

[Rollcall Vote No. 113 Leg.]

YEAS—42

Akaka	Dayton	Lautenberg
Baucus	Dodd	Levin
Biden	Dorgan	Lieberman
Bingaman	Durbin	Lincoln
Boxer	Edwards	Mikulski
Breaux	Feingold	Murray
Byrd	Feinstein	Pryor
Cantwell	Graham (FL)	Reed
Carper	Harkin	Reid
Chafee	Inouye	Rockefeller
Clinton	Johnson	Sarbanes
Conrad	Kennedy	Schumer
Corzine	Kohl	Stabenow
Daschle	Landrieu	Wyden

NAYS—55

Alexander	Domenici	Murkowski
Allard	Ensign	Nelson (FL)
Allen	Enzi	Nelson (NE)
Bayh	Fitzgerald	Nickles
Bennett	Frist	Roberts
Bond	Graham (SC)	Santorum
Brownback	Grassley	Sessions
Bunning	Gregg	Shelby
Burns	Hagel	Smith
Campbell	Hatch	Snowe
Chambliss	Hollings	Specter
Cochran	Hutchison	Stevens
Coleman	Inhofe	Sununu
Collins	Kyl	Talent
Cornyn	Lott	Thomas
Craig	Lugar	Voinovich
Crapo	McCain	Warner
DeWine	McConnell	
Dole	Miller	

NOT VOTING—3

Jeffords	Kerry	Leahy
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The amendment (No. 3263) was rejected.

Mr. ALLARD. Mr. President, I move to reconsider the vote.

Mr. LEVIN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

UNANIMOUS CONSENT AGREEMENT—EXECUTIVE CALENDAR

Mr. WARNER. Mr. President, I thank the Senator from Colorado and all others who participated in what I felt was one of the better debates we have had in some time on a very serious issue. I commend the Senator from Massachusetts and others for the manner in which we conducted the debate.

Mr. President, I will now propound a unanimous consent request.

I ask unanimous consent that the time from 2:15 to 3:40 be equally divided between the opponents and proponents of the Smith amendment No. 3183; provided further, that at 3:40, the Senate proceed to executive session for the consideration en bloc of the following nominations: Virginia Hopkins, Ricardo Martinez, and Gene Pratter.

I further ask unanimous consent that there be 20 minutes of debate equally divided between the chairman and ranking member of the Judiciary Committee, or their designees, and that at 4 o'clock today the Senate proceed to a vote in relation to the Smith amendment No. 3183, with no amendments in order to the amendment prior to the vote.

I further ask that following that vote, the Senate then proceed to consecutive votes on the confirmation of Executive Calendar Nos. 563, 564, and 566, with 2 minutes of debate equally divided prior to each vote. I finally ask

that following these votes, the President be immediately notified of the Senate's action and the Senate resume legislative session.

The PRESIDING OFFICER. Is there objection?

Mr. REID. Mr. President, reserving the right to object, following this series of votes, we will return to the Defense bill. At that time, there has been an agreement—at least it is my understanding that a Crapo amendment will be laid down.

Mr. WARNER. Mr. President, that is correct.

Mr. REID. That amendment would be set aside and Senator CANTWELL would lay down an amendment, and we will do our best to work out a time to vote on those amendments.

Mr. WARNER. The Senator is correct.

Mr. REID. Following the offering of the Cantwell amendment, the next one in order is the amendment by Senator DURBIN on our side, so people understand that.

Mr. DODD. Mr. President, if I may inquire, we have a pending amendment. What is the plan for dealing with amendments that have been offered and set aside? Do we try to resolve these matters in negotiation, or is there a schedule by which we will vote on these?

Mr. WARNER. The issue I am familiar with is the one the Senator from Connecticut and I debated which has sections (a) and (b).

Mr. DODD. Correct, the contractors.

Mr. WARNER. Mr. President, did the Senator reach any conclusions as to whether he wants to amend his amendment?

Mr. DODD. We may very well. I have not had a chance to speak with staff. I will be happy to speak with them in the next hour.

Mr. WARNER. I am hoping we can act on that amendment.

Mr. LEVIN. If whoever has the floor will yield, I understand we have now received the documents. We received the documents which we sought from the Army. I have not read them yet, and I do not know if the Senator has had a chance to review them.

The PRESIDING OFFICER. The Senator from Virginia has the floor.

Mr. REID. No objection.

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

Mr. WARNER. I thank the Presiding Officer. I think we will go to the standing order to place the Senate in recess.

RECESS

The PRESIDING OFFICER. Under the previous order, the Senate will stand in recess until the hour of 2:15 p.m. today.

Thereupon, the Senate, at 1 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. VOINOVICH).

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2005—Continued

The PRESIDING OFFICER. Under the previous order, the time until 3:40 p.m. will be equally divided between the proponents and opponents on the Smith amendment.

Who yields time?

The Senator from Virginia.

AMENDMENT NO. 3183

Mr. WARNER. Mr. President, it is my understanding that the time is equally divided between the distinguished Senator from Oregon on this side and the Senator from Massachusetts on the other. Am I correct on that?

Mr. LEVIN. As I understand it, Mr. President, both are proponents of the amendment. I do not know who would be controlling the opponents' time. Is there opposition? If so, I wonder if the chairman knows who the opponents are who would be controlling the time.

Mr. WARNER. Mr. President, the distinguished Senator from Michigan does raise a valid point. I will provide the Senate with the individual that controls the opponents' time momentarily.

Mr. LEVIN. In terms of the proponents' time, I understand that will be divided between the Senator from Oregon and the Senator from Massachusetts.

The PRESIDING OFFICER. The Senator from Oregon will control the time.

The Senator from Oregon.

Mr. SMITH. Mr. President, first may I express my appreciation to those who have agreed to this time agreement about an issue that is long overdue for our Senate to take up once again and to vote on its merits. This is the issue of hate crimes. This is an issue that is much in the news of late because it is an issue that too often is visited on the American people, or classes of Americans within the American community.

We are in the midst of a war on terror, and as we fight that war on terror abroad, it is important we not forget the war on terror at home. What Senator KENNEDY and I are trying to do in this bill is to simply remind the American people that there are classes of Americans who are uniquely vulnerable, who are singled out for violence, and for whom we need to do something.

It is a fact that hate crimes statutes are on the books of well over 30 States in America. They are even on the books of the U.S. Government. The Federal Government now has authority to pursue, prosecute, and punish those who commit hate crimes on the basis of race, religion, or national origin. What we are proposing to do in this bill is to add a few categories.

There is one category, one class of Americans that is the problem in this amendment, as some view it a problem, and that is the gay and lesbian community.

Now, many may wonder why we are bringing up this issue on a Defense authorization bill. And the answer is simply because some of the worst hate

crimes in recent memory have been committed in the U.S. military. It clearly is not unique to the American military because it happens all over the place, even in my State of Oregon, and notably, for example, in Texas with the death, murder, and dragging of James Byrd, and the savage beating of Matthew Shepard in Wyoming. But why the military bill? My answer is, why not? This is a bill that needs to move. It is important that we pass the defense authorization. It is important that we deal with this issue of domestic terrorism.

A hate crime is when someone with an ill-motive singles out an American citizen—or any person, but an American citizen—who, because of his sexual orientation, is hated and even killed. This happens way too often. In fact, if it happens at all, it is too often.

As I recounted yesterday in the case of several of our servicemen, a Navy man and an Army private were literally beaten to death. It is appropriate that we take up this issue on the Defense authorization bill.

Many of my colleagues will ask, Why are you trying to punish thought? I think it is important to recount that we are not punishing thought. We are not punishing speech. We are, in fact, punishing thought and speech that amounts to conduct, and that conduct then becomes criminal.

Many people say this is not appropriate to put in statute. We put it in statute a long time ago in the Federal Government. We did it in response to civil rights laws that were not being enforced in the Southern States—or a few of them. And the Federal Government needed to have some mechanism—some legal reach—to punish and pursue those who committed hateful things against the communities of African-American citizens. What this did was generate litigation when the Federal Government pursued it. It took the litigation all the way to the United States Supreme Court.

I think it is important that we recount that we are not going after anybody's hateful thinking or their hateful speaking but for the combination of those things—with hateful conduct which amounts to crime.

When this case came to the United States Supreme Court, you might have expected that conservatives would have struck it down. But it was an overwhelming vote by the United States Supreme Court, and the majority opinion affirming hate crimes as a category was written by none other than William Rehnquist, our current Chief Justice. It is hard to imagine a more conservative Justice. He made it very clear.

