education bill in which the Federal Government participates—not heavily. The Federal Government's role in funding elementary and secondary education is about 7 percent of the total expenditure. But the argument is whether the decisions are made in Washington as to how that 7 percent is used before it is sent down to the school districts or whether we send down the 7 percent and let the States and the school districts decide, which is what our position is on this side.

I spoke at a graduation a couple weeks ago in Chugwater, WY. The graduating class was 12. You can see that is a pretty small school. The things they need in Chugwater, WY, are quite different than what you need in Pittsburgh or Philadelphia or Washington, DC. So if you are going to really be able to help all different kinds of schools and have the flexibility to do that, clearly, you have to transport those decisions to State and local government.

These are some of the things in which we find ourselves involved. I am hopeful we can move forward. I do not expect everyone to agree. Certainly, that is not why we are here. But we ought to have a system where, No. 1, after we have dealt with an issue, we can move on to the next issue, and not have it continuously brought up as nongermane amendments, which is happening all the time. We ought to be able to say, we have a system where we can participate. But we have a system that can hold everything up, which is being used now in not allowing us to move forward as we should.

As you can imagine, it gets just a little bit nerve-racking from time to time when you think of all the things that we could be doing, and need to be doing, but find it difficult to do.

Finally, there is something, it seems to me, that would be most helpful if we could do it a little more. We are talking now about the reregulation of electricity, trying to make it competitive so there would be better opportunity for people to choose their supplier, so there would be a better opportunity for people to invest in generation, and do all those things. But we really have not decided where we want to go and where we want to be.

One of the things that seems to be difficult for us to do in governance is, first of all, to decide what we want to accomplish and then talk about how we get there. It sounds like a fairly simple routine, but it is not really happening. It would be good if we could do that, if we could say, for example, in terms of the Patients' Bill of Rights: All right, what do we want the result to be? What is our goal? What do we want to accomplish? and see if we could not define that, and then make the rules, make the regulations, pass the laws that would implement that decision. But instead, if we do not have that clearly defined, it seems that we continue to go around and around.

I am sometimes reminded by children of Alice in Wonderland. She fell through the hole in the Earth and was lost, and she talked to people to try to get some directions. None of them were very useful. She finally came to the Cheshire cat who was sitting up in a tree at a fork in the road.

She said: Mr. Cat, which road should I take?

He said: Where do you want to go?

She said: I don't know.

He said: Then it doesn't make any difference which road you take.

That is kind of where we are in some of the things we do. In any event, we are going to make some progress. I hope that we move forward and get our appropriations finished. I hope we can do something on national security. We need to have a system that works to decide what it is we want to accomplish, how we best accomplish that, and put it into place.

—

UNANIMOUS-CONSENT AGREEMENT—AMENDMENT TO S. 2549

Mr. THOMAS. Madam President, I have a unanimous consent request. I ask unanimous consent that notwithstanding the current unanimous consent agreement, Senator HATCH be recognized at 4 p.m. to offer his amendment regarding hate crimes.

The PRESIDING OFFICER (Ms. COLLINS). Without objection, it is so ordered.

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

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

—

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is now closed.

—

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2001

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of S. 2549, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 2549) to authorize appropriations for fiscal year 2001 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes.

Pending:

Smith of New Hampshire amendment No. 3210, to prohibit granting security clearances to felons.

McCain amendment No. 3214, to amendment No. 3210, to require the disclosure of expenditures and contributions by certain political organizations.

Mr. WARNER. Madam President, if my recollection serves me, the senior Senator from Massachusetts was to offer an amendment which would be the subject of debate for some period of time. That would be followed by the senior Senator from Utah, Mr. HATCH, who likewise will offer an amendment that would be the subject of debate. I see my distinguished colleague. I yield to him for any clarification he wishes to make of my statement.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Madam President, I am here in part today to offer Senator KENNEDY's amendment on his behalf and to speak in support of it. If the good Senator from Virginia is ready and wishes to do that, we could perhaps go through some of the cleared amendments on the authorization bill. I am happy to do it either way, to join with him in offering those amendments now for a few minutes and then to introduce the Kennedy amendment, if he would like.

The PRESIDING OFFICER. The Chair wishes to inform both Senators that the unanimous consent request was modified a brief time ago to provide for the Senator from Utah to offer his amendment at 4 o'clock.

Mr. WARNER. Madam President, I am glad to be informed of that.

The PRESIDING OFFICER. It did not affect the positioning of the amendment of the Senator from Massachusetts, which the Chair believes is to be offered first.

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

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

Mr. WARNER. At this time, Senator LEVIN and I will act on some cleared amendments.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Madam President, so we keep this clear, there is a unanimous consent agreement that is currently in place, as modified, so that immediately following the introduction of the Kennedy amendment and Senators speaking thereon, at 4 o'clock Senator HATCH would then introduce his amendment; is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. LEVIN. Madam President, I ask unanimous consent that we maintain that unanimous consent agreement in place without modification, exempt that prior to my offering the Kennedy amendment, it be in order for the Senator from Virginia to proceed with the cleared amendments, as he has indicated. I further ask unanimous consent that immediately following my introduction of the Kennedy amendment

and speaking thereon, the Senator from Minnesota be recognized to speak in support of the Kennedy amendment.

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

The Senator from Virginia.

AMENDMENT NO. 3458

(Purpose: To clarify the duty of the Department of Veterans Affairs to assist claimants for benefits)

Mr. WARNER. Madam President, on behalf of Senator MCCAIN, I offer an amendment that would clarify that the Secretary of Veterans Affairs must assist claimants in developing claims for VA benefits.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Virginia [Mr. WARNER], for Mr. McCain, proposes an amendment numbered 3458.

The amendment is as follows:

On page 239, following line 22, add the following:

SEC. 656. CLARIFICATION OF DEPARTMENT OF VETERANS AFFAIRS DUTY TO ASSIST.

(a) IN GENERAL.—Section 5107 of title 38, United States Code, is amended to read as follows:

''§ 5107 Assistance to claimants; benefit of the doubt; burden of proof

''(a) The Secretary shall assist a claimant in developing all facts pertinent to a claim for benefits under this title. Such assistance shall include requesting information as described in section 5106 of this title. The Secretary shall provide a medical examination when such examination may substantiate entitlement to the benefits sought. The Secretary may decide a claim without providing assistance under this subsection when no reasonable possibility exists that such assistance will aid in the establishment of entitlement.

''(b) The Secretary shall consider all evidence and material of record in a case before the Department with respect to benefits under laws administered by the Secretary and shall give the claimant the benefit of the doubt when there is an approximate balance of positive and negative evidence regarding any issue material to the determination of the matter.

''(c) Except when otherwise provided by this title or by the Secretary in accordance with the provisions of this title, a person who submits a claim for benefits under a law administered by the Secretary shall have the burden of proof.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 51 of that title is amended by striking the item relating to section 5017 and inserting the following new item:

''5107 Assistance to claimants; benefit of the doubt; burden of proof.''.

Mr. LEVIN. Madam President, this amendment has been cleared. We support it.

Mr. WARNER. I urge adoption of the amendment.

The PRESIDING OFFICER. Without objection, the amendment is agreed to.

The amendment (No. 3458) was agreed to.

Mr. WARNER. Madam 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.

AMENDMENT NO. 3459

(Purpose: To authorize the Secretary of Veterans Affairs to furnish headstones or markers for marked graves of, or otherwise commemorate, certain individuals)

Mr. LEVIN. Madam President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Michigan [Mr. LEVIN], for Mr. DODD, proposes an amendment numbered 3459.

The amendment is as follows:

On page 415, between lines 2 and 3, insert the following:

SEC. 1061. AUTHORITY TO PROVIDE HEADSTONES OR MARKERS FOR MARKED GRAVES OR OTHERWISE COMMEMORATE CERTAIN INDIVIDUALS.

(a) IN GENERAL.—Section 2306 of title 38, United States Code, is amended—

(1) in subsections (a) and (e)(1), by striking ''the unmarked graves of''; and

(2) by adding at the end the following:

''(f) A headstone or marker furnished under subsection (a) shall be furnished, upon request, for the marked grave or unmarked grave of the individual or at another area appropriate for the purpose of commemorating the individual.''.

(b) APPLICABILITY.—(1) Except as provided in paragraph (2), the amendment to subsection (a) of section 2306 of title 38, United States Code, made by subsection (a) of this section, and subsection (f) of such section 2306, as added by subsection (a) of this section, shall apply with respect to burials occurring before, on, or after the date of the enactment of this Act.

(2) The amendments referred to in paragraph (1) shall not apply in the case of the grave for any individual who died before November 1, 1990, for which the Administrator of Veterans' Affairs provided reimbursement in lieu of furnishing a headstone or marker under subsection (d) of section 906 of title 38, United States Code, as such subsection was in effect after September 30, 1978, and before November 1, 1990.

Mr. LEVIN. Madam President, this amendment would authorize the Secretary of Veterans Affairs to furnish headstones or markers for certain individuals. I believe the amendment has been cleared on both sides.

