from Utah, he excludes gender. The Republican leadership of the House of Representatives will not take protection of sexual orientation. Those are the facts. Sometime, some day, we have to deal with the realities.

This has been out there for 5 years. We have the support of 22 attorneys general. We have the support of the former Attorney General of the United States, Dick Thornburgh, who understands the importance of this legislation. There is a need out there. You are not going to get that kind of inclusion, those kinds of protections, in terms of gender, under the amendment of the Senator from Utah, and you will not get it under the Republican leadership.

Those are the facts. We have the list of the amendments. We have an anti-abortion amendment by the Senator from Pennsylvania here. Relevant amendments. The list goes on. The leader asked for the ability to do that. At some time we have to take action.

We know what this is really all about. We have had this for 5 years. We passed it 57 to 42 last year and were denied the opportunity to get this out of the conference because of the Republican leadership in the House.

The real question is, Are we going to take the action now? How long do people have to wait to get this protection? They have waited 5 years. We have a lot of pious statements here about the need for protection for American citizens on the basis of sexual orientation and disability and gender. Yet we refuse to address it or pass it.

That is the question and the issue. It is domestic terrorism. These are crimes based upon hate and prejudice that ruin not only the individual but the community and the Nation. That is what we are talking about. Trying to dismiss this as routine kinds of investigations isn't what this is about. The Senator from Utah understands that. That is the question—whether we are going to be prepared to take those steps to provide the limited but extremely important opportunity to make sure we are going to do something.

How about sending a message to those people out there in terms of the potential of hate-motivated crimes? We sent them a message when we passed the church burning legislation. We sent a powerful message, and that virtually stopped. How about doing the same thing with regard to hate crimes because of sexual orientation or gender or disability? What is the other side scared of?

They say we are going to federalize another thing. Well, they found 37 other provisions they are glad to federalize, but not this kind of protection.

As the Senator from Oregon said, this protection is rooted in animus, the basic hatred that motivates these kinds of crimes. The question is, Are we going to do something about it?

This is the time. Twice Republicans rejected the opportunity for debate on relevant amendments. We know what is happening. This is the vote. This is the time. We want to make it very clear, and I am hopeful that we get cloture. If we do not, I want to give the assurance to the Senator from Utah that we are going to be back again and again.

So have no fear about not addressing this issue because this is just the beginning, and we are going to continue the battle through this session.

The PRESIDING OFFICER. The Senator from Utah is recognized.

Mr. HATCH. Mr. President, I have heard all this rhetoric before. We have been working on this for 5 years. The distinguished Senator from Massachusetts knows that we put together some of the most important legislation in history—he and I. He knows darn well that this bill isn't going anywhere if it passes in its current form. He knows darn well that it sounds good to make all these political points, but I would like to pass something. I would like to do something. I would like to have something that works. I am willing to do it in a Federal way.

The Senator seems to be saying, take his viewpoint about this or take nothing, which is what we have done for the last 5 or 6 years. He knows darn well that I will work on the bill with him. We have discussed this in private.

I don't like what is going on in our society any better than he does, but I challenge him to show me where State and local law enforcement are not doing the job. Explain to me why he would not have the death penalty to help law enforcement and the prosecutors to obtain pleas, cooperation from witnesses, and to have witnesses testify against their coconspirators, which conserves judicial resources.

He says that if the States want to prosecute hate crimes, they can seek the death penalty. The fact is, we are taking these matters away from the States and saying the Federal Government ought to prosecute these crimes where there will be no death penalty. I feel embarrassed to have to talk about the death penalty because I am not real enthused about it. I don't want it applied, except in the most stringent of circumstances. There has to be absolute guilt, and the crime has to be so heinous as to justify it.

Look, I would be willing to put sexual orientation in my bill. I don't want every rape to be considered a federal hate crime. I don't want every criminal sexual act to be considered a federal hate crime, leading to the possibility of being brought before the Federal courts. On the other hand, I am certainly willing to talk about compromises.

The charts we just went through show that the criminals are being prosecuted. The crimes against gays and lesbians are being prosecuted. State and local law enforcement are bringing the appropriate prosecutions. The distinguished Senator said "let's send a

message through this legislation" if nothing more. I would like to do that. I would like to get a bill that we can pass. I would like to get a bill that the House will accept—instead of accusing the House of not having the same interests at heart than the Senator from Massachusetts.

No one is arguing that hate crimes are not a problem. We have never denied that hate crimes are occurring. Nobody can deny that. I want to get rid of them as much as anybody. No one feels more strongly on this issue than I do, whether they support S. 625 or not. No one—least of all me—is suggesting that hate crimes are not a problem, or that we as an institution should stand by and do nothing about hate crimes. That is why I intend to offer an amendment to S. 625 that provides an alternative approach to helping in the fight against hate crimes. I am willing to sit down with the Senator and see if we can work out something that will pass both bodies. The tremendous record of State and local prosecutions of hate crimes suggest to me, however, that States are doing a great job policing these types of cases.

In my view, a measured, appropriate, and constitutional Federal response should be directed at helping States that ask for our assistance. Nobody is arguing that existing Federal law is adequate. No one contends that we should rest on the existing Federal hate crimes statute. We can all agree that the Federal Government should do more than what 18 U.S.C. 245 currently provides.

That is why I will offer an amendment to S. 625 that provides for an alternative approach to help in the fight against hate crimes. The record is clear. I have always been open to fixing 18 U.S.C. section 245 through amendments.

The PRESIDING OFFICER. The time controlled by the Senator from Utah has expired.

Mr. FEINGOLD. Mr. President, I rise today to oppose the amendment offered by my colleague from Utah, Senator HATCH, to amend the penalty section of this bill to include the possibility of a death sentence.

This amendment is a step in the wrong direction.

Let me be clear. Those who commit crimes, including acts of violence that are motivated by hate, should be punished and punished severely. Federal law enforcement has an important role to ensure that hate crimes are investigated and prosecuted to the fullest extent of the law. And if death results from a hate crime, Senator KENNEDY's bill provides for the full weight of the law to be brought to bear on that individual. It does so by providing for a maximum sentence of life in prison without the possibility of parole.

At a time when Americans are increasingly recognizing that the current death penalty system is broken, this is not the time to expand the Federal death penalty.

We know that justice should be blind. But, unfortunately, in the Federal death penalty system, it appears that justice is not always blind. A report released by the Justice Department in September 2000 showed troubling racial and geographic disparities in the administration of the Federal death penalty. The color of a defendant's skin or the Federal district in which the prosecution takes place can affect whether a defendant lives or dies in the Federal system. Former Attorney General Janet Reno ordered a further analysis of why these disparities exist. And Attorney General Ashcroft has agreed to continue this study.

We have not yet seen the results of this study, nor have we had the opportunity to review and understand what the results might mean for the fairness and integrity of our Federal justice system. While this important study is underway, Congress should not create even more death-eligible crimes.