Citing the great Jurist William Blackstone, Rehnquist opined that “it is reasonable that among crimes of different natures those should be most severely punished which are the most destructive of the public safety and happiness.”

Further, Rehnquist added:

Deeply ingrained in our legal tradition is the idea that the more purposeful is the criminal conduct the more serious is the offense and, therefore, the more severely it ought to be punished.

Obviously, in the case of James Byrd, when his murderers were ultimately subject to the death penalty, you can't punish that any more severely. But what was different in that case, because it involved race, was the Federal Government had the statutory right to be there to back up and help to reinforce the State of Texas should they have needed it.

In the case of Matthew Shepard—in the case of Wyoming where there is no authorization for the Federal Government to help because our hate crimes do not include sexual orientation—the sheriff's office in Laramie—I met the sheriff, a good Republican—pled for this law. He said: We needed the help. It was a case of national importance, and we needed the backup of the Federal Government to manage all that happened around the pursuit and the prosecution and the punishment of Matthew Shepard's murderers.

But what is really important to emphasize—and some of my friends will come to the Senate floor and say we are punishing thought; we are infringing upon the first amendment because we are going after people because of what they speak. The answer, as Rehnquist and others have said, is, no, we are not. We only do it if they act upon it. When criminal conduct is more serious because it is so heinous with the evidence around it, you can even more severely punish that crime.

I think it is very important to hit on one other thing before I turn to my colleague, Senator KENNEDY.

Many people wonder why we would do this, why we would add this category.

My mother used to teach me to treat people the way they would like to be treated—not just the way I would like to be treated. I cannot think of a more Christian or decent thing to do than come to the aid of someone who is in physical peril, or to prosecute their case when they have been wronged, regardless of what you think of their life or lifestyle.

I believe the moral imperative that underpins hate crimes legislation is simply this, and it comes from sacred writ: When people are being stoned in the public square, we ought to come to their rescue. That includes the Federal Government, but that does not include the Federal Government according to our statutes today. What Senator KENNEDY and I propose to do would change that—and change it for the good.

This is not about endorsing anyone's lifestyle. This is about protecting Americans in any class or category in which they may find themselves.

We need to do this. We need to pass this amendment. It is long overdue.

I understand the reluctance on the part of some of my colleagues because of their dislike of the entire category

of hate crimes, but I disagree with them. I understand them, but I disagree with them because of this: The position, if you do not like hate crimes as a category and don't want to expand it to a new class of people, says you really have to then strike from our books the hate crimes protections for race, religion, and national origin. I don't think any of my colleagues would come down here and try to do that, particularly after those categories have been found constitutional across the street by the judicial branch of Government.

But I think, because you can demonstrate clearly the gay and lesbian community is demonstrably more vulnerable to crime because of their sexual orientation, we owe it to them as Americans—our American brothers and sisters—to add this extra measure of law and protection.

I urge my colleagues, I plead with them, to vote for this hate crimes legislation, known officially as the Local Law Enforcement Enhancement Act. It is symbolic, yes, but it can be substantive because the law can teach. The law is a good teacher, and the laws will then teach Americans that bigotry will not be tolerated. By changing the law, we can change hearts and minds, and I urge my colleagues to do so—to change hearts and minds, even change maybe their own minds and join with me and Senator KENNEDY in voting in favor of this most important and timely amendment.

Congress must take up and carry the torch of freedom and liberty so cherished by our forefathers. It is only through our ever vigilance against hate and those acts that threaten life, liberty and happiness of all Americans that we can achieve a just society.

I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I yield myself 6 minutes on the legislation.

I want the history of this legislation to understand what a very important and significant role my friend and colleague, the principal sponsor of this legislation, the Senator from Oregon, GORDON SMITH, has played in giving us the opportunity on the floor of the Senate to vote on an issue of enormous importance and consequence in terms of justice in our country, and to be able to express what this Nation is really about; that is, that when we are going to be facing hate crimes, we are going to use every possible tool we have to deal with these crimes. We are not going to battle them with one hand tied behind our back.

I have enjoyed the chance to work with Senator SMITH on this legislation over a number of years. We have had some successes in trying to get it through the Senate, but we have failed. However, I admire my friend and colleague's perseverance. As Shakespeare says, perseverance, Lord, make honor bright, and the Senator from Oregon has enhanced the honor in the Senate

by giving us an opportunity to address this issue.

For those listening to these remarks, they may not understand how complicated it is to get a real vote on some matters which are basic and of fundamental importance. On many occasions when they have opposed the legislation, Members try to undermine the central thrust of the legislation, divert it with parliamentary tactics.

The Senator, because of the respect Members have for him, has been able to ensure that the Senate will address this issue frontally, and it should, because it is a defining issue in terms of our country and our society about what this country represents. On the issues dealing with hate crimes, we find them to be completely unacceptable in this country.

We have learned from past experience, in other hate crimes legislation, where the gaps in the legislation have been. This legislation is very targeted, limited, but an important legislative effort to try to address those serious loopholes in a way which is both constitutional, is limited, but also effective and can make an important difference in terms of reducing the incidence of hate crimes.

I am sure my friend remembers a number of years ago we had the proliferation of church burnings in this country, primarily focused in the southern part of this Nation. After a good deal of deliberation, we were able to get the FBI involved in church burnings. The difference we saw was virtually almost overnight. Once America understood in different places of the country that we were serious about making sure we would use the full resources of our National Government to halt church burnings, it is amazing how they were effectively halted. There are still a scattering of them in some communities but effectively the epidemic we were seeing at that time has halted.

The Senator from Oregon and I believe we can make the similar type of progress on the issues of hate crimes. That is why this is such an opportunity.

I will take a few moments later to describe the appropriateness of this amendment on this legislation and the particular challenges we have been faced with in the military. As an Armed Services Committee member who has reviewed and watched that closely, I will come back to this issue. However, let me point out this is entirely relevant to this legislation. We have seen that hate crimes have taken place in the military. A number of occasions I will describe or place in the RECORD.

On one particular occasion it was based upon race. We saw a commanding general perform in an extraordinarily exemplary way, and on another occasion, when dealing with a young gay man, the performance was abysmal. The fact is, we ought to make sure that certainly the Armed Forces are going

to understand we are not going to tolerate the issues of hate crimes in the military or in any other place in our society.

It has been argued that our bill is discriminatory because it singles out hate crimes from other crimes when, in fact, all crimes are hate crimes. That is not true. It is not supported by the history or the law. Every crime is tragic and harmful and has its consequences because not all crime is based on hate. Hate crimes are based on bigotry or prejudice. A hate crime occurs when the perpetrator intentionally selects the victim because of who the victim is.

Mr. WARNER. If the Senator will yield, the Chair inquired as to the management of the time in opposition, and I ask unanimous consent that any Senator desiring to speak in opposition could speak for up to 10 minutes. If he or she desires additional time, we can seek an additional UC for another 10 minutes, and if a quorum is put in it will be charged equally to both sides.

The PRESIDING OFFICER. Is there objection?

Mr. SMITH. I further ask that the request be modified to reserve to Senator KENNEDY and myself any time unused after his remarks.

Mr. WARNER. Absolutely.

Mr. KENNEDY. I don't expect we will have numerous speakers, but it could happen that all the time will be taken up by people using 10 minutes.

So as I understand what the Senator is saying, those who want to speak may speak up to 10 minutes, but within the general timeframe the total time is divided.

Mr. WARNER. Yes.

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

Mr. KENNEDY. I ask that interlude not be charged against my time.

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

Mr. KENNEDY. As with acts of terrorism, hate crimes have an impact far greater than the impact on the individual victims and their families. They are crimes against entire communities, against the whole Nation, and against the fundamental ideals of liberty and justice for all on which America was founded.

As Attorney General Ashcroft has said, criminal acts of hate run counter to what is best in America, our belief in equality and freedom.

According to the surveys conducted by the Department of Justice, 85 percent of law enforcement officials believe hate-motivated violent crimes are more serious than similar crimes not motivated by bias. One need look no further than the current conflict in the Middle East or recall the ethnic cleansing campaigns in Bosnia, Rwanda, what is happening in the Sudan today, study the Holocaust itself, to understand that violence motivated by hate is different and is more destructive. Or consider the hate crimes committed in America. Most of them are committed

by multiple offenders against a single victim.

Because the victims are attacked simply because of who they are, there is little that can be done to avoid being a victim of a hate crime. Hate crimes are twice as likely as other crimes to involve injury to the victim and four times as likely to require hospitalization.

In the 1993 decision in *Wisconsin v. Mitchell*, a unanimous Supreme Court recognized that bias-motivated crimes are more likely to provoke retaliatory crimes, inflict distinct emotional harms on their victims, and incite community unrest.