Mr. WARNER. That is correct.

The PRESIDING OFFICER. Without objection, the amendment is agreed to.

The amendment (No. 3459) was agreed to.

Mr. LEVIN. Madam President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 3460

(Purpose: To add $30,000,000 for the Navy for the procurement of Gun Mount modifications; and to offset the increase by reducing by $30,000,000 the amount authorized to be appropriated for the Navy for procurement for aircraft ($13,100,000 from the amount for the block modification upgrade program for P–3 aircraft, $9,000,000 from the amount for the H–1 series to reclaim and convert aircraft from the aerospace maintenance and regeneration center, and $7,900,000 from the amount for procurement of SH–60R aircraft)

Mr. LEVIN. Madam President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Michigan [Mr. LEVIN], for Mr. WARNER, proposes an amendment numbered 3460.

The amendment is as follows:

On page 17, line 7, strike ''$1,479,950,000'' and insert ''$1,509,950,000''.

On page 17, line 5, strike ''$8,745,958,000'' and insert ''$8,715,958,000''.

Mr. LEVIN. This amendment authorizes modifications for gun mounts for surface ships.

Mr. WARNER. This amendment has been cleared by both sides.

The PRESIDING OFFICER. Without objection, the amendment is agreed to.

The amendment (No. 3460) was agreed to.

Mr. WARNER. Madam 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.

AMENDMENT NO. 3461

(Purpose: To provide, with an offset, $8,000,000 for research, development, test, and evaluation for the Air Force for Electronic Warfare Development (PE604270F) for the Precision Location and Identification Program (PLAID)

Mr. LEVIN. Madam President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Michigan [Mr. LEVIN], for Mr. CLELAND, for himself and Mr. COVERDELL, proposes an amendment numbered 3461.

The amendment is as follows:

On page 48, between lines 20 and 21, insert the following:

SEC. 222. PRECISION LOCATION AND IDENTIFICATION PROGRAM (PLAID).

(a) INCREASE IN AMOUNT.—(1) The amount authorized to be appropriated by section 201(3) for research, development, test, and evaluation for the Air Force is hereby increased by $8,000,000.

(2) Of the amount authorized to be appropriated by section 201(3), as increased by paragraph (1), the amount available for Electronic Warfare Development (PE604270F) is hereby increased by $8,000,000, with the amount of such increase available for the Precision Location and Identification Program (PLAID).

(b) OFFSET.—The amount authorized to be appropriated by section 201(1) for research,

development, test, and evaluation for the Army is hereby decreased by $8,000,000, with the amount of the reduction applied to Electronic Warfare Development (PE604270A).

Mr. LEVIN. Madam President, this amendment would add $8 million for research, development, test, and evaluation for the Air Force for Electronic Warfare Development for the Precision Location and Identification Program. I believe the amendment has been cleared by the other side.

Mr. WARNER. That is correct.

The PRESIDING OFFICER. Without objection, the amendment is agreed to.

The amendment (No. 3461) was agreed to.

Mr. LEVIN. Madam President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 3462

(Purpose: To add $30,000,000 for the Navy for the procurement of CIWS MODS for block 1B modifications; and to offset the increase by reducing by $30,000,000 the amount authorized to be appropriated for the Navy for procurement for the block modification upgrade program for the P–3 aircraft)

Mr. WARNER. Madam President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Virginia [Mr. WARNER] proposes an amendment numbered 3462.

The amendment is as follows:

On page 17, line 7, strike ''$1,479,950,000'' and insert ''$1,509,950,000''.

On page 17, line 5, strike ''$8,745,958,000'' and insert ''$8,715,958,000''.

The PRESIDING OFFICER. Without objection, the amendment is agreed to.

The amendment (No. 3462) was agreed to.

Mr. WARNER. Madam 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.

AMENDMENT NO. 3463

(Purpose: To require a report on submarine rescue support vessels)

Mr. LEVIN. Madam President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Michigan [Mr. LEVIN], for Ms. LANDRIEU, proposes an amendment numbered 3463.

The amendment is as follows:

On page 378, between lines 19 and 20, insert the following:

SEC. 1027. REPORT ON SUBMARINE RESCUE SUPPORT VESSELS.

(a) REQUIREMENT.—The Secretary of the Navy shall submit to Congress, together with the submission of the budget of the President for fiscal year 2002 under section 1105 of title 31, United States Code, a report on the plan of the Navy for providing for submarine rescue support vessels through fiscal year 2007.

(b) CONTENT.—The report shall include a discussion of the following:

(1) The requirement for submarine rescue support vessels through fiscal year 2007, including experience in changing from the provision of such vessels from dedicated platforms to the provision of such vessels through vessel of opportunity services and charter vessels.

(2) The resources required, the risks to submariners, and the operational impacts of the following:

(A) Chartering submarine rescue support vessels for terms of up to five years, with options to extend the charters for two additional five-year periods.

(B) Providing submarine rescue support vessels using vessel of opportunity services.

(C) Providing submarine rescue support services through other means considered by the Navy.

Mr. LEVIN. Madam President, this amendment requires the Secretary of the Navy to submit a report on the submarine rescue support vessels. I believe it has been cleared by the other side.

Mr. WARNER. That is correct.

The PRESIDING OFFICER. Without objection, the amendment is agreed to.

The amendment (No. 3463) was agreed to.

Mr. LEVIN. Madam President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 3464

(Purpose: To require a GAO-convened independent study of the OMB Circular A–76 process)

Mr. WARNER. Madam President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Virginia [Mr. WARNER] proposes an amendment numbered 3464.

The amendment is as follows:

On page 303, between lines 6 and 7, insert the following:

SEC. 814. STUDY OF OFFICE OF MANAGEMENT AND BUDGET CIRCULAR A–76 PROCESS.

(a) GAO-CONVENED PANEL.—The Comptroller General shall convene a panel of experts to study rules, and the administration of the rules, governing the selection of sources for the performance of commercial or industrial functions for the Federal Government from between public and private sector sources, including public-private competitions pursuant to the Office of Management and Budget Circular A–76. The Comptroller General shall be the chairman of the panel.

(b) COMPOSITION OF PANEL.—(1) The Comptroller General shall appoint highly qualified and knowledgeable persons to serve on the panel and shall ensure that the following groups receive fair representation on the panel:

(A) Officers and employees of the United States.

(B) Persons in private industry.

(C) Federal labor organizations.

(2) For the purposes of the requirement for fair representation under paragraph (1), persons serving on the panel under subparagraph (C) of that paragraph shall not be counted as persons serving on the panel under subparagraph (A) or (B) of that paragraph.

(c) PARTICIPATION BY OTHER INTERESTED PARTIES.—The Comptroller General shall ensure that the opportunity to submit information and views on the Office of Management and Budget Circular A–76 process to the panel for the purposes of the study is accorded to all interested parties, including officers and employees of the United States not serving on the panel and entities in private industry and representatives of federal labor organizations not represented on the panel.

(d) INFORMATION FROM AGENCIES.—The panel may secure directly from any department or agency of the United States any information that the panel considers necessary to carry out a meaningful study of administration of the rules described in subsection (a), including the Office of Management and Budget Circular A–76 process. Upon the request of the Chairman of the panel, the head of such department or agency shall furnish the requested information to the panel.

(e) REPORT.—The Comptroller General shall submit a report on the results of the study to Congress.

(f) DEFINITION.—In this section, the term ''federal labor organization'' has the meaning given the term ''labor organization'' in section 7103(a)(4) of title 5, United States Code.

The PRESIDING OFFICER. Without objection, the amendment is agreed to.

The amendment (No. 3464) was agreed to.

Mr. WARNER. Madam 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.

AMENDMENT NO. 3465

(Purpose: To authorize a land conveyance, Los Angeles Air Force Base, California)

Mr. LEVIN. Madam President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Michigan [Mr. LEVIN], for Mrs. FEINSTEIN, proposes an amendment numbered 3465.

The amendment is as follows:

On page 543, strike line 20 and insert the following:

Part III—Air Force Conveyances

SEC. 2861. LAND CONVEYANCE, LOS ANGELES AIR FORCE BASE, CALIFORNIA.

(a) CONVEYANCE AUTHORIZED.—The Secretary of the Air Force may convey, by sale or lease upon such terms as the Secretary considers appropriate, all or any portion of the following parcels of real property, including improvements thereon, at Los Angeles Air Force Base, California:

(1) Approximately 42 acres in El Segundo, California, commonly known as Area A.

(2) Approximately 52 acres in El Segundo, California, commonly known as Area B.

(3) Approximately 13 acres in Hawthorne, California, commonly known as the Lawndale Annex.

(4) Approximately 3.7 acres in Sun Valley, California, commonly known as the Armed Forces Radio and Television Service Broadcast Center.