I also strongly disagree with Senator HATCH's claim that the availability of the death penalty ensures efficient and reliable prosecution and conviction of those who commit hate crimes.

We know that levying death has an immensely coercive effect on the accused. The accused who wants to live and does not have the resources to mount a "dream team" defense may feel little choice but to accept whatever deal for less than death that the prosecution offers. This can happen in situations where the accused is less culpable than other defendants, or worse yet, innocent of the charges altogether.

I am very troubled by the practice of some prosecutors who may use the prospect of the death penalty to coerce a defendant, including a defendant who may be innocent, to accept guilt and a plea bargain.

A case involving defense representation from my state illustrates how this coercive tactic undermines the integrity of the justice system. It involves Christopher Ochoa, who confessed to a rape and murder out of fear of facing the death penalty in Texas. Mr. Ochoa was released a little over a year ago after serving 12 years of a life term in Texas. Mr. Ochoa won his freedom as a result of the persistence, hard work, and skill of students and professors at the Innocence Project at the University of Wisconsin-Madison Law School.

According to the Wisconsin State Journal, police arrived to question Mr. Ochoa in November 1988. Mr. Ochoa, who was 22 years old at the time, was "harangued with grisly details of the crime, many of them false. A burly sergeant told him he would be 'fresh meat' in prison, pounded tables and demonstrated where the death needle would pierce his arm. Ochoa confessed." In a forum at the University of Wisconsin after he was released, he said, "I don't think people can say what they would have done until they're in that situation." He said, "Basically, I was terrified."

The Federal system is not immune from the use of this coercive tactic or the other flaws that result in the risk of executing the innocent in the state systems. According to the Federal Death Penalty Resource Counsel Project, since the death penalty was re-enacted in 1988, approximately 3 percent of persons the Justice Department has attempted to execute may have been factually or legally innocent.

In one case, David Ronald Chandler claimed his innocence throughout the trial and the appellate process. Chandler believes that the real triggerman made a deal with the government to testify against Chandler, and in return the government would not seek the Federal death penalty against the triggerman. But the triggerman later recanted his testimony. Luckily for Chandler, President Clinton commuted his death sentence to life. But how many other defendants who have claims of innocence will not be so lucky, or feel forced to accept a life sentence? I don't know the answer to that question. None of us do. And that is why a thorough, top-to-bottom review of the death penalty system at the State and Federal levels is needed.

Until such a comprehensive review has been undertaken, and the necessary work has been done to ensure fairness and justice, Congress should refrain from expanding the Federal death penalty. Congress can ensure that perpetrators of crime are effectively punished without resorting to capital punishment.

I urge my colleagues to join me in opposing Senator HATCH's amendment.

The PRESIDING OFFICER. The majority leader.

Mr. DASCHLE. Mr. President, I will use leader time to make my remarks this morning.

I appreciate the debate we have had on this issue now for the last couple of days. I am struck by a couple of issues. First, I am struck by the number of hate crimes that occur every day. We are told there are over 20 hate crimes committed in the United States every day—every day. The Southern Poverty Law Center estimates the real number may be 50,000 a year. That comes out to five an hour.

In the time we have had the debate just this morning, according to those statistics, 15 to 20 hate crimes have been committed in this country—in just the time the Senate has been in session this morning.

If there is such a good job being done across this country as we deal with that volume, I would not be able to say that with any authority this morning, but the volume is there. That leads me to the second point.

The second point is that behind each one of those statistics is a human being, a face, a story, a tragedy. That is, in essence, what this debate is all about—to end the tragedy in this country.

As I consider the options we have available to us legislatively, I consider



those options as they must have existed during the civil rights debates of the fifties and sixties, and I am sure when we considered the civil rights issues in the fifties and sixties there were all kinds of reasons it was not the time to deal with civil rights laws; it was not the time to come to closure on how to address the rampant racism that existed in the country at that time.

Finally, it took leadership, it took resolve, it took bipartisan consensus and, ultimately, it took a willingness to commit to a bill. We passed the civil rights acts of the fifties and sixties, and today we are the better for it.

Who today would say we are going to repeal those laws? They have been on the books, they have worked, and we take credit for the fact they have.

This is our moment when it comes to hate crimes. This is our time to tell the Matthew Shepards of the world that we are not going to tolerate that anymore; that we are better than that; we are bigger than that.

Just as we addressed racism in the past, we have to address the prejudice against sexual orientation today. This is our chance. This is our moment. This is our Civil Rights Act for the year 2002. We are not going to have many more. Let's seize this opportunity. Let's seize this moment. Let's send a clear message. Let's end those terrible statistics. We can do it when we vote on cloture in a matter of moments this morning.

I yield the floor.

The PRESIDING OFFICER. The Republican leader.

Mr. LOTT. Mr. President, I yield myself time under my leader time that has been reserved.

The PRESIDING OFFICER. The leader has that right.

Mr. LOTT. Mr. President, I do not intend to get into the details now and a discussion on the substance of the bill except to say this: The greatest hate crime of all that we should be dealing with right now is the hate crime of terrorism against America and free and innocent peoples all over the world who have been attacked by terrorists—3,000 approximately killed on 1 day, September 11. There is where our focus should be.

I am disappointed at the timing of this legislation, to say the least. We should be focused on the war on terror. We should be taking up the Defense authorization bill. We should have already taken it up. Normally we deal with the Defense authorization bill in May; certainly the early part of June. Now it appears to me there will be no way to get to the Defense authorization bill before probably next Tuesday at the earliest, and maybe later. Until we do that, we cannot begin on the regular appropriations bills, the first of which should be the Defense appropriations bill. We need to make sure our men and women in uniform and our law enforcement officials all over this country and all over the world who are

fighting against this hate crime, terrorism, have what they need in terms of pay, quality of life, weapons, and sophisticated equipment they need to do the job.

While, obviously, this issue can be scheduled at some point—and I assume it will be scheduled—it certainly is one in which there is not an emergency facing us right now. I wanted to raise that point.

We do not even have a budget resolution. We are 2 months behind getting a budget resolution this year. It is just being ignored: No budget resolution. No 2003 numbers to which we have agreed. No policies. No enforcement mechanisms. How are we going to do the appropriations bills? What possible restraint can be provided for the ranking members and the chairmen of the subcommittees on appropriations?

The law requires we do the budget resolution by April 15. We do not have it. We do not know when we are going to have it. Apparently, we are never going to have it.

The Defense authorization bill was reported out of the committee May 15. While there were votes against it, it was a bipartisan vote. What is the problem? There is obviously a weapons system that is causing some consternation. Sooner or later we are going to have to address that issue—sooner rather than later, I hope.

With regard to this particular issue, I know how tough it is being majority leader and dealing with protracted debate and amendments. We saw last week what happens when we have a prematurely filed cloture motion. Tactically, one may think: I have to do it because I have to bring this to a conclusion.