A hate crime against one member of a group sends a strong message to the other members that you are next, that certain parts of the country aren't safe for you to work or travel or live in, that you better watch your step. This is domestic terrorism, plain and simple, and it is unacceptable.

Centuries ago, Blackstone commented it was unreasonable that among crimes of a different nature, those should be most severely punished, which are the most destructive of the public safety and happiness.

The simple fact is that hate crimes are different. They are more destructive than other crimes. The Federal Government has a responsibility to send a clear and unambiguous message that hate-motivated violence in any form from any source will not be tolerated.

Congress recognized the special harm caused by hate-motivated bias when it passed the current hate crimes law following the assassination of Dr. King in 1968, when it passed the Hate Crimes Statistics Act of 1990, and when it passed the Hate Crimes Sentencing Enhancement Act of 1994. Now it is time for Congress to take the next step toward protecting all Americans from the problems of hate-motivated violence, by passing the Local Law Enforcement Enhancement Act to address the obvious deficiencies in the current Federal hate crimes law.

As we mentioned, we are going to have our time. We hope those who might be in opposition would come over to the Chamber to debate us.

I think before I yielded myself 7 minutes. Do I still have a little time left on that?

The PRESIDING OFFICER. The Senator has consumed the time.

Mr. KENNEDY. Mr. President, I yield myself 2 additional minutes.

First of all, I know the Senator from Oregon, Mr. SMITH, has described this amendment, but what this amendment does is it authorizes the Justice Department to assist State and local authorities in hate crimes cases. It authorizes Federal prosecutions only when a State does not have jurisdiction or when a State asks the Federal Government to take jurisdiction or when a State fails to act against hate-motivated violence.

In other words, the amendment establishes an appropriate backup for

State and local law enforcement to deal with hate crimes in cases where States request assistance or cases that would not otherwise be effectively investigated and prosecuted. So this is very limited and targeted.

I want to remind the Senate that the original hate crimes preventive legislation was introduced in 1997 in the 105th Congress. The Senate Judiciary Committee held hearings in the 105th Congress and the 106th Congress. We had testimony from State and local law enforcement, the Justice Department, victims and families, and respected constitutional lawyers alike.

Our hate crimes bill has passed the Senate twice. In July of 1999, we passed it as an amendment to the Commerce-Justice-State appropriations bill. The amendment was stripped out in conference. In June of 2000, the bill was passed as an amendment to the Department of Defense authorization bill by a vote of 57 to 42. So there is precedent for this action. We had good bipartisan support.

Several months later, the House of Representatives voted 232 to 192 to instruct the conferees to accept the hate crimes bill. Again, however, the bill was stripped in conference.

In the 107th Congress, the Local Law Enforcement Act was introduced with 51 original cosponsors and favorably reported out of the Judiciary Committee by a vote of 12 to 7. In June of 2000, the Senate failed to invoke cloture on it with a vote of 54 to 43, with a clear majority supporting it.

So this issue has been studied. We have had extensive hearings. We have listened to the constitutional authorities. We have listened to local, State, and Federal officials with regard to this issue. We have also read the newspapers of this country and have studied what has been happening in the growth of hate crimes.

The PRESIDING OFFICER. The Senator has consumed the time.

Mr. KENNEDY. Mr. President, I will come back to that in a moment.

Mr. SMITH. Mr. President, will the Senator yield for a question?

Mr. KENNEDY. Yes, I yield.

Mr. SMITH. I say to the Senator, I wonder, as you recounted some of these horrendous acts that have occurred, if you are familiar with the Wisconsin case that is called *Wisconsin v. Todd Mitchell*. It is the 1993 case in which Chief Justice William Rehnquist authored the decision upholding hate crimes legislation. As it says in this preamble:

The question presented in this case is whether this penalty enhancement is prohibited by the First and Fourteenth Amendments. We hold that it is not.

Sir, this was a unanimous decision. And Justice Rehnquist—again, you would probably agree with me, I say to the Senator—is one of the more conservative justices. He wrote:

Thus, although the statute punishes criminal conduct, it enhances the maximum penalty for conduct motivated for a discrimina-

tory point of view more severely than the same conduct engaged in for some other reason or for no reason at all. Because the only reason for the enhancement is the defendant's discriminatory motive for selecting his victim. . . .

And that was the man's race.

Justice Rehnquist held it is entirely appropriate to look at the man's motive in ultimately ascribing the severity of the penalty that was handed down for this assault that was made by a White man on a Black man. It was prosecuted under the Federal Hate Crimes Act.

I am sure the Senator is familiar with that. Maybe he can help me to explain to my conservative colleagues how it is that we are trying to legislate thought or punish thought and punish speaking. Would the Senator agree with me that Justice Rehnquist and I are both right in saying we are only punishing conduct and the evidence that comes from thought and speech that can be used legitimately, constitutionally to enhance penalties?

Mr. KENNEDY. Mr. President, I thank the Senator for raising this issue because this is enormously important. The Senator from Oregon, in terms of protection of the first amendment, has reviewed the holding in the Wisconsin case.

As the Senator remembers, this principle was reaffirmed this last year by the Supreme Court in the cross burning decision in *Virginia v. Black*. As we know, as it has been interpreted, this act punishes violence, not speech. It covers only violent acts that result in death or bodily injury. It does not prohibit or punish speech, expression, or association in any way, even hate speech—even hate speech.

Those great lines of Oliver Wendell Holmes:

If there is any principle of the Constitution that more imperatively calls for attachment than any other it is the principle of free thought—not free thought for those who agree with us but freedom for the thought that we hate.

We ensure that even the hate speech is not affected in this. It is the violence, the physical violence that we are addressing, and it is enormously important that our colleagues understand that.

Mr. President, I withhold the remainder of the time.

I suggest that we have the quorum call, and I suggest that we have it on the opponents' time until it reaches where we are, and then we will charge it to both of us if that is acceptable.

Mr. SMITH. Mr. President, if I can modify the request, I think in fairness to my colleagues who disagree with me, we better charge it equally.

I ask unanimous consent that Senator ARLEN SPECTER of Pennsylvania be added as a cosponsor to this amendment.

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

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

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

Mr. KENNEDY. Mr. President, I think we had 42 minutes, and we divided that up formally. May I ask, of the 21 minutes, how much time have I used?

The PRESIDING OFFICER. The proponents have 12 minutes.

Mr. KENNEDY. Twelve minutes. That is all that remains between both of us, Senator SMITH and I?

The PRESIDING OFFICER. No, for the proponents.

Mr. KENNEDY. We are both proponents.

The PRESIDING OFFICER. The opponents have 37 minutes.

Mr. KENNEDY. Mr. President, I yield myself 2 minutes.

I will put more information in the RECORD, but I want to point out to our colleagues the growth of hate crimes in this country, what the Southern Law Poverty Center has said has taken place. That is the authoritative group, more so than even the Justice Department. The number of hate groups in America has expanded exponentially ever since 9/11. The figures we have here are basically dated figures, because they don't go in until after 9/11, but what we do see is the total number of hate crimes statistics during the period of the 1990s have been going higher and higher. Hate crimes based on sexual orientation have gone up significantly over the last several years. The venom and the hate against gays and lesbians has increased dramatically.

The backlash since 9/11 has been dramatic with regard to hate crimes against Muslims. This chart shows the dramatic increase and it is continuing to go up at an extraordinary level. Hate crimes against Arab Americans and hate crimes against Arabs have gone up dramatically in the last 2 years. Beyond that, hate crimes against Jews in the country and society have gone up exponentially as well. For all of these groups, I will include accurate information. But this is a real problem.

There is the possibility of not having a universal solution, and we don't suggest that with the passage of this amendment all of these problems are going to go away. But what we are going to say is, we ought to be battling this with the full force of the U.S. Government. When we guarantee the kinds of rights and liberties in this country that are in the Constitution and the Bill of Rights, we ought to make sure they are going to be enforced with the full power and authority of the United States. That is what our legislation does in dealing with the issue of hate crimes.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. SMITH. Mr. President, inasmuch as our colleagues are not here to debate Senator KENNEDY and me, I hope that is a good sign. I thought I would recount very briefly again the appropriateness of why this is on the military authorization bill, recounting the stories of two service people. They are somewhat horrendous, but it is appropriate that everyone understand why this has a very logical nexus for Senator KENNEDY and me with this piece of legislation and this amendment.