(b) CONSIDERATION.—As consideration for the conveyance of real property under subsection (a), the recipient of the property

shall provide for the design and construction on real property acceptable to the Secretary of one or more facilities to consolidate the mission and support functions at Los Angeles Air Force Base. Any such facility must comply with the seismic and safety design standards for Los Angeles County, California, in effect at the time the Secretary takes possession of the facility.

(c) LEASEBACK AUTHORITY.—If the fair market value of a facility to be provided as consideration for the conveyance of real property under subsection (a) exceeds the fair market value of the conveyed property, the Secretary may enter into a lease for the facility for a period not to exceed 10 years. Rental payments under the lease shall be established at the rate necessary to permit the lessor to recover, by the end of the lease term, the difference between the fair market value of a facility and the fair market value of the conveyed property. At the end of the lease, all right, title, and interest in the facility shall vest in the United States.

(d) APPRAISAL OF PROPERTY.—The Secretary shall obtain an appraisal of the fair market value of all property and facilities to be sold, leased, or acquired under this section. An appraisal shall be made by a qualified appraiser familiar with the type of property to be appraised. The Secretary shall consider the appraisals in determining whether a proposed conveyance accomplishes the purpose of this section and is in the interest of the United States. Appraisal reports shall not be released outside of the Federal Government, other than the other party to a conveyance.

(e) DESCRIPTION OF PROPERTY.—The exact acreage and legal description of real property to be conveyed under subsection (a) or acquired under subsection (b) shall be determined by a survey satisfactory to the Secretary. The cost of the survey shall be borne by the recipient of the property.

(f) EXEMPTION.—Section 2696 of title 10, United States Code, does not apply to the conveyance authorized by subsection (a).

(g) ADDITIONAL TERMS AND CONDITIONS.—The Secretary may require such additional terms and conditions in connection with a conveyance under subsection (a) or a lease under subsection (c) as the Secretary considers appropriate to protect the interests of the United States.

Part IV—Defense Agencies Conveyances

Mr. WARNER. Madam President, I would like to highlight the work of Congressman STEVE KUYKENDALL concerning this important amendment to the National Defense Authorization Act for Fiscal Year 2001. His tireless efforts over the past several months ensured this legislation was not only included in the chairman's mark during the House Armed Services Committee markup of H.R. 4205, but also that it remained unchanged during the debate on the House floor. Although I am confident that we could have resolved this issue in conference, there is always some risk when the House and Senate do not have identical legislation provisions. As a thorough legislator unwilling to take this risk, Mr. KUYKENDALL immediately sought my assistance after the House had acted on the bill to include the proposal in the Senate's defense authorization legislation. By ensuring that the land-for-building swap language is included in both the House and Senate authorization bills, Mr. KUYKENDALL has guaranteed that this innovative solution will appear in the final defense authorization legislation sent to the President for signature. I was glad to work with my colleague from the house to include his language in our bill, and appreciate Senator FEINSTEIN's support on this effort.

Mr. LEVIN. Madam President, this amendment would authorize the Secretary of the Air Force to convey a fair market value of approximately 110 acres at the Los Angeles Air Force Base. I believe this amendment has been cleared.

Mr. WARNER. That is correct.

The PRESIDING OFFICER. Without objection, the amendment is agreed to.

The amendment (No. 3465) was agreed to.

Mr. LEVIN. Madam President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 3466

(Purpose: To provide an additional amount of $92,000,000 for the procurement of remanufactured AV–8B aircraft for the Navy; and to offset the increase by reducing the amount provided for the procurement of UC–35 aircraft for the Navy by $33,400,000, by reducing the amount provided for the procurement of automatic flight control systems for EA–6B aircraft by $17,700,000, and by reducing the amount provided for engineering change proposal 583 for FA–18 aircraft for the Navy by $40,900,000)

Mr. WARNER. Madam President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Virginia [Mr. WARNER], for Mr. SANTORUM, proposes an amendment numbered 3466.

The amendment is as follows

On page 31, between lines 18 and 19, insert the following:

SEC. 126. REMANUFACTURED AV–8B AIRCRAFT.

Of the amount authorized to be appropriated by section 102(a)(1)—

(1) $318,646,000 is available for the procurement of remanufactured AV–8B aircraft;

(2) $15,200,000 is available for the procurement of UC–35 aircraft;

(3) $3,300,000 is available for the procurement of automatic flight control systems for EA–6B aircraft; and

(4) $46,000,000 is available for engineering change proposal 583 for FA–18 aircraft.

Mr. WARNER. This amendment has been cleared on both sides. I urge its adoption.

The PRESIDING OFFICER. Without objection, the amendment is agreed to.

The amendment (No. 3466) was agreed to.

Mr. WARNER. Madam 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.

AMENDMENT NO. 3467

(Purpose: To make available, with an offset, $5,000,000 for research, development, test, and evaluation for the Navy for the Information Technology Center and Human Resource Enterprise Strategy)

Mr. LEVIN. Madam President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Michigan [Mr. LEVIN], for Ms. LANDRIEU, proposes an amendment numbered 3467.

The amendment is as follows

On page 48, between lines 20 and 21, insert the following:

SEC. 222. NAVY INFORMATION TECHNOLOGY CENTER AND HUMAN RESOURCE ENTERPRISE STRATEGY.

(a) AVAILABILITY OF INCREASED AMOUNT.—(1) Of the amount authorized to be appropriated by section 201(2), for research, development, test, and evaluation for the Navy, $5,000,000 shall be available for the Navy Program Executive Office for Information Technology for purposes of the Information Technology Center and for the Human Resource Enterprise Strategy implemented under section 8147 of the Department of Defense Appropriations Act, 1999 (Public Law 105–262; 112 Stat. 2341; 10 U.S.C. 113 note).

(2) Amounts made available under paragraph (1) for the purposes specified in that paragraph are in addition to any other amounts made available under this Act for such purposes.

(b) OFFSET.—Of the amount authorized to be appropriated by section 201(2), the amount available for Marine Corps Assault Vehicles (PE603611M) is hereby reduced by $5,000,000.

Mr. LEVIN. Madam President, this amendment adds $5 million to the authorization of the Navy's Information Technology Center. I believe this amendment has been cleared.

Mr. WARNER. That is correct.

The PRESIDING OFFICER. Without objection, the amendment is agreed to.

The amendment (No. 3467) was agreed to.

Mr. LEVIN. Madam President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 3468

(Purpose: To increase the authorization of appropriations for the Marine Corps for procurement by $2,000,000 for night vision (M203 tilting brackets), by $2,000,000 for 5/4T truck high mobility multipurpose wheeled vehicles (including $1,500,000 for recruiter vehicles), and by $6,000,000 for the mobile electronic warfare support system; and to offset the total amount of the increase by reducing the authorization of appropriations for the Army for other procurement for the family of medium tactical vehicles by $10,000,000)

Mr. WARNER. Madam President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Virginia [Mr. WARNER] proposes an amendment numbered 3468.

The amendment is as follows:

On page 17, line 13, strike ''$1,181,035,000'' and insert ''$1,191,035,000''.

On page 16, line 22, strike ''$4,068,570,000'' and insert ''$4,058,570,000''.

Mr. WARNER. This amendment would increase Marine Corps procurement accounts $10 million for various items. It has been cleared on both sides.

The PRESIDING OFFICER. Without objection, the amendment is agreed to.

The amendment (No. 3468) was agreed to.

Mr. WARNER. Madam 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.

AMENDMENT NO. 3469 TO AMENDMENT NO. 3383

Mr. LEVIN. Madam President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Michigan [Mr. LEVIN], for Mr. KENNEDY, proposes an amendment numbered 3469.

The amendment is as follows:

On page 2, strike line 24 and all that follows through page 3, line 3, and insert the following:

(d) OFFSET.—The amount authorized to be appropriated by section 201(4) for research, development, test, and evaluation, Defense-wide is hereby decreased by $5,000,000, with the amount of such decrease applied to computing systems and communications technology (PE602301E).

Mr. LEVIN. Madam President, this is a technical amendment to amendment No. 3383. I believe this has been cleared.

Mr. WARNER. That is correct.

The PRESIDING OFFICER. Without objection, the amendment is agreed to.

The amendment (No. 3469) to amendment No. 3383 was agreed to.

Mr. LEVIN. Madam President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 3470

(Purpose: To modify the management and per diem requirements for members subject to lengthy or numerous deployments; and to authorize extensions of TRICARE managed care support contacts)

Mr. WARNER. Madam President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Virginia [Mr. WARNER], for himself, Mr. HUTCHINSON and Mr. CLELAND, proposes an amendment numbered 3470.

The amendment is as follows:

On page 200, after line 23, insert the following:

SEC. 566. MANAGEMENT AND PER DIEM REQUIREMENTS FOR MEMBERS SUBJECT TO LENGTHY OR NUMEROUS DEPLOYMENTS.