We saw last Thursday night what happens when cloture is invoked and we cut off debate and amendments. Unless it is very tightly germane, it is not in order. So at midnight last Thursday night, we were trying to figure out how do we conclude the supplemental appropriations bill, again, for defense and homeland security. Amendments were being knocked out right and left, probably amendments that were worthy and should have been taken but were not germane.

We are about to do that here. We made the mistake last week, and now we are about to make the mistake again this week. We are going to cut off amendments. As a matter of fact, a substitute amendment by the ranking member of the committee of jurisdiction, Senator HATCH, would be non-germane postcloture. It is not a question of trying to stop unrelated amendments. This is an amendment that even deals with the substance of the issue. Why are we doing that?

I used to file cloture motions perhaps prematurely, and I was royally pilloried by the other side of the aisle: Why did you file a cloture motion so prematurely? You shouldn't do that.

Most of the time I realized it was probably a mistake, and on occasion, I

backed off and we vitiated the cloture vote.

Even at the beginning of the last Congress when it was 50-50, under S. Res. 8, the organizing resolution, we agreed specifically in the rule that cloture motions could not be filed before 12 hours of debate had taken place. When the majority changed, that rule went by the board, but the principle was there. Why was it good when we were 50-50 but not good when it is 50-49 and 1? This is not partisan. I have made this mistake. I think it is a mistake. We should not do this.

This cloture motion was filed after 12 minutes, not 12 hours. This bill was called up and within 12 minutes a cloture motion was filed. This is not the way to do business. We are prepared to debate this issue, consider legitimate, substantive amendments, and any other amendment for certainly a reasonable period of time. This is cutting off members of committees of jurisdiction. This is cutting off all Senators. It is a mistake. We made the mistake last week. We should not make the mistake now.

On my side of the aisle, it would be a message that we are not going to prematurely cut off debate. Give it a little time. It works on both sides of the aisle. I urge my colleagues to vote against this cloture motion. Let's have some amendments offered. Let's spend some time making sure we do not get ourselves trapped in the same situation we did last Thursday night, which was not pretty for this institution.

I yield the floor.

Mr. WELLSTONE addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts controls the time.

Mr. KENNEDY. I yield the Senator from Minnesota 2 minutes.

Mr. WELLSTONE. I thank the Senator.

Mr. President, I disagree with my colleague, the minority leader. It is always an emergency when brutal crimes are committed against people because of their sexual orientation or gender or because of disability.

I think it is an emergency for our country when someone such as Matthew Shepard is brutally murdered. I think it is an emergency for our country when what we say to people is not just that they are a victim or that we dehumanize people but, rather, we say to many citizens in our country, by gender or sexual orientation, because they are a gay or because they are a lesbian, they are next. Hate crimes violate not only our Constitution but they destroy our oneness as a people. They diminish us as a country. They take away from what is best in our Nation.

I insist, as a Senator from Minnesota, that this is an emergency and that we should pass this legislation and that this legislation must not be blocked. If it were your loved one who had been murdered, if it were your

loved one who were a target of these hate crimes, you would consider it an emergency and you would want us to pass this very important legislation.

I urge my colleagues to vote for cloture.

Mr. SARBANES. Mr. President, I rise today to express my support for the Local Law Enforcement Enhancement Act of 2001, and my disappointment that the Senate failed to invoke cloture on this important legislation today. As a cosponsor of Senator KENNEDY's bill, I believe it is crucial that we pass hate crimes legislation in an expeditious manner in order to provide the government with the tools it needs to prosecute the many senseless bias-motivated crimes that occur in our country each year. In the past several decades we have made significant progress in reducing discrimination, yet more needs to be done. This legislation is an important step toward ending the scourge of hate crimes that continues to plague our Nation.

Data gathered under the Federal Hate Crime Statistics Act about the prevalence of these crimes is sobering. Beginning in 1991, the Act requires the Justice Department to collect information from law enforcement agencies across the country on crimes motivated by a victim's race, religion, sexual orientation, or ethnicity. Congress expanded the Act in 1994 to also require the collection of data for crimes based upon the victim's disability. For the year 2000, 11,690 law enforcement agencies in 48 states and the District of Columbia reported 8,063 bias-motivated criminal incidents (8,055 single-bias and 8 multiple-bias incidents) to the FBI. The incidents consisted of 9,430 separate offenses, 9,924 victims, and 7,530 distinguishable offenders. According to the data collected, 53.8 percent of the 8,055 single-bias incidents were motivated by racial bias, 18.3 percent by religious bias, 16.1 percent by sexual-orientation bias, 11.3 percent by ethnicity/national origin bias, and 0.5 percent by disability and multiple biases.

The Local Law Enforcement Enhancement Act is carefully tailored to ensure a state's ability to prosecute hate crimes, but it provides the Federal government with additional tools to prosecute hate crimes should a state be unable to do so. The legislation extends the Federal law to prohibit hate crimes against victims because of their gender, sexual orientation or disability. In addition, the legislation allows Federal prosecution of hate crimes wherever they occur and under whatever circumstances, thus broadening the previous requirement that the hate crime occur while the victim is engaged in a "federally protected activity."

The need for these limited changes in existing Federal hate crimes laws is clear. For example, according to the Justice Department, 16.1 percent of the hate crimes committed in 2000 were motivated by the victim's sexual ori-

entation. The Local Law Enforcement Enhancement Act would expand the definition of hate crimes to include those committed because of the victim's sexual orientation—in addition to a victim's gender or disability.

A hate crime may meet the federal definition of "hate crime" yet the federal government is still powerless to aid in its prosecution. For example, in the wake of the terrorist attacks of September 11th, our Nation has struggled to prevent discrimination and acts of violence against Arab-Americans. Despite the resolve that most Americans have shown in that regard, tragically, crimes have occurred. On September 15, 2001, Balbir Singh Sodhi, a Sikh-American, was shot and killed at his gas station in Mesa, Arizona. This tragic incident was the most serious of several attacks against people of Middle Eastern and South Asian descent who were targeted in the aftermath of the terrorist attacks. Although religion and national identity are already protected under current law, the hate crimes legislation before us would give the Federal government enhanced authority to investigate and prosecute these types of crimes.

Despite the progress towards ending discrimination over the past decades, it is undeniably clear that raw hatred and its tragic consequences continue to exist in our Nation. Strengthening the Federal government's ability to prosecute hate crimes is an important step towards the eradication of hate crimes in our country. Mr. President, I urge my Senate colleagues to bring the Local Law Enforcement Enhancement Act back to the floor of the Senate and to join me in supporting this important hate crimes legislation. We have an invaluable opportunity to make a statement that the United States government will not tolerate crimes motivated by bigotry and prejudice, and I look forward to the day when there is no longer a need in our Nation to legislate such changes.

Ms. CANTWELL. Mr. President, I would like to take this opportunity to express my strong support of the Local Law Enforcement Act of 2001, the "Hate Crimes Act." The Hate Crimes Act is a bill whose time has come. I would like to commend Senator KENNEDY for his long, hard work to pass this important legislation, and I am happy to have the opportunity to vote for it today.