One of these crimes resulted in the death of an Army private and the other the death of a Navy seaman. In 1992, Navy Seaman Allen R. Schindler was brutally murdered by his shipmate Terry Helvey in Okinawa, Japan. Helvey beat and stomped Schindler to death simply because he was gay. He didn't want his wallet; he didn't want his watch; he wanted him dead because of his sexual orientation.

Helvey's attack was so vicious that he destroyed every organ in Schindler's body. He was so badly beaten that Schindler's own mother could identify him only by the remains of the tattoo on his arm. The medical examiner compared Schindler's injuries to those sustained by the victims of fatal airplane crashes.

In another tragic case, PFC Barry Winchell was forced outside his barracks at Fort Campbell Army Base where he was stationed. In the early morning hours of July 5, 1999—this is very recent history—Winchell was repeatedly beaten with a baseball bat by another Army private. He was beaten with such force and his injuries were so severe that he died shortly thereafter. Barry was only 21. He was murdered, again not for his watch, not for his wallet, but simply because he was gay.

These are appalling examples. Again, I want to say for the RECORD, I understand the reluctance of some of my colleagues to deal with issues that involve a person's sexuality, but I also want to say I don't agree with them. I think we need to treat people civilly and in the highest Christian traditions, no matter what we think of their lifestyles. I think the finest example we can find on this issue—really on point—is the great New Testament example when, in my view, the greatest person who ever lived was confronted with a woman being stoned to death because of her lifestyle. He did not endorse her lifestyle, but He risked His life to save her life. It does seem to me that if this can be done in ancient Israel, we ought to be able to do the same in modern America and have laws that reflect the very best part of the American people, that we stand and help those in need. You need read no more into it, no more moral approval in it.

I believe there are real family values, and I believe there are counterfeit family values. Arguments made to suggest that opposing hate crimes is a family value are truly misguided. When it comes to human necessities of making a living and having shelter and enjoy-

ing public safety, having the dignity and respect of law on your side, that is for all of us, I don't care how we conduct our lifestyles. That is for the American people. It includes gays and lesbians.

We are not censoring speech. We are not punishing thought. We are punishing crime. The statutes that are constitutional in this government, upheld by William Rehnquist as to their constitutionality, are long overdue to be added to to include this category of the American people who are gay and lesbian. The need is easy to demonstrate through statistics, through crimes committed on this community. Those of us who stand with the President in fighting the war on terrorism, I say great, but don't forget the war on terrorism at home. It includes defending gays and lesbians and other Americans and classes that make them vulnerable and more likely victims of crime. We owe them that, and we owe them at least that. We owe them more, in fact.

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

The PRESIDING OFFICER (Mr. CRAPO). Without objection, it is so ordered.

Mr. SESSIONS. Mr. President, the Defense bill we are working on today is critically important for our Nation. We need to complete that bill. It is important for us not to be distracted from it by bringing up amendments about which people feel strongly and which may be important, but are unrelated to defense and not germane to the issue before us.

I am glad we are able to at least proceed fairly promptly to a vote on this issue so that we can get back to the purpose with which we are dealing. We have soldiers in the field who are at risk this very moment. They need to know we are moving forward on business that relates to them, that deals with the issues that threaten their lives, and we need to make sure that we have every possible activity and report in this authorization bill to help them do their jobs better. I wanted to say that at the beginning. Sometimes these things happen, and we can offer amendments, but we do not need to do too much of this, in my view.

I raise two points about this so-called hate crimes amendment, and the reason that I will be voting against it. Different people can have different ideas and different values about how we should deal with this issue.

First, there is no legitimacy for any attack on any person because of their sexual orientation in America today. That is unacceptable behavior. It has always been unacceptable. We need to crack down on it aggressively. In fact, I believe States are doing so, as they do

with all other crimes that occur throughout our country.

I was a Federal prosecutor for 15 years and dealt with the distinctions between Federal and State law on a regular basis. Most people may not realize that if someone robs a gas station, or someone shoots your daughter on her way home from school, or someone commits a rape, those are not Federal crimes. They are not prosecuted in Federal court. They cannot be prosecuted in Federal court under normal circumstances. They have always been given over to the States for prosecution. That is very important.

We have developed and expanded over the years the reach of Federal law, and in some instances that is quite good, I believe—but in some instances it is very much in dispute. In fact, liberals and conservatives say Federal law is reaching over and prosecuting and taking over cases. There are always some State offenses that are prosecuted in Federal court. Regardless of the debate, what we have decided to do in the past is each case should be evaluated on its own. I will make a couple of points.

With regard to this hate crimes legislation, Senator HATCH, the chairman of the Judiciary Committee, proposed what I thought was a good piece of legislation some time ago. That legislation said we would conduct a study, in effect, to see what the need of this legislation is. I have to tell you, Mr. President, if you want to prosecute somebody for assaulting, shooting, or harming another person, it is easier to prosecute that case if you do not have to prove what was in the mind of the person who did it. That is an additional element of a crime, one not easily proven. I know the Presiding Officer is a lawyer and skilled in these matters. It is an additional element to the crime that must be proven.

If we were to create such a hate crime, we would basically be taking on an offense that would be a fundamental State crime—an assault, a murder, or assault with intent to kill. You would be transforming that kind of crime into a Federal offense, and not only would you have to prove all the underlying elements that would be true in a State trial, but you would also have to prove that the person did it for a reason of hate, but not just any hate. If you dislike U.S. Senators and you beat up one—there may be a Federal law that protects a Senator, I don't know.

If there is a State legislator and someone goes and beats them up because they hate them, because of the way they voted, all right, that can be taken care of in State court. But what would make it a Federal offense? Well, if a person hated him, but they hated him for a particular reason—they hated him because of sexual orientation—that is why this becomes now a Federal offense rather than a State offense.

One can make arguments that this is all right to do. We did that with the

issue of race in America, and there was a very real reason for it. As a southerner myself, I am sorry to say that in fact and in reality there were areas in this country where crimes against African Americans were prosecuted either not at all or not adequately; there was not proper punishment being imposed in those cases and people were denied civil rights. At certain periods of time in our Nation's history, feelings were so strong that cases could not be effectively prosecuted. That was clear. That was established. That was a fact, unfortunately.

So the Federal Government said those kinds of crimes involving race could be prosecuted in Federal court under the civil rights statute even though there may be an underlying State offense. That is how those came into effect.

Now we are being asked to go one step further. I think maybe we ought not do that. Senator HATCH's study would have analyzed the question of whether offenses involving assaults on gays are being adequately prosecuted in America. If they are being adequately prosecuted—and most States would have tougher laws. Most States have death penalty laws. This bill does not provide the death penalty for the murder of somebody under a hate crime. So are those being adequately prosecuted?

We know in a case in Colorado that a person committed murder because of the victim's sexual orientation, apparently, and was given the death penalty in State court. One offense occurred in my home State of Alabama, and he was tried and given life without parole. So I am not aware of those offenses being inadequately prosecuted. That is what I am saying.

In addition, there is this troubling concept of what is in one's mind. If the Social Security office turned a person down for their disability and they did not get a disability paycheck and they spent weeks churning it in their heart and soul and their hatred built and built and they finally went down to the Social Security office and shot everybody, well, that would not meet the definition of hate crime under this statute. It might be a Federal offense because it is the Federal Social Security agency, but if it had been a local State official it would not be a Federal crime. There would be no Federal jurisdiction.

So we are being asked to take that extra step into creating a new offense in Federal law based on the question of what is in somebody's mind when they commit the crime.

Classical American jurisprudence has been simple and direct. I know as a student in law school I learned about these things and as a former prosecutor I have been thinking a lot about it lately. I think sometimes even we who have been former prosecutors get overly aggressive about passing statutes to deal with every wrong that comes up.

Let's take the burglary statute that is in effect in almost every State in

America today. It makes it a State crime to break and enter into a dwelling with the intent to commit a felony. Some of them are first degree, such as when the crime involves an occupied dwelling at night and those are the elements of their crime. That is what we have done for 200-plus years in America and England. It did not say why a person broke into somebody's house or even what kind of felony someone may be intending to commit. It could be rape; it could be robbery; it could be theft. So that is the clarity with which our law has traditionally operated.

Now we are saying if someone assaults and kills this person because they were mad at him over a girlfriend and hated him for it, that is not a Federal offense, but if a person is angry because of someone else's sexual orientation, that could be a Federal offense. Maybe that is justified and some would find it justified, but I think before we continue down this road of moving into the psychological motivations for a specific act of committing a crime, we ought to ask ourselves: is it the kind of problem we know is not being effectively prosecuted and handled in America today, is not being prosecuted and sentenced effectively based on the act that was committed, so that now we need to figure out the motive behind the act and make it a Federal crime? That is what we need to be thinking about.