(a) MANAGEMENT OF DEPLOYMENTS OF MEMBERS.—Section 586(a) of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106–65; 113 Stat. 637) is amended in the text of section 991 of title 10, United States Code, set forth in such section 586(a)—

(1) in subsection (a), by striking ''an officer in the grade of general or admiral'' in the second sentence and inserting ''the designated component commander for the member's armed force''; and

(2) in subsection (b)—

(A) in paragraph (1), by inserting ''or homeport, as the case may'' before the period at the end;

(B) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively;

(C) by inserting after paragraph (1) the following new paragraph (2):

''(2) In the case of a member of a reserve component performing active service, the member shall be considered deployed or in a deployment for the purposes of paragraph (1) on any day on which, pursuant to orders that do not establish a permanent change of station, the member is performing the active service at a location that—

''(A) is not the member's permanent training site; and

''(B) is—

''(i) at least 100 miles from the member's permanent residence; or

''(ii) a lesser distance from the member's permanent residence that, under the circumstances applicable to the member's travel, is a distance that requires at least three hours of travel to traverse.''; and

(D) in paragraph (3), as redesignated by subparagraph (B) of this paragraph—

(i) by striking ''or'' at the end of subparagraph (A);

(ii) by striking the period at the end of subparagraph (B) and inserting ''; or''; and

(iii) by adding at the end the following:

''(C) unavailable solely because of—

''(i) a hospitalization of the member at the member's permanent duty station or homeport or in the immediate vicinity of the member's permanent residence; or

''(ii) a disciplinary action taken against the member.''.

(b) ASSOCIATED PER DIEM ALLOWANCE.—Section 586(b) of that Act (113 Stat. 638) is amended in the text of section 435 of title 37, United States Code, set forth in such section 586(b)—

(1) in subsection (a), by striking ''251 days or more out of the preceding 365 days'' and inserting ''501 or more days out of the preceding 730 days''; and

(2) in subsection (b), by striking ''prescribed under paragraph (3)'' and inserting ''prescribed under paragraph (4)''.

(c) REVIEW OF MANAGEMENT OF DEPLOYMENTS OF INDIVIDUAL MEMBERS.— Not later than March 31, 2002, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the administration of section 991 of title 10, United States Code (as added by section 586(a) of the National Defense Authorization Act for Fiscal Year 2000), during the first year that such section 991 is in effect. The report shall include—

(1) a discussion of the experience in tracking and recording the deployments of members of the Armed Forces; and

(2) any recommendations for revision of such section 991 that the Secretary considers appropriate.

SEC. 567. EXTENSION OF TRICARE MANAGED CARE SUPPORT CONTRACTS.

(a) AUTHORITY.—Notwithstanding any other provision of law, the TRICARE managed care support contracts in effect, or in final stages of acquisition as of September 30, 1999, may be extended for four years, subject to subsection (b).

(b) CONDITIONS.—Any extension of a contract under paragraph (1)—

(1) may be made only if the Secretary of Defense determines that it is in the best interest of the Government to do so; and

(2) shall be based on the price in the final best and final offer for the last year of the existing contract as adjusted for inflation and other factors mutually agreed to by the contractor and the Government.

Mr. WARNER. Madam President, this amendment would modify the management and per diem requirements for the military service members subject to lengthy deployments and to authorize extensions of TRICARE management care support contracts. This has been cleared on both sides.

The PRESIDING OFFICER. Without objection, the amendment is agreed to.

The amendment (No. 3470) was agreed to.

Mr. WARNER. Madam 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.

AMENDMENT NO. 3471

(Purpose: To require reports on the progress of the Federal Government in developing information assurance strategies)

Mr. LEVIN. Madam President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Michigan [Mr. LEVIN], for Mr. SCHUMER and Mr. BENNETT, proposes an amendment numbered 3471.

The amendment is as follows:

On page 378, between lines 19 and 20, insert the following:

SEC. 1027. REPORTS ON FEDERAL GOVERNMENT PROGRESS IN DEVELOPING INFORMATION ASSURANCE STRATEGIES.

(a) FINDINGS.—Congress makes the following findings:

(1) The protection of our Nation's critical infrastructure is of paramount importance to the security of the United States.

(2) The vulnerability of our Nation's critical sectors—such as financial services, transportation, communications, and energy and water supply—has increased dramatically in recent years as our economy and society have become ever more dependent on interconnected computer systems.

(3) Threats to our Nation's critical infrastructure will continue to grow as foreign governments, terrorist groups, and cyber-criminals increasingly focus on information warfare as a method of achieving their aims.

(4) Addressing the computer-based risks to our Nation's critical infrastructure requires extensive coordination and cooperation within and between Federal agencies and the private sector.

(5) Presidential Decision Directive No. 63 (PDD–63) identifies 12 areas critical to the functioning of the United States and requires certain Federal agencies, and encourages private sector industries, to develop and comply with strategies intended to enhance the Nation's ability to protect its critical infrastructure.

(6) PDD–63 requires lead Federal agencies to work with their counterparts in the private sector to create early warning information sharing systems and other cyber-security strategies.

(7) PDD–63 further requires that key Federal agencies develop their own internal information assurance plans, and that these

plans be fully operational not later than May 2003.

(b) REPORT REQUIREMENTS.—(1) Not later than July 1, 2001, the President shall submit to Congress a comprehensive report detailing the specific steps taken by the Federal Government as of the date of the report to develop infrastructure assurance strategies as outlined by Presidential Decision Directive No. 63 (PDD–63). The report shall include the following:

(A) A detailed summary of the progress of each Federal agency in developing an internal information assurance plan.

(B) The progress of Federal agencies in establishing partnerships with relevant private sector industries.

(2) Not later than 120 days after the date of the enactment of this Act, the Secretary of Defense shall submit to Congress a detailed report on the roles and responsibilities of the Department of Defense in defending against attacks on critical infrastructure and critical information-based systems. The report shall include the following:

(A) A description of the current role of the Department of Defense in implementing Presidential Decision Directive No. 63 (PDD–63).

(B) A description of the manner in which the Department is integrating its various capabilities and assets (including the Army Land Information Warfare Activity (LIWA), the Joint Task Force on Computer Network Defense (JTF-CND), and the National Communications System) into an indications and warning architecture.

(C) A description of Department work with the intelligence community to identify, detect, and counter the threat of information warfare programs by potentially hostile foreign national governments and sub-national groups.

(D) A definitions of the terms ''nationally significant cyber event'' and ''cyber reconstitution''.

(E) A description of the organization of Department to protect its foreign-based infrastructure and networks.

(F) An identification of the elements of a defense against an information warfare attack, including the integration of the Computer Network Attack Capability of the United States Space Command into the overall cyber-defense of the United States.

Mr. LEVIN. This amendment provides for reports on the progress of the Federal Government in developing information assurance strategies. I believe this has also been cleared.

Mr. WARNER. That is correct.

The PRESIDING OFFICER. Without objection, the amendment is agreed to.

The amendment (No. 3471) was agreed to.

Mr. LEVIN. Madam President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 3472

(Purpose: To reform Government information security by strengthening information security practices throughout the Federal Government)

Mr. WARNER. Madam President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Virginia [Mr. WARNER], for Mr. THOMPSON, for himself, Mr. LIEBERMAN, Mr. AKAKA, Mr. CLELAND, Mr. HELMS, Mr. VOINOVICH, Mr. ABRAHAM, and Ms. COLLINS, proposes an amendment numbered 3472.

(The text of the amendment is printed in today's RECORD under ''Amendments Submitted.'')

Mr. THOMPSON. Madam President, I offer this amendment on behalf of myself as chairman of the Governmental Affairs Committee and Senator LIEBERMAN, the committee's ranking minority member. This amendment deals with the important issue of information security at the Department of Defense and other Federal agencies. The amendment is essentially the same as S. 1993, a bill reported by our committee this past April.

Senator LIEBERMAN and I introduced the original S. 1993 last November as the result of the considerable time spent by the Governmental Affairs Committee last Congress examining the state of Federal government information systems. Numerous Governmental Affairs Committee hearings and General Accounting Office reports uncovered and identified systemic failures of government information systems which highlighted our nation's vulnerability to computer attacks—from international and domestic terrorists to crime rings to everyday hackers.

Report after report, agency after agency, we learned that our nation's underlying information infrastructure is riddled with vulnerabilities which represent severe security flaws and risks to our national security, public safety and personal privacy.

In fact, GAO believes the problems in the government's information technology systems to be so severe that it has put government-wide information security on its list of ''high-risk'' government programs—programs which are most vulnerable to waste, fraud, abuse and mismanagement.

For example, GAO told us:

That unknown and unauthorized individuals were gaining access to highly sensitive unclassified information at the Department of Defense;

That weaknesses in IRS computer security controls continue to place IRS systems and taxpayer data ''at serious risk to both internal and external attack'';

That ''pervasive, serious weaknesses jeopardize State Department operations'';

That ''many NASA mission-critical systems face serious risks'';

That flight safety is jeopardized by weak computer security practices at FAA; and

That, based on the most recent review of the government's 24 largest agencies, computer security weaknesses place critical government operations, such as national defense, tax collection, law enforcement and benefit distribution, at risk.