The Hate Crimes Act creates an intergovernmental assistance program which would provide technical, forensic, prosecutorial and other forms of assistance to state and local law enforcement officials for hate crimes based on race, color, religion, national origin, gender, sexual orientation and disability. The bill authorizes the Justice Department to award grants of up to \$100,000 to state, local, and Indian law enforcement officials who have incurred extraordinary expenses associated with investigating and prosecuting hate crimes. This legislation

requires grant applicants to coordinate with affected community groups, schools, and colleges and universities. In addition, this bill gives the Justice Department jurisdiction over crimes of violence involving bodily injury, if motivated by a person's actual or perceived race, color, religion, national origin, gender, sexual orientation, or disability, if it meets both the interstate commerce and certification requirements in the underlying statute. Lastly, the bill amends the Hate Crimes Statistics Act to include gender and requires the FBI to collect data from states on gender-based hate crimes in the same manner that it currently collects data for race, religion, sexual orientation, disability, and ethnicity.

The number of reported hate crimes has grown by almost 90 percent over the past decade and we cannot afford to ignore this growing problem. The recent hate-motivated crimes in my state of Washington demonstrate the destructive and devastating impact hate crimes have on individual victims and entire communities. On May 9th, 2002, Patrick Cunningham pled guilty to the September 13, 2001 attack of an Islamic Idriss Mosque in Seattle. Mr. Cunningham doused two cars with gasoline in the mosque parking lot in an attempt to destroy the mosque and harm worshipers inside. Cunningham also shot at the worshipers after being discovered. Just a few days later, on September 18, 2001, Kulwinder Singh, a Sikh cabdriver in Seatac, Washington, was harassed and physically assaulted by a passenger.

This legislation takes important steps to ensure that crimes motivated by the victim's race, gender, sexual orientation, disability or religion can be prosecuted to the full extent of the law, and it removes the artificial limitations that currently keep local law enforcement from getting needed assistance. The Hate Crimes Act provides the necessary complement between state and federal law enforcement officials in order to ensure that perpetrators of hate crimes are brought swiftly to justice. The federal government's resources, forensic expertise, and experience in the identification and proof of hate-based motivations have often provided invaluable addition to the important work conducted by local investigators. One need only remember the brutal killing of James Byrd in Jasper County, Texas to understand the benefits of an effective hate crimes investigative partnership between state and federal authorities. This partnership is also crucial to the work of the National Church Arson Task Force and to the increase in the number of hate crimes solved by arrests and prosecutions.

I believe that the Hate Crimes Act is necessary to ensure that violent hate crimes based on sexual orientation, gender, or disability do not go unpunished. Every year, a significant number of hate crimes are perpetrated



across our nation based on anti-gay bias. Current law, however, leaves the federal government without the authority to work in partnership with local law enforcement officials or to bring federal prosecutions when gay men or lesbians are the victims of murder or other violent assaults because of bias based on their sexual orientation.

This Act would fix the inadequacies in pre-existing federal law, which became painfully apparent in the vicious murder of Matthew Shepard in Laramie, Wyoming, and the subsequent investigation and prosecution of his assailants. The lack of federal funding caused significant financial hardships on the local sheriff's department in its efforts to bring Matthew's killers to justice, and, as a result, five law enforcement staff members were laid off. In response, this bill amends the criminal code to cover hate crimes based on sexual orientation and authorizes grants for state and local programs designed to combat and prevent hate crimes.

This legislation would have a measurable impact in my state of Washington and help prosecute the growing string of hate-based attacks targeting individuals' sexual orientation. On April 6, 1995 in Olympia, Washington, four young adults brutally assaulted Bill Clayton, an openly bisexual high school student, and his friends who happened to be walking with him. Just two months after the assault, the seventeen-year-old committed suicide. Prior to his suicide he had explained to his mother that he was just tired of coping, and that it was the constant knowledge that any time he could be attacked because he was bisexual, that despite the love of his family and friends, all he could see ahead of him was a lifetime of facing a world filled with hate and violence, going from one assault to another. We cannot let our citizens live in fear for their safety, knowing that their attackers will not be prosecuted to the full extent of the law. This legislation is necessary to fill the current void to ensure vigorous prosecution of individuals who perpetrate a hate crime. The extra federal resources that this Act would make available in the investigations and prosecutions of hate-motivated crimes would serve as both a significant deterrent and punishment, and would likely bring a greater number of cases to successful resolution through arrest and prosecution. We must do all we can to prevent the incidents that led to Bill Clayton's tragic death.

I believe it is important that we recognize from the beginning that not all crimes are hate crimes. The reason behind this is simple. All crimes are not created equal and mental states, in addition to acts, have always played an important role in determining the severity and subsequent punishment of a crime. Recognizing this, it is well established that a legislature can properly determine that crimes committed against certain classes of individuals

are different or warrant a stiffer response. Moreover, the U.S. Supreme Court had unanimously ruled that bias-inspired conduct inflicts greater individual and societal harm.

I share Senator KENNEDY's concerns regarding hate crimes, and I have consistently supported hate crimes legislation, from the time I was in the Washington state House of Representatives to now. There are nearly 8,000 hate crime incidents reported annually each year. The Hate Crimes Act sends a clear message that violence against a person based on skin color, sexual orientation, or religion will not be tolerated anywhere in this country. The bill will provide broader federal jurisdiction to prosecute hate crimes, including crimes motivated by race, color, religion, gender, sexual orientation, and disability. Broadening federal jurisdiction will allow effective prosecution even when hate crimes are committed in states that lack hate crime statutes, or where local law enforcement lacks the resources for this type of prosecution. Additionally, the bill will provide federal grant money to states to better enable these jurisdictions to successfully prosecute hate crime offenders. We cannot afford to wait any longer to pass this vital legislation. Our sons and daughters, brothers and sister, mothers and fathers depend upon this Act to ensure full protection of their right to be free from hate-motivated crimes. I urge my colleagues to support this bill.

Mrs. FEINSTEIN. Mr. President, I am pleased to join my colleagues in expressing my strong support for The Local Law Enforcement Act of 2001, legislation of which I am an original cosponsor.

Popularly known as The Hate Crimes Prevention Act, this legislation would: expand current federal protections against hate crimes based on race, religion, and national origin; amend the criminal code to cover hate crimes based on gender, sexual orientation, and disability; authorize grants for State and local programs designed to combat and prevent hate crimes; and enable the federal government to assist State and local law enforcement in investigating and prosecuting hate crimes.

While past efforts to enact this legislation have received strong bipartisan support, we have not been able to get it to the President's desk for his consideration. We must now work to ensure that this legislation is not simply supported, but actually passed and signed into law by the President.

In the aftermath of the tragic events of September 11th, we saw a terrible rise in hate crimes in the United States. California was not immune to the violence.

In San Gabriel, CA, Adel Karas, an Egyptian-American grocer, was shot to death while he worked in his store. It is believed that he was a victim of an attack motivated by the September 11 attacks, not a robbery, because all the cash was left in his register.