I do believe Senator HATCH's legislation that he offered some time ago I think it even passed this body once, although it did not become law—said let us do a study of that and analyze where we are so we can deal with it.

Well, terrorists hate us for various reasons. People hate our Government. Some of them hate police officers. Would it be a Federal crime to commit murder against a police officer? Not to my knowledge. It would not be a crime to do that if someone hates the police officer or hates the jailer who locks up a person in compliance with the law of the land. The jailer could be murdered and that would not be a Federal offense.

This should not be seen as any kind of referendum on how we think about the treatment of people with various sexual orientations. This is a great, free country. It is a country that allows behavior people may agree with or not agree with. In my view, it is just as much a crime to injure or harm anyone whether it is as a result of their sexual orientation or any other behavior they may be participating in. Maybe someone does not like them because they are out there complaining about George Bush or complaining about JOHN KERRY and they hate them for that. That would not be a Federal crime if action is taken against them.

I do not know that we need to take this step today. In fact, I think we should not. It is something that deserves careful consideration and is not to be thrown onto the Defense bill as we are moving forward at this date.

Let's think it through. Let's do a study, as Chairman HATCH has suggested. Let's see if there is a real problem out there. If there is a problem of failure to enforce the law, then I would say this could be justified. We have done it before with regard to civil rights actions. Maybe it would be appropriate to do it now. Frankly, I do not see that today. I think it is a reach in terms of need and creates the danger of criminalizing thought processes rather than actions.

I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, I rise to comment on the remarks of the Senator from Alabama. I join and agree with his remarks. I have said to the Senator from Oregon on more than one occasion, if I believed hate crimes were a proper crime for the Federal Government to be passing on, I would vote for this as well as the others, but I do not believe, as the Senator from Alabama stated, we should be criminalizing thought, and that is what this does. I have always said the greatest of the freedoms we have in this country is the freedom to believe what we want to believe and the freedom to think what we want to think. I know there are lots of motivations for people to do things and there are lots of bad thoughts out there in people's minds, but we do not criminalize those. We only criminalize them if there are actions taken. We criminalize the action, not the thought.

I think protecting the freedom of belief and the freedom to think the way one wants to think is an important concept in our country, somewhat unique in the American Constitution, and I believe this hate crimes amendment violates that very premise. So I will vote against this amendment.

I wanted to be clear, as the Senator from Alabama was clear, it is not because of the group that happens to be identified in this amendment to be subject to hate crimes. It could be any group.

I will vote no because I believe the premise underlying this criminal statute is faulty. I regret to have to oppose our two colleagues who are trying to take a step forward and bring civility and protection to certain people who have been the subject of violence. But I do not believe this is the right way to do it.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. SMITH. Mr. President, have we used all time on our side?

The PRESIDING OFFICER. Yes. Twelve seconds remain to the opponents.

Mr. SMITH. I ask unanimous consent to speak for 2 minutes, and I probably won't use that.

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

Mr. SMITH. Mr. President, there are few people I like more than my colleagues who are speaking against this

amendment. They know that. They know I respect their right to disagree with me. But I want to state for the record that if I believed what Senator KENNEDY and I were doing was criminalizing thought, I would vote against this amendment. What we are doing is criminalizing actions. It is always the case in criminal law that you look at all of the evidence, and if it can establish that words and thoughts have led to actions that rise to hate crimes—William Rehnquist, the most conservative Justice we probably have on the Supreme Court, and maybe some would argue that a couple others are more conservative—held in a unanimous Supreme Court decision that existing hate crimes statutes are constitutional because they do not punish thought. They do not impinge upon the first amendment. They do not impinge upon the 14th amendment because it takes action to commit a crime, and the words and the thoughts are simply evidentiary materials that go into motive to establish a crime. You have to establish motive.

This is simply an enhanced version of looking at the totality of a crime. If it can rise to a hate crime, it ought to be prosecuted. This is the constitutional law of America. We are simply saying there is a category of Americans out there who ought to be added to settled constitutional law of the Federal Government. We owe them at least this; they deserve no less than a vote on this amendment.

I yield the floor.

Ms. MIKULSKI. Mr. President, I rise in strong support of the Smith amendment on hate crimes. This amendment mirrors the Local Law Enforcement Enhancement Act, which I have been proud to co-sponsor. This bill puts America's values of equality and freedom into action.

Hate crimes are one of the most shocking types of violence against individuals. They are motivated by hatred and bigotry. But hate crimes target more than just one person—they are crimes against a community because of who they are—because of their race, gender, sexual orientation, religion or disability.

We are a nation that cherishes our freedom. All Americans must be free to go to church, walk through their communities, attend school without the fear that they will be the target of hate violence. We are a Nation that is built on a foundation of tolerance and equality. Yet no Americans can be free from discrimination and have true equality unless they are free from hate crimes. That's why hate crimes are so destructive. They tear at our Nation's greatest strength—our diversity.

This amendment does two things—it helps communities fight these crimes and it makes sure that those who are most often the target of hate motivated violence have the full protection of our Federal laws.

The amendment strengthens current law to help local law enforcement in-

vestigate and prosecute hate crimes. It does this by closing a loophole that prevented the Federal Government from assisting local and State police at any stage of the investigative process. Simply put—this bill authorizes Federal law enforcement officers to get involved if State or local governments want their help. That means local communities, which often have very limited resources for pursuing these types of crimes, will have the resources of the FBI and other Federal law enforcement agencies at their disposal to help them more effectively prosecute incidents of hate violence.

This amendment also improves current law so it protects more Americans. It broadens the definition of hate crimes to include gender, sexual orientation and disability. Today, gay and lesbian Americans, women and those with disabilities are often targets of hate motivated violence, but existing Federal laws offer these communities no safeguards. That is the weakness in our current law. And that is what this legislation will fix. By passing this legislation today, the United State Senate says to all Americans that you deserve the full protection of the law and you deserve to be free from hate violence.

Hate crimes are crimes against more than one person—these crimes affect whole communities and create fear and terror in these communities and among all Americans. We need look no further than the horrific killings of James Byrd and Matthew Shepard to know the anger and grief that families and communities experience because of hatred and bigotry. Hate crimes attack the fundamental values of our Nation—freedom and equality. This bill is another step in the fight to make sure that in a Nation that treasures these values these crimes do not occur.

So today I rise to support and urge my colleagues to pass this much needed and timely legislation. It is time that we put these American values into action and passed this hate crimes bill. The Local Law Enforcement Enhancement Act says that all Americans are valued and protected—regardless of race, religion, gender, sexual orientation or disability.

Mr. ENZI. Mr. President, I rise in opposition to the Local Law Enforcement Enhancement Act, Amendment 3183, proposed by my colleague from Oregon.

I have always believed that we should leave as many decisions as possible to the States to decide. Only on rare occasions, and with great and good cause should the Federal Government try to step in and legislate what the States should do. When we try to legislate "one size fits all" solutions to the problems facing the States more often than not we create more problems than we solve.

Before we act on this amendment, we should ask ourselves if this new law that we would create would reduce crime. After all, that should be our primary reason for passing new criminal laws. In this case, although I know it is

a well meaning effort to address a serious problem, it won't prevent crime, it will only make a statement about it. That's one of the problems with a Federal hate crime bill. If it passes, we may think we have taken care of the problem. Unfortunately, although it may make us feel good, a law like this will do little to slow down or stop the cycle of violence in our cities and towns.

Another problem with the hate crime bill is its definition of hate crimes. All of the predicate offenses that would qualify as hate crimes are already illegal and they are already being prosecuted under traditional categories of crimes. In other words, the States are already aware of the problem and using existing law to address it. In those cases where additional legislation is needed, the States are taking the lead and deciding the matter for themselves. They don't need or want us to step in and tell them what they should do.

In addition, if we pass this amendment Federal agents and prosecutors will be put in a position in which they will be second guessing the efforts of local officials and substituting their own judgment or political motivations for the judgment of local law enforcement personnel who are dealing with the problem of hate crimes at the scene where they are committed.

The Smith amendment could essentially federalize most crimes. Such an explosion in Federal jurisdiction would require a tremendous expansion in the size and scope of Federal law enforcement and Federal prosecutors at a time when the States have the capability of prosecuting these crimes themselves—and they are doing it. Federal prosecutors already have the tools at their disposal to address issues like hate crimes—they just have to make better use of them.