At our hearings, we learned from the Director of Central Intelligence, George Tenet, that information warfare or cyberterrorism has the potential to deal a crippling blow to our national security if strong measures are not taken to counter it. Potential threats range from national intelligence and military organizations, terrorists, criminals, industrial competitors, hackers, and disgruntled or disloyal insiders.

Director Tenet stated that several countries, including Russia and China, have government-sponsored information warfare programs with both offensive and defensive applications. These countries see information warfare as a way of leveling the playing field against a stronger military power, such as the U.S.

We learned from the Director of the National Security Agency, General Minihan, that severe deficiencies exist in our ability to respond to a coordinated attack on our national infrastructure and information systems.

We heard from agents of the Social Security Administration's Office of Inspector General who described how computer crimes were committed by SSA employees. This demonstrated the danger of the ''inside threat'' to agencies that do not adequately monitor and limit access to computer information by their own employees.

And finally, we heard from reformed hacker, Kevin Mitnick, and learned of his ability to crack into systems without ever touching a computer. He told us that, even if we did everything else right, without strong personnel security, nothing is safe. He described how he successfully tricked the employees of a multi-national company into giving him pass codes to the company's security access devices. He said ''The human side of computer security is easily exploited and constantly overlooked.''

And, yet, even with evidence from all of these various experts on how information systems should be managed to prevent against attacks, year after year, we continue to receive reports detailing significant security breaches at Federal agencies.

The one thing that came through loud and clear is that at the core of the government problems is the absence of effective management. GAO told us ''Poor security program planning and management continue to be fundamental problems . . . What needs to emerge is a coordinated and comprehensive management strategy.''

To identify potential management solutions, we asked GAO to study the management practices of organizations known for their superior security programs. When GAO looked at eight organizations—most of which were private companies—GAO found that these organizations implemented information security policies on an ongoing basis through a coordinated management framework.

Agencies clearly must do more than establish programs and set management goals—agencies and the people responsible for managing information

systems in those agencies must be held accountable for their actions.

That is what Senator LIEBERMAN and I intend with this amendment. The primary objective of the amendment is to address the management challenges associated with operating in the current interdependent computing environment. It will provide a coordinated and comprehensive management approach to protecting information.

For example, the bill would:

Vest overall government accountability within the highest levels of the Executive Branch [Deputy Director for Management at the Office of Management and Budget];

Create specific management rules for agency heads, such as requiring agency-wide security programs;

Require agencies to have an annual independent evaluation of their information security programs and practices;

Focus on the importance of training programs and government-wide incident response handling.

Our amendment reflects changes made to S. 1993 based on comments received from our colleagues in the Senate and working with the Department of Defense and others in the intelligence community, the Office of Management and Budget, the agency Inspectors General, and industry.

We urge support of our amendment and believe that, through continued vigorous oversight, we will drive the Federal government to focus on improving its computer security deficiencies. I look forward to working with my colleagues to ensure that government information technology systems are secure and that the information within those systems is protected from further attacks.

Mr. LIEBERMAN. Madam President, I want to thank Chairman WARNER and Ranking Member LEVIN for their foresight in accepting the amended text of S. 1993, the Government Information Security Act, which was unanimously reported out of the Government Affairs Committee.

We are now far enough into the digital age to understand both its promise and its pitfalls. Our booming economy is driven in large part by the dot.com entrepreneurs who are providing goods and services faster and more cost-effectively than ever before in our history. But we are also experiencing threats to our privacy, to the integrity of our digitized information, and even to our ability to use our computers freely.

We know there will be trade-offs for the benefits government will reap in the digital age. But, I offer this sincere warning now: information security cannot be one of them. With this amendment, we would lay the groundwork for securing much of the government's electronic information. Above all else, protecting the integrity, the availability and the confidentiality of information stored on federal computers is central to serving taxpayers in the digital age. And we must be vigilant about it.

Like the rest of the nation, the government is ever more dependent on automated information systems to store information and perform tasks. At hearings before the Government Affairs Committee last Congress, however, witnesses testified that such increased reliance has not been met by an equivalent strengthening of the security of those systems. It is chilling to think of less than perfect security in the context, for example, of tax and wage information the Internet Revenue Service maintains, troop movements monitored by the Defense Department, or public health threats analyzed by the Centers of Disease Control. Without proper security, government's dependence on computers would expose to exploitation all of this information—and much more.

Indeed, some of this information may be in jeopardy right now. A series of General Accounting Office (GAO) studies found government computer security so lax that GAO put the entire apparatus on its list of ''high risk'' government programs. GAO reported in September 1998 that inadequate controls over information systems at the Veterans Administration exposed many of its service delivery and management systems to disruption or misuse. In May 1998, the GAO gained unauthorized access to State Department networks, enabling the GAO, had it tried, to modify, delete or download data and shut down services. In May 1999, GAO reported that one of its test teams gained access to mission critical computer systems at NASA, which would have allowed the team to control spacecraft or alter scientific data returned from space.

Our problem is not simply a technical one. It is also a cultural one. The federal government can purchase and implement the most advanced security programs it can afford but unless top government officials acknowledge that our future depends on information security, those programs will be meaningless. But even high-level attention to and responsibility for security will mean little unless everyone and anyone who uses a computer—which, these days, must include practically every government worker—does their part to ensure the security of the system on which they work. This amendment, therefore, focuses on good management practices to ensure secure government information systems.

Had this amendment been in place earlier this year when the ''Love Bug'' and successive, mutating viruses wreaked havoc on the world's computers, government would have been better prepared to withstand the attack. I hope that government employees would have been more aware of the need to upgrade their systems' security software to ensure that such ''worms,'' as they are called, were barred from the system. And this amendment's training provisions would have helped to ensure that employees were versed in the dangers of opening attachments from unknown senders.

The cornerstone of this amendment is the plan each agency must develop to protect sensitive federal information systems. Agency chief information officers (CIOs) would be responsible for developing and implementing the security programs, which must undergo annual evaluations and be subject to the approval of the Office of Management and Budget (OMB).

Because we need to change our cultural attitudes toward information security, the OMB also would be responsible for establishing government-wide policies promoting security as a central part of each agency's operation. And we intend to hold agency heads accountable for implementing those policies. This amendment requires high-level accountability for the management of agency systems beginning with the Director of OMB and agency heads. Each agency's plan must reflect an understanding that computer security is an integral part of the development process for any new system. Agencies now tend to develop a system and consider security issues only as the system is about to go online.

This amendment establishes an ongoing, periodic reporting, testing and evaluation process to gauge the effectiveness of agencies' policies and procedures. This would be accomplished through reviews of agency budgets, program performance and financial management. And the amendment requires an independent, annual evaluation of all information security practices and programs to be conducted by the agency's Inspector General, GAO or an independent external auditor. I hope that the IGs will use their limited resources wisely and use their discretion in targeting those areas of their agencies' programs which require the most attention. In addition, I hope that agency heads will work with their IGs, especially when it comes to sharing information on potential threats to agencies' systems.

Our amendment requires that agencies report unauthorized intrusions into government systems. GSA currently has a program for reporting and responding to such incidents. The amendment requires agencies to use this reporting and monitoring system.

The amendment requires that the national security and classified systems adhere to the same management structure as every other government system under our bill. This means they must develop a plan addressing security upgrades, although the plan need not be approved by OMB. To address particular concerns raised by the defense and intelligence communities, the amendment allows the heads of agencies with national security and classified systems to designate their own independent evaluators in the interest of protecting sensitive information and system vulnerabilities. And the Secretary of Defense, the Director of Central Intelligence, and other agency heads, as designated by the President, may develop their own procedures for

detecting, reporting and responding to security incidents.

Finally, President Clinton has proposed a very creative idea known as the Federal Cyber Service designed to strengthen the government's cadre of information security professionals. Our amendment authorizes this program and gives agencies the flexibility they need to implement it. The program includes scholarships in exchange for government service, retraining computer information specialists and, as part of our campaign to influence cultural behavior, proposals to promote cyber-security awareness among Federal workers and high school and secondary school students.

Since Senator THOMPSON and I introduced S. 1993 last November, we have worked closely with the Administration, the Department of Defense, the National Security Agency, the Department of Energy, the CIO Council, the Inspector General community, and interested parties outside government. We have made changes to address the concerns that have been raised and I am very pleased that the administration strongly supports the provisions.

Witnesses testifying at the Governmental Affairs Committee hearing on S. 1993 were also very supportive of the bill. Jack Brock, Director of GAO's Governmentwide and Defense Information Systems Group in the Accounting and Information Management Division testified that ''the bill, in fact, incorporates the basic tenets of good security management found in our report on security practices of leading organizations. . . . '' He also said that ''the key to this process is recognizing that information security is not a technical matter of locking down systems, but rather a management problem. . . . Thus, it is highly appropriate that S. 1993 requires a risk management approach that incorporates these elements.''