In Palmdale, CA, a public high school found a notice threatening a "massacre" to avenge the terrorist attacks, complete with the names of five Muslim students who would be targeted.

In Lancaster, CA, Gerald Pimentel, a Hispanic man, was attacked after he was mistaken for being Iranian. Two men bumped his car three times while he was driving. His car was then blocked, and the men began yelling and running toward him. They chased him through his yard and into his home. When he tried to defend his family, they beat him. "They'd been calling him an Iranian," Gerald's daughter later said. "I couldn't understand why. You know, my dad is not Iranian. They just kept hitting and hitting my dad," she said.

The FBI has investigated over 300 incidents since September 11 in which individuals perceived to be Muslim or of Middle Eastern decent have been attacked or threatened because of their religion or national origin.

President Bush moved swiftly to protect Muslims and Arab-Americans from hate crimes and sent out a message that this nation will not tolerate such attacks against any Americans.

The President implored, "In our anger and emotion, our fellow Americans must treat each other with respect . . . Those who feel like they can intimidate our fellow citizens to take out their anger don't represent the best of America, they represent the worst of humankind . . ."

Attorney General John Ashcroft reiterated the President's message by warning that, "We must not descend to the level of those who perpetrated [September 11th] violence by targeting individuals based on race, religion or national origin."

Now, it is the Senate's turn to speak out. We can, and must, do more to prevent these types of hateful threats and acts of violence, and passing The Local Law Enforcement Enhancement Act would do just that.

I have seen, first-hand, the devastating impact hate crimes have on victims, their families and their communities. A hate crime divides neighborhoods and breeds a sense of mistrust and fear within a community.

I am an original cosponsor of The Local Law Enforcement Enhancement Act because it is aimed at protecting citizens from crimes based on their real or perceived race, ethnicity, religion, gender, disability, or sexual orientation.

The current hate crimes law simply does not go far enough. It covers only crimes motivated by bias on the basis of race, color, religion or national origin, and it only covers instances in which the victim was targeted because he or she was engaged in a federally-protected activity, such as voting, attending a public school, or if the crime occurred on federal property.

The limitations of current Federal law prevent it from reaching many hate crimes where individuals are

killed or injured by just walking down the street or, in the case of Clint Risetter, where he was sleeping in his own home.

On February 24, 2002, Clint Risetter awoke in his Santa Barbara apartment engulfed in flames and then tried to escape as he was burning. When firefighters arrived, they found him dead on his patio. Two days later, Martin Hartmann walked into the Santa Barbara Police Department and admitted to entering Clint's apartment, pouring gasoline on him as he slept, and then setting him on fire.

Hartmann had known Clint for several months but had learned just recently that Clint was gay. He told police about his hatred toward gays and how he "... decided to put [Clint] out of his misery," because he was gay. He believed that he was doing the right thing and that Clint deserved to die.

Clint's murder is being prosecuted as a hate crime because it took place in California which has its own hate crimes law that includes sexual orientation. However, had it taken place in one of the 27 states that do not have hate crimes laws that include sexual orientation, Clint's family might not receive the justice they are entitled to.

Gay men and lesbians are the third-largest hate-crime victim group in the country, the second-largest in California. They were the targets of more than 16 percent, or almost 1,300, of all hate crimes in 2000. Yet, current Federal hate crimes law does not include crimes against individuals because of their real or perceived sexual orientation.

Current law does not extend basic civil rights protections to every American, only to a few and under certain circumstances.

The Local Law Enforcement Enhancement Act would expand current Federal protections against hate crimes based on race, color, religion, and national origin, and amend the criminal code to cover hate crimes based on gender, disability, and sexual orientation.

Extending the law would not provide special rights, it would ensure equal protection.

In the past, we have made some progress in the sentencing and prosecution of hate crimes, but more needs to be done. I am proud to have sponsored The Hate Crimes Sentencing Enhancement Act which was signed into law in 1994, and has just recently been invoked for the first time.

In 1996, Julianne Marie Williams and Laura Winans were discovered dead in Virginia's Shenandoah National Park, bound and gagged with their throats slit.

In April of this year, Attorney General John Ashcroft announced that The Hate Crimes Sentencing Enhancement Act would be invoked in the murder indictment against the perpetrator of this horrific crime, Darrell Rice, "to ensure justice for victims of hate crimes."

Rice chose his victims based on their gender and sexual orientation. He even stated that he intentionally selected women to intimidate and assault "because they are more vulnerable than men" and that these two women "deserved to die because they were lesbian whores."

With this indictment, the Federal Government has recognized the horrendous nature of this hate crime and that it should be prosecuted to the fullest extent of the law.

However, prosecutors were only able to use The Hate Crimes Sentencing Enhancement Act because the two women were killed in a national park. If these murders had occurred in almost any other place in America, The Hate Crimes Sentencing Enhancement Act could not have been invoked and, again, justice might not have been ensured for the victims and their families.

Enacting The Local Law Enforcement Enhancement Act would ensure that all hate crimes can be investigated and prosecuted no matter what the victims are doing when they are targeted and no matter where the crime is perpetrated.

It would also significantly increase the ability of State and Federal law enforcement agencies to work together to solve and prevent hate crime.

Until we enact this legislation, many hate crime victims and their families may not receive the justice they deserve.

Those who are opposed to this legislation would say that we should leave it up to the states to legislate, enforce and prosecute hate crimes laws.

To those, I would refer you to a May 3rd, 2002, New York Times editorial which put it best. It read:

Congress has long recognized that the Federal Government should play a role in pursuing certain crimes, like bank robbery, kidnapping and racketeering, where the national interest is great and where federal law enforcement is in a good position to offer help to local police and prosecutors. Crimes in which individuals are singled out because of their race, religion or membership in other protected groups strike directly at this nation's commitment to equality, and are worthy of this sort of special federal involvement.

Other opponents of this legislation often argue that any crime of violence is a hate crime and that the motives behind and harms caused by a hate crime are not relevant or distinguishable from other crimes. I disagree.

The crimes perpetrated against Gerald Pimentel, Julianne Williams and Laura Winans, and Clint Risetter were carried out with a different intent and motive than other violent crimes.

Unfortunately, they are characteristic of many hate crimes in America; where an attacker repeatedly beats, stabs or severely burns his victim as if he is removing whatever it is he hates out of the person.

And the attacker feels justified in doing so, as if he is doing a great service to humanity by killing the person.

Congress should expand the ability of the Federal Government to investigate these heinous crimes, and it should expand the ability to prosecute anyone who would target victims because of hate.

Final passage of the Local Law Enforcement Enhancement Act is long overdue. It is necessary for the safety and well being of millions of Americans.

No American should be afraid to go to work or school because of his or her religion or national origin.

No American should be afraid to go hiking for fear of a gender-motivated attack.

And certainly, no American should be afraid to sleep in their own home because of his or her sexual orientation.