All crimes are in some way hate crimes. By enacting hate crime legislation we ironically serve the principle of inequality that this type of legislation seeks to fight against. Violent crimes are horrific and should be punished equally, regardless of the particular "bias" of the perpetrator. A vicious murder should be prosecuted to the fullest extent of the law—no matter who the victim is. The value of an individual's life should not depend on their heritage, ethnicity or lifestyle. If life truly is a sacred gift we should treat every life with the same dignity and respect we all deserve.

To try to read someone's mind, or guess what their real motivation was for committing a crime will never be possible. Crimes aren't thoughts, they're actions, and actions which are crimes need to be addressed as soon as they are committed. To try to gauge the seriousness of a crime based on someone's thoughts is to put an additional burden on law enforcement personnel and prosecutors, not to mention the judge and jury who will have to work on and ultimately decide the

case. Clearly, putting a greater value on some lives inherently devalues others, and it goes against a basic principle of our legal foundation which is that all are equal in the eyes of the law. Justice is swifter when the accused are tried on the basis of what they did without adding some speculation on the thoughts they might have had while committing the crime.

We have State and Federal laws to punish murder, assault, battery, and a long list of other crimes. If these laws are not strong enough then we should make them stronger. We should also be making our feelings known to our neighbors, to our children, in our papers and through our broadcast media that hatred in any form is wrong. We should not, however, try to make statements with laws that weaken State authority or the rights granted to individuals in the Constitution.

Our society must continue to participate in a dialogue on the issues of racism, bigotry, and hate. We must pray for direction and guidance and work together to ensure that we avoid the kind of hate that may give rise to such crimes in the first place. Hatred in any form is destructive to the very foundation upon which our society is built.

If we are to truly address the problem of hate crimes, we must come together as one, our families, our spiritual and church leaders, our local and community leaders, and the citizens of our communities to foster and reinforce in our children and all our citizens the importance of treating each other as we would wish to be treated. It is such a simple lesson—it is never permissible to hurt another. Somehow, some of our children never learned it. Recent and past events make it clear that it is a lesson about which every child must be taught, and every adult constantly reminded.

Mr. HATCH. Mr. President, I rise today in opposition to the Local Law Enforcement Enhancement Act of 2003, offered as an amendment by my dear friend from Oregon, Senator SMITH.

Those who have been instrumental in drafting hate crimes legislation in the past several Congresses—Senators KENNEDY, SMITH and others—know I care deeply about this issue. They know I believe that hate crimes are insidiously harmful, that they should be forcefully prosecuted, and that the Federal Government has a role to play in reducing the incidence of these crimes in our Nation. The concerns I have voiced have always been about what Congress should do at the national level, not about whether we should act.

In past Congresses, and again here today, I have felt compelled to voice my opposition to Senator SMITH's hate crimes legislation which has essentially remained unchanged over the past several years, and is now being offered as an amendment. My primary concern has been, and remains to this day, that this legislation invades an area historically and constitutionally

reserved to State and local law enforcement authorities, without a demonstrated need for Federal intervention. In an effort to do what we believe is right, we simply cannot ignore core principles of our Constitution.

While there is little evidence that the States are failing to prosecute hate crimes, I firmly believe that local law enforcement authorities need our help. They need our resources, and they need our expertise. And we, the Federal Government, should stand ready and able to provide such assistance. We must proceed, however, in a manner that does not offend the authorities conferred upon the States by our Constitution.

As all of my colleagues are aware, this body has considered this issue in almost every session of Congress since 1999. I recognize that Senator SMITH has the necessary support in this body to pass his amendment. Indeed, his amendment has prevailed twice before. Recognizing that a majority of the Members of this body have supported Senator SMITH's proposal in the past, and in view of the substantial concerns I have about the amendment, over the past few months I have worked diligently to improve the legislation so that it may receive much broader bipartisan support. I have suggested that the proposal include Federal assistance and a study and an analysis of available statistics. I have also suggested that the amendment be broadened to include the possibility of the death penalty for those who commit the most heinous of crimes. I also think that the definition and intent elements of what is considered to be a hate crime should be significantly narrowed so that we do not capture every crime that happens to be committed against a member of a particular class. With these changes, the legislation would stand a better chance of becoming law and surviving constitutional challenges, which we know are certain to occur. Despite those concessions, it appears clear that we were unable to come to an agreement and I must, therefore, once again stand in opposition to two of my dear friends.

If we genuinely want to make a difference, if we want to pass legislation that both Houses of Congress will support, let us find a baseline of common ground and resist the temptation to make this a divisive political issue. I urge my colleagues to oppose the amendment.

I yield the floor.

NOMINATION OF VIRGINIA HOPKINS

Mr. HATCH. Mr. President, I rise in support of the confirmation of Virginia Hopkins for the United States District Court for the Northern District of Alabama. I have reviewed her record and I find her to be an excellent choice for the federal bench. Virginia Hopkins possesses 25 years of legal experience that will serve her well on the federal bench.

Upon graduating from the University of Virginia School of Law in 1977, Ms.

Hopkins joined the Birmingham, Alabama law firm of Lange, Simpson, Robinson & Sommerville, LLP. There she had a broad civil practice that included appellate matters, tax and estate planning, business dispute resolution and planning, and labor disputes. She also worked for another widely respected law firm, Taft, Stettinius & Hollister LLP, in Washington D.C.

In 1991, Ms. Hopkins returned to Alabama to join the firm of Campbell & Hopkins LLP., where she is currently a partner. Over the past 12 years, she has developed a broad civil practice, including litigation, tax and estate planning, business dispute resolution and planning, trademark and copyright registrations and disputes, trade secret disputes, confidentiality agreement disputes, and trade name disputes.

I am confident that she will make a fine addition to the Northern District of Alabama.

Thank you, Mr. President. I yield the floor.

Mr. LEAHY. Mr. President, today we vote on the nomination of Virginia Hopkins to the Northern District of Alabama. Ms. Hopkins has been an attorney at the firm Campbell & Hopkins in Alabama, and has the support of both of her home State Senators. In particular, Senator SHELBY deserves praise for diligently pressing forward, and this confirmation rewards his constant attention to this nomination. Senator SHELBY has always been a pleasure with whom to work, whether I was serving as chairman or ranking member. Senator SHELBY has always been someone who plays it straight and shows good judgment. He is fair and forthright.

I must note that since May 18, the date of the agreement on judicial confirmations this year involving Senator DASCHLE, Senator FRIST and the White House, the Senate has confirmed seven judges, including two circuit court nominees. We confirmed Marcia Cooke to the district court in Florida, Judge Van Antwerpen to the Third Circuit in Pennsylvania, and Ray Gruender to the Eighth Circuit the first week of that agreement. The following week, the Senate confirmed the nominations of Dennis Saylor, Sandra Townes, Ken Karas, and Judith Herrera to the Federal district courts.

Last week, the Republican leadership did not schedule any judicial nominations for a vote and considered other business during that shortened work week. In the month since the agreement to have a floor vote on 25 judicial nominees, the Republicans have asked for votes on only seven judicial nominees and have scheduled debate on a variety of matters other than judicial nominees. That is their choice. The Republican leadership knows that some of the remaining nominees in the agreement for votes this year require significant time for debate.

I do not want to see the Democrats blamed for any delay in confirmation votes when Republicans have been advised for weeks now that it is going to

take time for the Senate to process all of the nominees in the agreement. Members of the Senate deserve time to consider the merits of the nominees for lifetime positions. Democrats have been working cooperatively on judges but the Republican leadership has not worked with us to schedule the debate and votes on the many remaining judicial nominees that we had hoped could be considered before June 25. After today's three votes, 15 judicial nominees remain to be scheduled for debates and votes. I hope that we can make progress on more nominees this week and next. At the pace the Republican leadership has chosen to proceed, there is now a strong likelihood that debate and votes on some of these judicial nominees will extend past June 25.

On the occasion of the confirmation of this Alabama nominee, I would note that some in the Senate have falsely alleged that Democratic Senators have treated southern nominees unfairly. Some extreme partisans tried to divide the American people for partisan political gain with their false accusations against Democratic Senators. The truth is that Democrats have treated judicial nominees from the South very fairly: Southern States comprise about 25 percent of the States in the Nation, yet out of the 181 judicial nominees of President Bush that we have confirmed as of this vote, 59 nominees, or one-third of the confirmed nominees, have been to judicial seats in the South. In particular, I would note that six of President Bush's judicial nominees have already been confirmed to United States district courts in Alabama since he took office: Judge Karon Bowdre, Northern District; Judge Callie Granade, Southern District; Judge Mark Everett Fuller, Middle District; Judge L. Scott Coogler, Northern District; Judge R. David Proctor, Northern District; and Judge William Steele, Southern District. Judge Steele, as you may recall, was initially nominated by President Bush to the Eleventh Circuit, but President Bush pulled down the elevation of this then-U.S. magistrate judge in order to put forward the even more controversial William Pryor, who was recess appointed earlier this year despite the serious objections of numerous Senators. Recent news articles about Judge Pryor's actions on the bench have only underscored the concerns of many that he lacks the political independence and fairness to serve as a judge.