Roberta Gross, the Inspector General at the National Aeronautics and Space Administration testified that ''. . . S. 1993 is a very positive step in highlighting the importance of centralized oversight and coordination in responding to risks and threats to IT [information technology] security.'' S. 1993 ''. . . importantly recognizes that IT security is one of the most important issues in shaping future Federal planning and investment . . . the Act makes it clear that each agency must be far more vigilant and involved than current practices.''

Another witness, James Adams, Chief Executive Officer of Defense, a security consulting firm, testified that S. 1993 is ''. . . thoughtful and badly needed legislation . . .'' which ''. . . takes a crucial step forward.'' Ken Watson of Cisco Systems noted hat S. 1993 is consistent with what industry has already been encouraging, that is that ''. . . security must be promoted as an integral component of each agency's business operations, and information technology security training is essential. . . .''

Mr. President, it is my hope that, if enacted, this amendment will improve our computer security to the point where the operations of government in the digital age are performed with the privacy and well-being of the American public in mind. Again, I am pleased the leadership of the Armed Services Committee has accepted this amendment because, in the digital age, there is no such thing as moving too quickly.

The PRESIDING OFFICER. Without objection, the amendment is agreed to.

The amendment (No. 3472) was agreed to.

Mr. WARNER. Madam 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.

Mr. WARNER. Madam President, I believe we will proceed in accordance with the order.

Madam President, I rise this afternoon—14 days since the Senate first turned to consideration of the Fiscal Year 2001 Defense Authorization Bill—to, once again, emphasize the importance of the Senate passing this critical legislation. Our troops deployed around the world, many in harm's way, their families here at home, and all those who have answered the call to duty before them are waiting on the Senate to act.

Since June 6 when the Senate first began consideration of the Defense Authorization bill we have had productive debate and dialogue. The Senate has spent four days debating and voting on this legislation, and the Committee has done a great deal of work during the ''down time''—when the Senate was considering various appropriations bills—in clearing many of the amendments that are in order on the authorization bill. We now have a Unanimous Consent agreement for the next day and a half to deal with several pending amendments. In my view, there is perhaps an additional day's worth of debate and votes on the remaining amendments which we believe will be offered to this bill. I urge my colleagues to work with the Committee on any remaining amendments so that we can pass this bill in the Senate and send a strong signal of support to our troops.

Mr. President, I think it is useful to remind my colleagues of the amount of hard work that goes into the annual defense authorization bill. This year alone, the Armed Services Committee has conducted 50 hearings related to the defense budget, and spent four days—15 hours—in marking up the bill which is before the Senate.

This bill, which we reported out of the Senate Armed Services Committee on May 12th with bipartisan support, is a good bill which will have a positive impact on our nation's security, and on the welfare of the men and women of the Armed Forces and their families. It is a fair bill. It provides a $4.5 billion increase in defense spending—consistent with the congressional budget resolution. But, the real beneficiaries of this legislation are our servicemen and women who will not only have better tools and equipment to do their jobs, but an enhanced quality of life for themselves and their families. We must show our support for these brave men and women all of whom make great sacrifices for our country and many of whom are in harm's way on a daily basis by passing this important legislation.

I am privileged to have been associated with the Senate Armed Services Committee and the development of a defense authorization bill every year of my modest career here in the Senate—a career quickly approaching 22 years. The Senate has passed a defense authorization bill each and everyone of those years. In fact, the Senate has passed a defense authorization bill each year since 1961—since the beginning of the current authorization process. This year, the House passed its version of the defense authorization bill by an overwhelming vote of 353–63. It is now the Senate's duty to fulfill its responsibilities on this important legislation.

But our responsibility to consider and pass the annual defense authorization bill goes beyond statutory requirements and historical precedent. We must also be aware of the importance of this measure to our men and women in uniform around the world.

U.S. military forces are involved in overseas deployments at an unprecedented rate. Currently, our troops are involved in over 10 contingency operations around the globe. Over the past decade, our active duty manpower has been reduced by nearly a third, active Army divisions have been reduced by almost 50 percent, and the number of Navy ships has been reduced from 567 to 316. During this same period, our troops have been involved in 50 military operations worldwide. By comparison, from the end of the Vietnam War in 1975 until 1989, U.S. military forces were engaged in only 20 such military deployments.

In an all-volunteer force, where increasing deployments and operations challenge the capabilities of our military to effectively meet those commitments, as well as challenge the efforts of our military to recruit and retain quality military personnel, we must embrace every opportunity to demonstrate our commitment to our military personnel. The National Defense Authorization Bill for Fiscal Year 2001 sends this important message.

Mr. President, I would like to take a moment to make my colleagues well aware of the impact of NOT passing The National Defense Authorization Bill for Fiscal Year 2001.

With respect to personnel policy, the committee included legislation in the defense authorization bill for fiscal year 2001 to continue to support initiatives to address critical recruiting and retention shortfalls. In this regard, the committee increased compensation

benefits and focused on improving military health care for our active duty and retired personnel and their families.

Without this bill, there will be:

No extension of TRICARE benefits to active duty family members in remote locations;

No elimination of health care co-pays for active duty family members in TRICARE Prime;

No Thrift Savings Plan for military personnel;

No stipend for military families to eliminate their need to rely on food stamps McCain amendment);

No five year pilot program to permit the Army to test several innovative approaches to recruiting; and

No transit pass benefit for Defense Department commuters in the Washington area.

Without this bill, almost every bonus and special pay incentive designed to recruit and retain service members will expire December 31, 2000, including:

Special pay for health professionals in critically short wartime specialities;

Special pay for nuclear-qualified officers who extend their service commitment;

Aviation officer retention bonus;

Nuclear accession bonus;

Nuclear career annual incentive bonus;

Selected Reserve enlistment bonus;

Selected Reserve re-enlistment bonus;

Special pay for service members assigned to high priority reserve units;

Selected Reserve affiliation bonus;

Ready Reserve enlistment and re-enlistment bonuses;

Loan repayment program for health professionals who serve in the Selected Reserve;

Nurse officer candidate accession program;

Accession bonus for registered nurses;

Incentive pay for nurse anesthetists;

Re-enlistment bonus for active duty personnel;

Enlistment bonus for critical active duty specialities; and

Army enlistment bonuses and the extension of this bonus to the other services.

And, Mr. President, without this bill, the Congress will not meet it's commitment to our miliary retirees and their families to provide a comprehensive lifetime health care benefit, including full pharmacy services. Without this bill, military health care system benefits will continue to be denied to retirees and their dependents who reach age 65 and become Medicare eligible. Military beneficiaries will lose the earned military health care benefit that this bill finally restores to them.

The committee has carefully studied the recruiting and retention problems in our military. We have worked hard to develop this package to increase compensation and benefits. We believe it will go a long way to recruit new servicemembers and to provide the necessary incentives to retain mid-career personnel who are critical to the force.

Mr. President, on many occasions I have shared my concerns about the threats posed to our military personnel and our citizens, both at home and abroad, by weapons of mass destruction: chemical, biological, radiological and cyber warfare. Whether these weapons are used on the battlefield or by a terrorist within the United States, we, as a nation, must be prepared.

Without this bill, efforts by the committee to continue to ensure that the DOD is adequately funded and structured to deter and defeat the efforts of those intent on using weapons of mass destruction or mass disruption would not be implemented. Efforts that would not go forward without this bill include:

Establishing a single point of contact for overall policy and budgeting oversight of the DOD activities for combating terrorism;

Fully deploying 32 WMD–CST (formerly RAID) teams by the end of fiscal year 2001;

Establishing an Information Security Scholarship Program to encourage the recruitment and retention of Department of Defense personnel with computer and network security skills; and

Creating an Institute for Defense Computer Security and Information Protection to conduct research and critical technology development and to facilitate the exchange of information between the government and the private sector.

Mr. President, I would like to briefly highlight some of the other major initiatives in this bill that would be at risk without the defense authorization bill:

Without this bill, multi-year, cost-saving spending authority for the Bradley Fighting Vehicle and UH–60 ''Blackhawk'' helicopter would cease.

Without this bill, there would not be a block buy for Virginia Class submarines. Without the block buy, there would be fewer opportunities to save taxpayer dollars by buying components—in a cost-effective manner—for the submarines.

All military construction projects require both authorization as well as appropriations. Without this bill, over 360 military construction projects and 25 housing projects involving hundreds of critical family housing units would not be started.

The Military Housing Privatization Initiative would expire in February 2001. Without this bill, the program would not be extended for an additional three years, as planned. The military services would not be able to privatize thousands of housing units and correct a serious housing shortage within the Department of Defense.

Mr. President, it has been said that, ''Example is the best General Order.'' The Senate needs to take charge, move out, and pass the National Defense Authorization Bill for Fiscal Year 2001. This legislation is important to the nation and to demonstrate to the men and women in uniform, their families and those who have gone before them, our current and continuing support and commitment to them on behalf of a grateful nation.