We have had strong bipartisan support for this legislation in the past, and it continues to receive bipartisan support. It now has 50 cosponsors in the Senate and 206 cosponsors in the House.

Today, I urge my colleagues to invoke cloture and vote in favor of this legislation. Let us now send a message to all Americans, that we will no longer turn a blind eye to hate crimes in this country.

Mr. WYDEN. Mr. President, I speak today because it is time for Congress to send its own message to those who would perpetrate hate crimes. That message should be that Federal law will no longer tolerate intolerance. Hate crimes are a stain on our national greatness, and it is time to stop that stain from spreading.

Fighting hate crimes should not be a partisan issue. This is not about giving preferences to one group of people or another. I am talking about opposing violence. I am talking about opposing brutal crimes.

When the fight for a hate crimes law first began in the early 1990s, many Americans questioned whether the problem was serious enough to warrant a specific law. But during the past decade, from one coast of the United States to the other, tragic events have proven that a law is badly needed.

These crimes are so unspeakably ugly that the names of the victims are seared in our minds. James Byrd, Jr., dragged to his death because he was black. Matthew Shepard, beaten and left for dead because he was gay.

My home State has been wounded by hate crimes, too. Oregonians will not forget Roxanne Ellis and her partner, Michelle Abdill, who were taped up and shot twice in the head in the back of their own pickup truck in Medford, Oregon in December 1995. Or Loni Okaruru, who was found last August bludgeoned to death in a field in Washington County, just outside Portland. Loni was a transsexual planning to undergo surgery. She had been beaten multiple times prior to that night.

The Senate has passed hate crimes legislation unanimously several times, only to see it jettisoned in Conference with the other body. The consequences of all this legislative wrangling are

real. Each time Congress delays, more brutal, hate-driven deaths go unpunished. Each time Congress delays, more hate crimes happen, because the perpetrators have no fear of being punished for the true nature of their acts.

The legislation before this body today will close the loopholes in Federal hate crimes law. It will give local law enforcement the full force of Federal resources in investigating and prosecuting crimes motivated by bias against sexual orientation, gender or disability.

This legislation will not preempt State and local laws or authorities. But it will provide Federal backup to important local efforts. Based on testimony before the Senate Judiciary Committee, it is likely that Federal help will be sought by local authorities in a dozen cases a year.

The message Congress sends in passing this bill is as important as the resources that will be made available to local law enforcement. It is time to limit the lengths to which people can go to infect our society with diseases like racism, and homophobia, and religious intolerance.

Hate crimes are intentionally directed at victims because of who they are. They strike not just at a person but at the heart of a community, be it a black community, a gay community, or a disabled community. And when any one group is targeted, the entire American community feels the blow.

The scourge of hate crimes must be confronted and eradicated. This legislation gives Congress the means to do so. I urge my colleagues to vote for cloture on the bill so that it can be enacted swiftly.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. I understand we have 3½ minutes remaining. I yield 2 minutes to the Senator from Oregon, and I will take the last minute and a half.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. SMITH of Oregon. As I contemplate the conclusion of this debate, my own judgment is that it has been one of the poorer debates I have witnessed in the Senate. Until this moment, there has been very little participation in it. Frankly, I find that disappointing because, as the Senator from Minnesota pointed out, this is an emergency.

I have to think of all of our gay brothers and sisters who may be watching, who cannot follow the confusion of Senate procedure, who will be very disappointed that once again we are thwarted from proceeding on a matter that is, in fact, very important. This is about domestic terrorism and about the Federal Government showing up to work.

On a positive note, I say, as Senator KENNEDY has said, we will be back and we will find another vehicle and another opportunity to proceed. I hope in the meantime we will reach out to Sen-

ator HATCH and others who have legitimate concerns to find ways to incorporate their concerns in an even better bill, and I hope we will do that in the spirit of the great example set in the New Testament. When confronted with a woman who had committed adultery, Christ himself was able to say in the public square he did not condemn, he did not endorse the lifestyle, but he did save a life. I think we ought to do the same as the Federal Government. It is in that spirit I intend to vote to invoke cloture.

I yield the floor.

Mr. KENNEDY. Mr. President, the most fundamental right we have as citizens is to be able to live in a peaceful country without the fear of violence in our society. We have seen so many different instances where violence has come in our society based on race, religion, and national origin. We have, over a period of years, tried to free ourselves from that form of discrimination. That is what this is about: Making sure that every American, regardless of their race, religion, national origin, sexual orientation, disability, or gender, is going to have the full support and weight of the Justice Department to ensure they will be able to live in this country in peace and dignity and some security. That should be a responsibility of the Justice Department, and it should be a common responsibility for all Americans.

That is not the state of affairs today, but this legislation will guarantee that. That is why it is so important. We are not prepared to exclude any different group. We want to include all Americans. That is why this legislation includes all of those groups. It is broadly supported by the law enforcement community, 22 attorneys general, former attorneys general from the United States, Republicans, and by virtually all the diverse religious leaders. They understand the moral issues, the moral compulsion, as well as the issues of liberty that are included. I hope we would now invoke cloture.

So all Members know, obviously if the amendments are germane, they will be considered after cloture. But let us give this message to all Americans that they will live in a secure nation.

#### CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, the cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

#### CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close the debate on Calendar No. 103, S. 625, a bill to provide Federal assistance to States and local jurisdictions to prosecute hate crimes:

Hillary Clinton, Harry Reid, Jack Reed, Russell Feingold, Richard Durbin, Edward Kennedy, Evan Bayh, Charles Schumer, Debbie Stabenow, Maria Cantwell, Daniel Akaka, Ron Wyden, Carl Levin, Daniel Inouye, Joseph Lie-

berman, E. Benjamin Nelson, Byron Dorgan, Patrick Leahy.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call under the rule is waived. The question is, Is it the sense of the Senate that debate on S. 625, a bill to provide Federal assistance to States and local jurisdictions to prosecute hate crimes, and for other purposes, shall be brought to a close?

The yeas and nays are required under the rule.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS), the Senator from Missouri (Mr. BOND), and the Senator from Idaho (Mr. CRAPO) are necessarily absent.

I further announce that if present and voting the Senator from North Carolina (Mr. HELMS) would vote "no."

The PRESIDING OFFICER (Mrs. CLINTON). Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 54, nays 43, as follows:

[Rollcall Vote No. 147 Leg.]