Ms. Hopkins received a partial "Not Qualified" rating from the American Bar Association. Following the White House's exclusion of the ABA from reviewing judicial candidates before they have the President's stamp of approval, a dismaying number of this President's nominees have received "Not Qualified" ratings. Indeed, four of his nominees were rated "Not Qualified" by a majority of the ABA rating committee, and 24—more than 10 percent—were rated "Not Qualified" by some members of the ABA's standing committee.

The weight that should be accorded an ABA rating was called into question after the debacle in which Republican partisan Fred Fielding prepared Miguel Estrada's ABA rating recommendation. Mr. Fielding not only served on the White House transition team advising the President about Cabinet appointments, he subsequently cofounded the Committee for Justice, which attacks anyone opposed to the President's judicial nominees. Similarly, the ABA's rating to Judge Pickering after his judicial ethics were called into question by national ethics experts undermined the confidence that some in the Senate had in the evaluations of the ABA's rating committee. Also, the ABA's ratings do not take into account the President's effort to put so many ideologues and extremists into these lifetime positions on the bench.

In Ms. Hopkins' case, the ABA rating may reflect her modest trial experience: She has been the sole or chief counsel in only two of the cases she has tried to verdict. Ms. Hopkins has been active in Republican fundraising like many of the President's nominees, but I am hopeful, given the confidence Senator SHELBY has reposed in her, that she will leave her partisan roots behind upon confirmation. Out of deference to Senator SHELBY, I will vote in favor of her confirmation.

I congratulate Ms. Hopkins on her confirmation.

NOMINATION OF RICARDO MARTINEZ

Mr. HATCH. Mr. President, I am pleased today to speak in support of Judge Ricardo Martinez, who has been nominated to the United States District Court for the Western District of Washington. Since 1998, Judge Martinez has served as a federal magistrate judge—an experience which undoubtedly has prepared him well for the district court bench.

Judge Martinez has a compelling story. The son of former migrant workers, he lived in a migrant camp for several years during his childhood, where he worked with his parents on the farms. Neither he nor his parents understood English, but with the help of his teachers, he mastered the language and became the family's interpreter. He also became the first in his family to attend high school. Incidentally, he was one of two boys to graduate from high school with honors.

Judge Martinez then attended the University of Washington, where he earned a Bachelor of Science degree in psychology. He subsequently graduated from the university's law school, where he had been a member of the Order of the Coif.

Following graduation from law school, Judge Martinez spent 10 years as an assistant prosecutor with the King County Prosecuting Attorney's Office where he became chief of the drug unit. After his appointment as a judge on the King County Superior Court in 1990, he started the State's first drug court, which allows those who are arrested on minor drug-related

charges to have the charges dropped in exchange for staying drug-free, completing their education and seeking employment.

I applaud President Bush for his nomination of Judge Martinez and am confident that he will serve on the bench with compassion, integrity and fairness.

Thank you, Mr. President. I yield the floor.

Mr. LEAHY. Mr. President, today the Senate considers the nomination of Ricardo Martinez, to be a United States District Judge for the Western District of Washington. For the past 6 years, he has been a widely respected United States Magistrate Judge for the Western District of Washington. Previously, Judge Martinez served as a Superior Court Judge and as an assistant prosecutor in King County, WA. He is a graduate of the University of Washington and of the University of Washington Law School, and has substantial trial experience. In light of his significant judicial experience it is not surprising that he received a unanimous rating of "Well-Qualified" from the American Bar Association.

Judge Martinez's nomination is the product of a bipartisan judicial nominating commission that Senators MURRAY and CANTWELL insisted upon in spite of Bush administration opposition. The State of Washington is well-served by its bipartisan judicial nominating commission which recommends qualified, consensus nominees on whom members of both parties can agree. It is difficult to understand why President Bush has opposed similar bipartisan selections commissions since they help Democrats and Republicans work together and help maintain an independent judiciary. I thank Senators MURRAY and CANTWELL for their steadfast efforts in maintaining the commission.

While some people have accused Democrats of being anti-Hispanic, our record of confirming Hispanic nominees is excellent. Democrats have supported the swift confirmation of President Bush's Latino nominees already, with four more waiting only for a vote on the Senate floor. While President Clinton nominated 11 Latino nominees to circuit court positions, five of those 11 were blocked by the Republican Senate, and four of those five were not even granted hearings. President Bush has only nominated four Latino jurists to circuit court positions, three of whom have already been confirmed with unanimous Democratic support. President Bush's 21 Latino nominees constitute less than 10 percent of his 225 judicial nominees.

Regrettably the President has been more concerned with nominating those affiliated with the Federalist Society. He has nominated 45 such nominees. Twice as many nominees have been affiliated with the Federalist Society as have been Hispanic. In fact, all of his Hispanic, Asian and African American judicial nominees combined do not

equal the number of those affiliated with the Federalist Society.

This confirmation marks the 182nd lifetime judicial appointment approved by the Senate during this Presidential term. That is more than is all of President Reagan's term from 1981 through 1984 and more than in all of President Clinton's more recent term from 1997 through 2000. We have also approved more judicial nominees this Congress than in either of the last two Congresses preceding the Presidential elections in 1996 or 2000.

I strongly support his nomination and I congratulate Judge Martinez and his family on his confirmation.

Ms. CANTWELL. Mr. President, it is my privilege today to discuss the incredibly talented nominee for vacancy on the District Court for the Western District of Washington, Judge Ricardo Martinez. The people of western Washington will be well-served by this talented and fair jurist.

Given Judge Martinez's reputation for even-handedness and thoroughness, it is fitting that he was recommended by a bipartisan selection committee that I believe is a sound model for other States. Members of Washington State's legal community, the White House, and my colleague Senator PATTY MURRAY and I worked together to review a group of applicants. Together, we all agreed that Judge Martinez is the right person for the job.

Judge Martinez has ably served the people of Washington State as a public servant for more than two decades: as prosecutor in the State's largest county for 10 years; as a Superior Court judge for 8 years; and as a United States Magistrate judge in the Western District of Washington for the past 5 years.

While serving on the King County Superior Court, Judge Martinez took the lead in helping to create an innovative "drug court" to address the unique challenge of recidivism among drug offenders. He helped build a consensus to try a new approach, and preside over the new court for three years.

And it worked. The "drug court," one of the first in the Nation, has helped reduce recidivism rates among those people who successfully complete the program and it has been emulated by many jurisdictions across the country.

Judge Martinez's commitment to his community extends beyond the courtroom. He has volunteered countless hours to help those in need and the homeless; to mentor young people as a coach in several sports; and to raise money for college scholarships for young men from disadvantaged backgrounds.

Those who have worked with Judge Martinez attest to his fundamental sense of fairness and justice. The ABA rated him as "well-qualified"—its highest rating—on a unanimous vote. He also enjoys support from the Federal bench, and was encouraged to apply for the vacancy by all of the incumbent judges of the Western District.

I am pleased to offer Judge Ricardo Martinez my full support, and I urge my fellow Senators to approve his nomination.

NOMINATION OF GENE PRATTER

Mr. HATCH. Mr. President, I rise today in support of the nomination of Gene Pratter to be United States District Judge for the Eastern District of Pennsylvania.

Gene Pratter, has contributed much to the legal community over her 29 year legal career, specifically in the areas of ethics and professional conduct. Upon graduation from University of Pennsylvania Law School, Ms. Pratter joined the law firm of Duane Morris & Heckscher—now Duane Morris LLP. She has remained with this firm since her first days as an associate and is currently a partner in and general counsel of the firm.

She has represented numerous clients in commercial litigation and professional liability. She has also represented licensed law, financial and other professionals before State and national licensing boards and in litigation throughout the country in both federal and State courts. She has practiced in a variety of legal issues including litigation and alternative dispute resolution, with emphasis on commercial, securities, employment contract, real estate, insurance coverage, RICO, professional and business ethics, and professional liability litigation. She has also represented the Philadelphia Zoo.

Additionally, Ms. Pratter has served as an expert witness and has overseen legal issues for her law firm, Duane Morris, for a number of years while also holding the position of vice-chair of the firm's Trial Department. She has also been named as a Judge Pro Tem in the Philadelphia Court of Common Pleas and a mediator for the U.S. District Court for the Eastern District of Pennsylvania.