MILITARY INSTALLATIONS

Mr. COVERDELL. First, I would like to thank Senator WARNER and Senator LEVIN for their continued leadership on the Senate Armed Services Committee. Your efforts have helped reverse fourteen consecutive years of real decline in defense spending—a decline that has affected all aspects of our military, from morale to readiness. Our troops and our Nation are grateful for your leadership in stopping this decline.

I would like to take a moment to engage the chairman in a colloquy on one particular area within this bill—military construction.

Mr. WARNER. I thank the Senator for his kind words and would be glad to indulge him in a colloquy on this subject.

Mr. COVERDELL. Of course, we are all appreciative of what the committee has done for our bases across the Nation. As the chairman knows, Georgia has a proud military tradition. Currently it is home to thirteen military installations representing all branches of our military and housing some of our armed service's most vital missions. As is the case at military installations across the country most of the bases in Georgia are in need of new infrastructure.

Through my travels to Georgia's bases, I was struck in particular with the condition of the buildings at Fort Stewart in Hinesville, Georgia, home of the 3rd Infantry Division. As the chairman and ranking member know, the 3rd I.D. is the heavy division of the Army's Contingency Corps. It is ready to go at a moment's notice and is part of our Army's ''tip of the spear'' force.

Despite this crucial mission, it is my understanding that Fort Stewart is the only major FORSCOM installation that still performs corps functions in World War II wooden buildings.

Mr. WARNER. The Senator is correct.

Mr. COVERDELL. It is clear to me that Fort Stewart needs more military construction dollars. However, I also understand that the committee and the Pentagon have certain parameters within they work to determine military construction dollars. I understand that one of the reasons Fort Stewart is not gaining authorization for military construction projects is that the projects I requested were not in the Pentagon's FYDP and that the committee uses the FYDP as its guide for authorizing military construction dollars. Is that correct?

Mr. WARNER. The Senator from Georgia is correct. We see many projects that need funding. However, in distributing scarce resources we must work with the Pentagon's priorities. While base commanders may have different views of what their bases need, if those priorities do not correspond with the Pentagon's priorities then it is different for us to assess the military value of the various projects.

Mr. COVERDELL. I thank the chairman. I have relayed similar views to

Fort Stewart and will work with our other Georgia bases to ensure that they understand this process. I would like to ask the chairman how the committee views the situation at Fort Stewart.

Mr. WARNER. We agree that Fort Stewart needs new construction dollars and worked very hard this year to do what we could to help. We are committed to Fort Stewart's future and look forward to working with you, the base and the Pentagon to help it in the future.

Mr. COVERDELL. I thank the chairman for his remarks and look forward to working with him on this matter in the future.

Mr. CLELAND. I would like to join my distinguished colleague, the senior Senator from Georgia, Senator COVERDELL, in highlighting the critical needs of Fort Stewart in Georgia. I would also like to note my appreciation for the remarks of Chairman WARNER and his recognition of Fort Stewart.

I too would like to highlight the importance of Fort Stewart. Since its birth in 1940, Fort Stewart has seen a flurry of activity. Its original mission began as an anti-aircraft artillery training center and later evolved into a helicopter training facility, and is now home to 3rd Infantry Division. Fort Stewart has shown its importance during the Korean war, Vietnam war, the Persian Gulf war, and even during the Cuban missile crisis. Through the years, Fort Stewart has adapted to the changing landscape of our military missions. Despite this glorious history, Fort Stewart needs our attention. Fort Stewart has important military construction needs to provide the critical infrastructure to fulfill its mission. It is my hope that through increased attention from the Department of the Army, the Pentagon, and the Congress, Fort Stewart's needs can be addressed. I thank my colleagues for engaging in this colloquy regarding such a vital facility.

AMENDMENT NO. 3473

(Purpose: To enhance Federal enforcement of hate crimes and for other purposes)

Mr. LEVIN. Madam President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Michigan (Mr. LEVIN), for himself and Senator KENNEDY, proposes an amendment numbered 3473.

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

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

(The text of the amendment is printed in today's RECORD under ''Amendments Submitted.'')

Mr. LEVIN. Madam President, the Kennedy proposal has two major provisions. First, it strengthens current law as it relates to hate crimes based on race, religion and nation origin. Second, it broadens the definition of hate crimes to include gender, sexual orientation, and disability.

The two major provisions in the Kennedy amendment address specific loopholes in our current federal civil rights statute. Under current law, the federal government is limited in its ability to intervene in case unless it can be proved that the victim was engaged in one of six narrowly defined ''federally protected activities,'' such as enrolling in a public school, participating in a state or local program or activity, applying for or enjoying employment, serving as a juror, traveling in or using interstate commerce, and enjoying certain places of public accommodation.

The other unduly severe limitation under current law is this: federal prosecution is limited to those crimes motivated by race, color, religion and national origin and does not allow for federal intervention in crimes motivated by a person's sexual orientation, gender, or disability.

The Senate has the ability and the responsibility to pass the Kennedy amendment and send a clear message that America is an all-inclusive nation—one that does not tolerate acts of violence based on bigotry and discrimination.

Hate crimes are a special threat in a society founded on ''liberty and justice for all.'' Too many acts of violence and bigotry in the last years have put our nation's commitment to diversity in jeopardy. When Matthew Shepard, a gay student was severely beaten and left for dead or James Byrd, Jr. was dragged to death behind a pick-up truck, it was not only destructive for the victims and their families, but damaging to the victims' communities, and to our American ideals.

When a member of the Aryan Nations walked into a Jewish Community Center day school and fired more than 70 rounds from his Uzi submachine gun, then killed a Filipino-American federal worker because he was considered a ''target of opportunity,'' it not only affected the families of the victims but all those who share the traits of the targeted individuals.

In a united voice, we must not only condemn these acts of violence that terrorize Americans every day, but act against them. America's agenda will remain unfinished so long as incidents like those occur and statistics like the following threaten our people. According to the FBI Uniform Crime Reports, at least one hate crime occurs each hour. These are often acts of violence, not threats, verbal-abuse or hate speech, but criminal offenses.

In 1998, there were 7,755 incidents involving 9,722 victims. Of those incidents, approximately 56 percent were motivated by racial bias; 18 percent by religious bias; 16 percent by sexual-orientation bias; and the remainder by ethnicity/national origin bias, disability and multiple biases, and prejudices and hate.

In my own home state of Michigan, according to the State Police, there were 578 hate crimes in the same year. According to Donald Cohen, director of Michigan's Anti-Defamation League, racist, anti-gay and anti-Semitic activity is on the rise. In October of 1998, Cohen, who monitors hate crimes for his organization said ''I can say I have seen more hate-group material circulated . . . in the last few months than I have seen in the prior two years.''

As a result, civil rights and law enforcement officials, who were concerned about the rise of hate crimes in Michigan moved to counter them by founding the Michigan Alliance Against Hate Crimes. The Alliance is a statewide coalition working to provide support to victims of hate crimes and to identify, combat and eliminate such crimes.

The group was already in place last September, when this crime was committed in Grand Rapids, Michigan: a 30-year-old white man, Charles Raab, beat unconscious an African-American man, Willie Jarrett, ran him over with a car three times and dragged him with the car for 80 feet, before he dislodged the victim and fled the scene. Witnesses said that during the scene, the attacker used racial slurs to describe his victim—who suffered wounds to his back, hands, chest, and shoulders, and had half of his ear torn off.

The Michigan Alliance Against Hate Crimes immediately assembled a ''rapid response team'' and worked with the local prosecutor to charge Raab, the attacker, under the Ethnic Intimidation Act—Michigan's hate crime law. In the end, Raab pleaded guilty to the charges against him and was sentenced to seven to twenty-five years in prison for the attack.

The city of Grand Rapids, along with the Michigan Alliance Against Hate Crimes, made sure that the perpetrator of this heinous hate crime was prosecuted to the extent of the law. Unfortunately, not all hate crimes are prosecuted so successfully. There are several states without such Alliances and hate crimes are not prosecuted with success either because state or local authorities do not have adequate resources or personnel; state and local authorities aren't as incensed as they should be or decline to act for other reasons.

In some cases, state or local authorities simply don't have jurisdiction to prosecute hate crime cases: 42 states have hate crime statutes but only 21 cover sexual orientation and disability and 22 cover gender. Michigan's Ethnic Intimidation Act, for example, is limited to crimes incited by a person's race, color, religion, gender or national origin, and does not include crimes motivated by a person's sexual orientation or disability.

The FBI Statistics show that the number of reported hate crimes based on sexual orientation is third only to those based on racial bias and religious bias.

My home state of Michigan has had its share of hate crimes based on sexual

orientation. Last summer, an 18-year-old boy leaving a gay nightclub in Grand Rapids, Michigan was met by an attacker who was waiting outside the club in a car. The assailant jumped the young man and slashed his face with a razor blade hospitalizing him for over a week. His face is permanently scarred.

A few weeks ago in Detroit, a gay man was buying cigarettes at a gas station late at night and a car full of men pulled up, accosted him and asked if he was gay. When he just walked away the men became infuriated and beat him badly, shattering his skull and putting him in a coma for several days. The assailants have not been arrested.