#### YEAS—54

Akaka	Dodd	Lieberman
Baucus	Dorgan	Lincoln
Bayh	Durbin	Mikulski
Biden	Edwards	Miller
Bingaman	Feingold	Murray
Boxer	Feinstein	Nelson (FL)
Breaux	Graham	Nelson (NE)
Byrd	Harkin	Reed
Cantwell	Hollings	Reid
Carnahan	Inouye	Rockefeller
Carper	Jeffords	Sarbanes
Chafee	Johnson	Schumer
Cleland	Kennedy	Smith (OR)
Clinton	Kerry	Snowe
Collins	Kohl	Stabenow
Conrad	Landrieu	Torricelli
Corzine	Leahy	Wellstone
Dayton	Levin	Wyden

#### NAYS—43

Allard	Frist	Nickles
Allen	Gramm	Roberts
Bennett	Grassley	Santorum
Brownback	Gregg	Sessions
Bunning	Hagel	Shelby
Burns	Hatch	Smith (NH)
Campbell	Hutchinson	Specter
Cochran	Hutchison	Stevens
Craig	Inhofe	Thomas
Daschle	Kyl	Thompson
DeWine	Lott	Thurmond
Domenici	Lugar	Voinovich
Ensign	McCain	Warner
Enzi	McConnell	
Fitzgerald	Murkowski	

#### NOT VOTING—3

Bond	Crapo	Helms
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The PRESIDING OFFICER. On this vote, the yeas are 54, the nays are 43. Three-fifths of the Senators duly chosen and sworn, not having voted in the affirmative, the motion is rejected.

Mr. DASCHLE. Madam President, I enter a motion to reconsider the vote by which cloture was not invoked on S. 625, the hate crimes legislation.

The PRESIDING OFFICER. The motion is entered.

Mr. LIEBERMAN. Mr. President, I rise to express my severe disappointment in the Senate's failure to invoke cloture on the Local Law Enforcement Enhancement Act—also known as the

Hate Crimes bill. I am proud to be a cosponsor of this bill, but I am not proud of what the Senate did to that bill today.

One of the things we try to do in this Chamber, as lawmakers, is to adopt laws that express and encode our values as a society—to, in some sense, put into law our aspirations for the kind of people we want to be. Clearly, one of the bedrock values, one of the fundamental values, of America is equality—equality of treatment before the law, equality of opportunity but, beyond that, a broader notion of tolerance in our society. It is part of what brought generations of immigrants to this country—the idea that they would be judged on their personal merit, not on anything related to their personal status or characteristics.

Starting with our Declaration of Independence—our nation's documentary explication of the values underpinning our experiment in self-government—our country's leaders have laid out a vision of a nation born and bred in notions of tolerance and equality. We know for a certainty that our nation did not live up to that vision when it was first articulated, but in each successive generation we have tried hard to meet the ideals we set out for ourselves. And in each successive generation we have come a bit closer to meeting that goal. Sometimes, obviously, we do not achieve those aspirations and we are intolerant toward one another. Then the law has not only the opportunity but the obligation to step in and to try to create incentives or deterrents toward the worst forms of intolerance, even hatred. That is what this bill is about.

Clearly, over the decades our Nation has built a strong and proud history of protecting the civil rights of Americans who are subject to racial, religious, gender-based, or disability-based discrimination in the workplace, in housing, in life. In more recent times, many of us here in the Chamber have worked to try to extend some of those protections to cover discrimination based on sexual orientation.

This bill stands solidly in that tradition and is just one more step on our nation's path to make its vision of itself a reality. Like the civil rights laws of which we are all so proud, this bill proclaims that there is certain conduct that is unacceptable to us as a nation. This bill takes Federal criminal jurisdiction and extends it to the prosecution and punishment of those who are accused of having caused bodily injury or death based on an animus, a hatred that comes from feelings about the victim's race, religion, nationality, gender, disability, or sexual orientation. In other words, this is another way for our society to express our disdain, to put it mildly, at acts of violence committed based on a person's race, religion, nationality, gender, disability, or sexual orientation.

It is also a way, as is traditionally the province of criminal law, not just

to speak to the common moral consensus of our society about what is right and what is wrong—that, after all, is what the law is all about—but also by punishing those who are proven to have committed the wrongs and to deter others in the future from committing those same acts that society generally finds abhorrent.

Current law expresses this but in a way that is limited. It permits Federal prosecutions of hate crimes resulting from death or bodily injury if two conditions are met: First, the crime must be motivated by the victim's race, religion, national origin, or color. Second, the perpetrator must have intended to prevent the victim from exercising certain specific federally protected rights. Of course, I support this law and the goals that it embraces: The Federal prosecution of people who inflict serious harm on others because of the color of the victim's skin, the sound of the victim's voice, a foreign accent, or the particular place in which the victim worships God. In short, these are crimes committed because the victim is different in some way from the perpetrator. Such crimes, I conclude, should be eligible for federal prosecution.

But the current federal law is too limited to address many of the hate crimes that are deserving of federal prosecution, and we need for the law to more fully express some of the principles I talked about at the outset: equality, tolerance, doing everything we can to stop the most abhorrent acts of violence against people based on their characteristics. I think we ought to add to the list of prohibited bases of these crimes, crimes committed against someone because of gender, because of sexual orientation, and because of disability. Adding these categories—gender, sexual orientation, disability—seems to me to be an appropriate extension of the basic concept of equal protection under the law. As the law now stands, it also imposes a requirement, a bar to prosecution relating to race, color, religion, and national origin that we ought to change, which is that the law is only triggered if the victim is prevented from exercising a specific type of federally protected activity.

There are obviously crimes that are committed based on hatred that are triggered in cases other than the prevention of the exercise of a specific federally protected activity, thus, the provision of this bill that would eliminate this obstacle and, therefore, broaden the ability of Federal prosecutors to pursue crimes motivated by racial or religious hatred. It would still, however, require prosecutors to show a connection to interstate commerce.

Just as importantly for those concerned that this bill unnecessarily intrudes upon State prerogatives, the bill also includes language requiring the Justice Department, prior to indicting a defendant for a hate crime, to certify not just that there is reasonable cause

to believe that the crime was motivated by improper bias, but also that the U.S. Attorney has consulted with local law enforcement officials and determined one of four things—that the state doesn't have or won't exercise jurisdiction to prosecute the crime, that the State has asked for federal prosecution, that the State does not object to federal prosecution or that the State has completed its prosecution and the Justice Department wants to initiate a subsequent prosecution. This process ensures both that we will avoid an unnecessary overlap between the exercise of State and federal jurisdiction and that those in local law enforcement, closest to the alleged crime, will have the first opportunity to pursue those committing these heinous crimes.

At the same time, it makes clear that in cases where federal prosecutors determine that federal prosecution is essential to vindicate federal values, this statute will be available to them. This certification process should lay to rest the concerns some of my colleagues have who fear that Federal prosecutors will interfere with State efforts to bring perpetrators of hate crimes to justice.

At a time when so much else is going on here in the Capitol with the high profile issues of this session, this bill brings us back to America's first principles of equality and tolerance and challenges each of us to think about the appropriate and constructive role that the law can play, understanding that the law can't control the hearts of people in this country.

Ultimately, we have to count on people's own sense of judgment and tolerance and, hopefully, the effect that other forces in their lives will have on them to make them fair and tolerant, such as their families, their schools, their religions, their faith. But this bill is here to say in the cases when all of those other sources of good judgment and values in society fail to stifle the hatred that sometimes does live in people's hearts and souls, to say that this is unacceptable in America and to attach to that statement the sanction of law, hoping that we thereby express the higher aspirations we have for this great country of ours as it continues over the generations to try to realize the noble ideals expressed by our founders in the Declaration of Independence, but also to put clearly into the force of law the punishment that comes with law when one goes so far over the line to commit an act of violence based on hatred, hoping thereby that we will deter such heinous acts from occurring again in the future.