Ms. Pratter has been a guest faculty member at the University of Pennsylvania Law School, where she lectured on the legal profession and professional responsibility. She also served on the School's Board of Overseers from 1993 to 1999. She is active in numerous professional and community associations.

I have every confidence that she will make an excellent federal judge. I commend President Bush for nominating her, and I urge my colleagues to join me in supporting this nomination.

Thank you, Mr. President. I yield the floor.

Mr. LEAHY. Mr. President, today we vote to confirm another district court nominee, Gene Pratter to the U.S. District Court for the Eastern District of Pennsylvania. Ms. Pratter is currently a partner at the firm Duane Morris LLP, where she has worked her entire career.

A look at the Federal judiciary in Pennsylvania demonstrates yet again that President Bush's nominees have been treated far better than President Clinton's and shows dramatically how

Democrats have worked in a bipartisan way to fill vacancies despite the fact that Republicans blocked more than 60 of President Clinton's judicial nominees. With this confirmation, 17 of President Bush's nominees to the Federal courts in Pennsylvania will have been confirmed—a rate not matched in any other State but California.

With this confirmation, President Bush's nominees will make up 17 of the 42 active Federal circuit and district court judges for Pennsylvania—that is more than one-third of the Pennsylvania Federal bench. On the Pennsylvania district courts alone, President Bush's influence is even stronger as his nominees will hold 14 of the 33 active seats—or more than 42 percent of the current active seats. With the additional Pennsylvania district court nominees pending on the floor and likely to be confirmed soon, nearly half of the district court seats in Pennsylvania will be held by President Bush's appointees. Republican appointees will outnumber Democratic appointees by nearly two to one.

This is in sharp contrast to the way vacancies in Pennsylvania were left unfilled during Republican control of the Senate when President Clinton was in the White House. Republicans denied votes to nine district and one circuit court nominees of President Clinton in Pennsylvania alone. Despite the efforts and diligence of the senior Senator from Pennsylvania, Senator SPECTER, to secure the confirmation of all of the judicial nominees from every part of his home State, there were 10 nominees by President Clinton to Pennsylvania vacancies who never got a vote. Despite records showing them to be well-qualified nominees, many of their nominations sat idle before the Senate for more than a year without being considered. Such obstruction provided President Bush with a significant opportunity to shape the bench according to his partisan and ideological goals.

Recent news articles in Pennsylvania have highlighted the way that President Bush has been able to reshape the Federal bench in Pennsylvania. For example, The Philadelphia Inquirer, on November 27, 2003, said that the significant number of vacancies on the Pennsylvania courts "present Republicans with an opportunity to shape the judicial makeup of the court for years to come."

Democratic support for the confirmation of Gene Pratter is yet another example of our extraordinary cooperation despite an uncompromising White House and a record that shows Republicans' refusal to cooperate on President Clinton's Pennsylvania nominees when they controlled the Senate and a Democrat resided at 1600 Pennsylvania Avenue.

Like so many of President Bush's nominees, Ms. Pratter is a member of the Federalist Society and has been involved in numerous Republican Party campaigns. She has no judicial experience although she comes from a well-

respected law firm. Her record of defending businesses raises concerns about her ability to balance business and individual interests. In her answers to my written questions, however, she assured me that she would be fair to all parties that come before her. I hope that she will be a person of her word. I hope that she will follow the law. I hope that she will treat all who appear before her with respect. I hope she will not abuse the power and trust of her position. Sometimes we have to take a risk to allow a nominee to be confirmed.

I congratulate Ms. Pratter on her confirmation today.

Mr. SANTORUM. Mr. President, I yield the remainder of time in opposition.

Mr. SMITH. Mr. President, I believe we have used all our time. Therefore, I believe we are ready to vote.

The PRESIDING OFFICER. All time has expired.

Mr. KENNEDY. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SANTORUM. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

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

EXECUTIVE SESSION

THE NOMINATION OF VIRGINIA E. HOPKINS TO BE UNITED STATES DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF ALABAMA

THE NOMINATION OF RICARDO S. MARTINEZ TO BE UNITED STATES DISTRICT JUDGE FOR THE WESTERN DISTRICT OF WASHINGTON

THE NOMINATION OF GENE E.K. PRATTER TO BE UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF PENNSYLVANIA

The PRESIDING OFFICER. Under the previous order, the Senate will now proceed to executive session to consider nominations 563, 564, and 566. There will be 20 minutes of debate equally divided between the chairman and ranking members of the Judiciary Committee, or their designees. At the conclusion of 20 minutes, we will vote on the nominations, following which there will be a vote on the pending amendment.

Mr. SANTORUM. Mr. President, I rise to speak in favor of Gene Pratter, who is the nominee, as you noted, on the Executive Calendar for the Eastern District of Pennsylvania.

Gene has an outstanding record of community service, of service to the

legal community, working in very complex and difficult litigation with a large law firm in the city of Philadelphia. She is someone who has been active, as I mentioned, in the community and in political life, and is the kind of well-rounded individual who I think would make an excellent jurist on the court.

She is someone I have gotten to know over the past 10 or 12 years, and I have respected her demeanor. She has a very professional but yet gentle way of discussing sometimes rather contentious issues in which we have been involved.

Again, I respect the way she approaches issues that confront her. She has proven that she has outstanding legal abilities. She has proven that she understands the importance of community and the importance of being a good citizen and participating as a citizen beyond just the professional life, which to me, as a judge, is something that is very important.

We have been fortunate under the leadership of Senator SPECTER in finding now 20 judges under this administration who have been nominated, and I believe the number is 17 or 18 who have been confirmed by the Senate. We have done a good job in finding people who are well rounded and people who have judicial experience and judicial temperament about which I spoke, as well as a record of community involvement and active citizenship which rounds out the person. So when they come to the bench, they are not just a narrow scholar or someone who is a "hail fellow well met" but a nice combination of the two that brings the kind of commonsense judicial temperament that is important in our court system.

I commend Gene for her steadfastness in this process. As anybody who has gone through this process in the last couple of years will tell you, this is a difficult and somewhat tortuous process where you are on again, off again; You don't know whether your career is going to move forward or is going to stay in limbo. Is it going to fall off the docket and not be heard from again? That is a very difficult thing for all of these nominees to have to go through.

But thanks to the agreement of Senator FRIST and Senator DASCHLE, we have been able to move some of these nominations—the "noncontroversial nominations"—and we will now have a vote on Judge Pratter.

I say for the RECORD again that because of the work Senator SPECTER has done with our bipartisan nominating commission we have in the State of Pennsylvania, we have been able to get Republicans and Democrats—I underscore Republicans and Democrats—nominated by this President.

When there are two Republican Senators, we have a rule in Pennsylvania that the party in power—that means the President—will nominate three to his party to every one in the minority

party, irrespective of, as I said before, the fact that we may have two Republican Senators and a Republican President. Out of every four nominees, we still nominate one Democrat to fill the bench to make sure there is a proper balance on the court, and even to some degree some little ideological balance on the court.

We have been successful in getting soon to be 20 nominees approved by the Senate, which I think is a fairly admirable record if you consider the contentious attitude the judicial nominees have had to work through in the committee as well as in the Senate.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. SESSIONS. Mr. President, I speak on behalf of a judicial nominee for the Northern District of Alabama, Virginia E. Hawkins. I join with Senator Richard Shelby of my State in moving her nomination forward with great enthusiasm. She is a woman of impeccable academic credentials, high in integrity, great legal experience and skill. She will do a great job on the Federal bench.

She has a strong academic background. She graduated from the University of Alabama in 1974 as an undergraduate. She attended Agnes Scott College before that. Then she attended the University of Virginia Law School in 1977. She began her career as an associate attorney at the law firm of Lange, Simpson, Robinson & Sommerville in Birmingham, AL. That is one of the great law firms in the State. The fact she was hired there in itself is a good commendation of what they thought were good legal skills and good judgment. She certainly would not have been selected at that firm had they not thought so at the time.

She had at that firm a broad civil practice, including appellate matters, tax and estate planning, business dispute resolution, and planning in labor disputes. These things come up in Federal court, also.

She left the firm after 2 years to join the law firm of Taft, Stettinius & Hollister in Washington, DC, where she established the firm's intellectual property practice and handled complicated trademark matters. It is a fine law firm in Washington for her to be part of.

In 1991, however, she and her husband decided to return to her home of Anniston, AL, and to form the firm of Campbell & Hopkins where she is currently a partner.

Over the past 12 years she developed a broad civil practice, including litigation, tax and estate planning and administration, business dispute resolution, and planning intellectual property cases.