The Senate had a chance today to bring us one step closer to making the law more closely reflect our founding vision. The Senate should have taken that step. It is a truly deep disappointment that it did not do so. This will not, though, be our last chance. The bill's opponents will not be able to hide behind procedural posturing forever. This bill will come back again this

year to the Senate and when it does, I believe that we have no choice but to pass it. Our values as a nation will allow for no less.

I thank the distinguished Chair. I yield the floor.

### INCREASING THE PUBLIC DEBT LIMIT

The PRESIDING OFFICER. Under the previous order, the clerk will report S. 2578 by title.

The legislative clerk read as follows:

A bill (S. 2578) to amend title 31 of the United States Code to increase the public debt.

The PRESIDING OFFICER. The clerk will read the bill for the third time.

The bill was read the third time.

The PRESIDING OFFICER. The bill having been read for the third time, the question is, Shall the bill pass?

Mr. KERRY. Madam President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS), the Senator from Missouri (Mr. BOND), and the Senator from Idaho (Mr. CRAPO) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 68, nays 29, as follows:

[Rollcall Vote No. 148 Leg.]

#### YEAS—68

Akaka	Edwards	Miller
Allen	Feinstein	Murkowski
Baucus	Frist	Murray
Bennett	Grassley	Nelson (FL)
Biden	Gregg	Nelson (NE)
Bingaman	Hagel	Nickles
Boxer	Hatch	Reed
Breaux	Hutchinson	Reid
Brownback	Hutchison	Roberts
Bunning	Inouye	Rockefeller
Burns	Jeffords	Santorum
Byrd	Johnson	Sarbanes
Cantwell	Kennedy	Schumer
Carnahan	Kerry	Snowe
Cleland	Kohl	Specter
Cochran	Landrieu	Stevens
Collins	Leahy	Thomas
Craig	Levin	Thompson
Daschle	Lieberman	Thurmond
DeWine	Lott	Voinovich
Dodd	Lugar	Wellstone
Domenici	McConnell	Wyden
Durbin	Mikulski	

#### NAYS—29

Allard	Ensign	Lincoln
Bayh	Enzi	McCain
Campbell	Feingold	Sessions
Carper	Fitzgerald	Shelby
Chafee	Graham	Smith (NH)
Clinton	Gramm	Smith (OR)
Conrad	Harkin	Stabenow
Corzine	Hollings	Torricelli
Dayton	Inhofe	Warner
Dorgan	Kyl	

#### NOT VOTING—3

Bond	Crapo	Helms
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The bill (S. 2578) was passed, as follows:

S. 2578

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SECTION 1. INCREASE IN PUBLIC DEBT LIMIT.

Subsection (b) of section 3101 of title 31, United States Code, is amended by striking “\$5,950,000,000,000” and inserting “\$6,400,000,000,000”.

Mr. REID. Madam President, I move to reconsider the vote and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Ms. CANTWELL. Madam President, I rise today to offer my support for increasing the federal debt ceiling by \$450 million. This is a difficult issue and I well understand that we need to raise the debt ceiling. We have troops conducting military operations overseas. We are working here at home to address critical national security needs. But if we hadn't acted today, the United States would have been on the verge of defaulting on its debt for the first time in history. This is unacceptable.

However, now that we have voted to raise our debt limit, we must begin an honest and open debate about why we are having this vote. I want to make it crystal clear that I believe we need to extend the budget enforcement procedures and establish reasonable discretionary spending caps as soon as possible.

At the beginning of last year, the Congressional Budget Office projected a ten-year surplus of \$5.6 trillion and the debt ceiling seemed to be high enough to last through fiscal year 2008. That all changed, however, as the projected big surpluses first started to decline last year and then dramatically changed into a \$2.7 trillion deficit. We know that the current deficit is the result of last year's tax cut, the recession, and the tragic events of September 11, 2001.

One of the most important actions we can take for the nation's future economic stability is to pay down the national debt. According to Chairman of the Federal Reserve Board, Alan Greenspan, paying down the national debt lowers interest rates and keeps the capital markets and investment going. In January, he told the Senate Budget Committee that one of the reasons long-term rates have not come down is the sharp decrease in the surplus and the diminishing prospects for paying down the debt.

I want to make it clear that the change in our fiscal situation has driven estimated federal interest costs higher: CBO has boosted its projection of federal interest costs in 2002 through 2011 from just over \$600 billion a year ago to \$1.6 trillion. The dramatic downturn in the federal budget will force taxpayers to pay \$1.2 trillion more in debt payments, money that could have been used to invest in additional defense, homeland security, education, and job training.

Our total budget must be crafted within the need to maintain fiscal dis-

cipline, and stimulate economic growth through continued federal investment in education and job training, while also protecting the environment. Furthermore, we need to invest in our nation's economic future by making a commitment to public research and development in science and technology—maintaining our status as a global leader.

It is a balance. We must make these investments to secure our country. But we must do so within a framework that ensures we don't spend beyond our means. If we want our economy to be strong, if we want revenues, and if we want to make the right decisions, we need to keep paying down the debt.

Having spent time in the private sector, I can tell you this: No private sector organization thinks it can spend its way out of programs; nor can we as a country. This is why I supported and cosponsored the Gregg-Feingold Budget Enforcement Amendment last week—and why I will continue to work with my colleagues on extending the pay-as-you-go budget enforcement procedures as well as setting up reasonable discretionary spending limits.

Some voted against this debt limit increase today because it had not been paired with procedures for a fiscally disciplined framework. I certainly empathize with that position. We are in tough times. And tough times force us to make tough decisions. Today's vote was one of them.

Mr. CONRAD. Madam President, I voted against S. 2578, a bill that would increase the public debt limit by \$450 billion.

I support taking action to increase the debt limit, in order to protect the full faith and credit of the U.S. government. Frankly, we have no choice but to raise the limit. The United States must pay its bills. What I cannot support, however, is increasing the limit without also putting in place procedures for arresting this dramatic downturn in our nation's fiscal health.

I want to provide a little background on how we arrive at this juncture. You might remember that a little over a year ago, when the Bush administration submitted its first budget, we were told that, even with the enactment of the President's proposed tax cut, we would not hit the Federal debt limit until 2008. By August, with the tax cut enacted, the administration acknowledged it was wrong and that we would actually hit the debt limit in 2004. By December, that estimate was moved up again, with the Treasury Secretary admitting the debt limit would be reached within months and pleading with Congress to raise the limit so that the United States wouldn't default on its financial obligations.

And, I should not, the administration didn't just request a small debt limit increase. It requested a \$750 billion increase, which would constitute the second largest one-time increase ever surpassed only by the \$915 billion increase