A gay man driving in Royal Oak, Michigan was allegedly harassed and intimidated by four other motorists in a nearby car. The assailants were screaming anti-gay epithets and succeeded in running him off the road and destroying his car. The assailants then screamed at the man, spit on him, and kicked in his window.

The police officer investigating the case allegedly asked multiple questions about the driver's sexual orientation and sexual activity rather than the details of the accident. The four assailants were never charged and despite the fact that witnesses and crime specialists reconstructed the scene as told by the driver, the driver was convicted of reckless driving. Local media and community leaders were outraged and called it a miscarriage of justice.

This and other such stories are examples of crimes that not only affect the fundamental rights of the victim, but deprive that victim of a sense of security and self worth. These crimes are just as damaging as those motivated by race or religion, but state authorities are limited in their ability to respond because Michigan's hate crimes statute is inadequate.

Congress has the opportunity to take action against these and other hate crimes, which go unprosecuted at the state level, with the passage of the Kennedy hate crimes amendment. This amendment would expand the federal definition of hate crimes to include crime motivated by a person's sexual orientation, gender or disability adding to the current list of attacks motivated by race, color, religion or national origin.

The Kennedy amendment would also broaden the federal government's authority to prosecute any hate crime based on race, color, religion or national origin. Currently, federal prosecution of hate crimes is limited and U.S. attorneys have had difficulties prosecuting cases—that state authorities are unwilling or unable to prosecute—because of the need to prove that the victim of a hate crime was also targeted because of his participation in one of six specified federally protected activities. The statute's severe restrictions has prevented the federal government from prosecuting perpetrators of some of the most egregious hate crimes.

For example, in recent years a jury acquitted three white supremacists who had assaulted African-Americans. After the trial, some of the jurors revealed that they felt racial animus had been established but did not believe there was sufficient evidence to show that the defendants intended to prevent the victims from engaging in a narrowly defined federally protected activity that the statute had provided.

The Kennedy amendment will not make every hate crime a federal crime. Almost all hate crimes will remain the primary responsibility of sate and local law enforcement agencies. For these cases, broadening federal authority will permit joint federal-state investigations and may be useful to state and local authorities who will be able to rely on investigatory and prosecutorial assiatnce from the Department of Justice. The Kennedy amendment makes grants of up to $100,000 available to state and local law enforcement agencies who have incurred extraordinary expenses associated with investigating and prosecuting hate crimes.

For the few hate crimes that the Justice Department does act to make federal crimes, the Department will be required to use its authority sparingly, as is required with the existing authority to prosecute crimes motivated by racial or religious hatred. Prior to federally indicting someone, the Justice Department must certify and there is reasonable cause to believe that the crime was motivitated by bias and the U.S. attorney has consulted with the state or local law enforcement officials and determined one of the following situations is present, under the Kennedy amendment, to show we are not creating under this amendment a situation where the Federal Government is going to be prosecuting every hate crime. There are still restrictions built in here to rely more heavily on State and local law enforcement. If one of the following situations is present, then the U.S. attorney, under certain circumstances at least, would be authorized to proceed:

No. 1, the state does not have jurisdiction or does not intend to exercise jurisdiction;

No. 2, the state has requested that the federal government assume jurisdiction;

No. 3, the state does not object to the federal government assuming jurisdiction;

No. 4, or the state has completed prosecution and the verdict or sentence obtained under state law left demonstratively unvindicated the federal interest in eradicating bias-motivated violence.

In addition, for crimes based on the three new categories—gender, sexual orientation, and disability, and in some instances, for crimes based on religion and national origin—the Kennedy amendment provides that the Federal Government must prove an interstate commerce connection showing that:

No. 1, the defendant or the victim traveled across state lines;

No. 2, the defendant or the victim used a channel, facility, or instrumentality of commerce;

No. 3, the defendant used a firearm, explosive, incendiary device or other weapon that has traveled in commerce, or

No. 4, the conduct interferes with commercial or other economic activity in which the victim is engaged at the time of conduct.

Stated simply, the Kennedy hate crimes amendment will allow for more effective and just prosecutions of hate crimes. The alternative, the Hatch proposal, which will be before the Senate, neither addresses the problems with existing law—that the victim must be engaged in a narrowly specified federally protected activity; nor does it address the limited definition of a hate crime—which excludes sexual orientation, disability, and gender.

More than 175 law enforcement, civil rights, civic and religious groups as well as 22 State Attorneys General support the Kennedy amendment, and the role it gives the federal government to prosecute individuals who have committed violent acts resulting from racist, anti-Semitic or homophobic motives. This legislation is also supported by the Justice Department, and is compliant with the recent Supreme Court decision United States v. Morrison. In a June 13, 2000 letter to Senator KENNEDY, the Justice Department stated clearly that the amendment ''would be constitutional under governing Supreme Court precedents''

Passage of this amendment will send the message that we are a country that treasures equality and tolerance. We will not condone the hate crimes that have plagued our nation and have had such a devastating impact on the families of Matthew Shepard, James Byrd, Jr. and too many others. I hope my colleagues will support the Kennedy amendment. This amendment will bring us closer to the time when all Americans have equal opportunities, and perpetrators of hate crimes receive swift and vigorous prosecution.

I believe there is a unanimous consent order relative to the next speaker, but before the Senator from Minnesota speaks, I see the Senator from Oregon on the floor and I want to express my gratitude to him for the article that was in this morning's paper. It was an extremely beautifully written, heartfelt article. I hope every Member of this body has an opportunity to read it. I know the Senator from Oregon is too modest to do so. Therefore, I ask unanimous consent that article be printed in the RECORD.

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

[From the Washington Post, June 19, 2000]

NATIONALLY: WHY HATE CRIMES ARE DIFFERENT

(By Gordon H. Smith)

On June 7, 1998, James Byrd Jr. was dragged to death along a dusty Texas road. On Oct. 12, 1998, Matthew Shepard was beaten and left to die on a lonely Wyoming fence.

They were murdered not for their property, but for who they were—one black, the other gay.

Their brutal murders shocked the nation and spurred a national debate over what can be done to prevent further hate crimes and to ensure that perpetrators of such crimes are brought to justice.

The Senate soon will consider the Hate Crimes Prevention Act of 2000. This act would authorize federal law enforcement officers to aid and assist state and local police in the pursuit and prosecution of hate crimes—even if state lines have not been crossed.

The act is controversial. Some believe that all crime is hateful, and that by providing federal resources for hate crimes we would be telling the victims of crimes committed for other motives that they are not as important. I believe, however, that hate crimes are different. While perpetrated upon an individual, the violence is directed at a community.

The most controversial element in this legislation is that in addition to categories of race, religion, gender and disability, it contains a category for sexual orientation. Many in the Senate will oppose the legislation because they feel that to legislate protections for gays and lesbians is to legitimize homosexuality.

I once shared that feeling, but no longer. One needn't agree with all the goals of the gay community to help it achieve fair treatment within our society. It is possible, for example, to oppose gay marriage on religious and policy grounds but to protect gays and lesbians against violence on the same grounds. There is a biblical example and a present duty to protect anyone in the public square who would be stoned by the sanctimonious or the politically powerful.

As a member of the Senate Foreign Relations Committee, I have spoken against hate crimes of many kinds and in many lands. For that reason, I cannot be silent at home. I cannot forget the testimony given at a recent hearing by Elie Wiesel:

''To hate is to deny the other person's humanity. It is to see in 'the other' a reason to inspire not pride but disdain, not solidarity, but exclusion. It is to choose simplistic phraseology instead of ideas. It is to allow its carrier to feel stronger than 'the other,' and thus superior to 'the other.' The hater . . . is vain, arrogant. He believes that he alone possesses the key to truth and justice. He alone has God's ear.''

I often have told those who attempt to wield the sword of morality against others that if they want to talk about sin, go with me to church, but if they want to talk about policy, go with me to the Senate. That is the separation of church and state.

At times, the law can and should be a teacher—and this is one of them. Yes, in many ways, passage of the Hate Crimes Prevention Act would be nothing more than a symbol. But it is a symbol that can be filled with substance by changing hearts and minds and by better protecting all our citizens, be they disabled, female, black or gay. They are Americans all.

The PRESIDING OFFICER. Under the previous order, the Senator from Minnesota is to be recognized.

Mr. WELLSTONE. Madam President, I say to my colleague, I will be very brief on this amendment. I will try to take less than 10 minutes because Senator SMITH has taken a major leadership role. I know Senator HATCH will be speaking, and I am sure my colleague from Oregon will want to be here for that debate. The only reason I am taking this time right now is I won't be able to stay beyond the next 10 or 15 minutes. I will be brief. Then the country will have a chance to hear from the Senator from Oregon. I have not read the piece, but I thank the Senator very much for his leadership.

I am not a lawyer, but I want to try to briefly summarize what this bill is about. Senator LEVIN always does a more masterful job of that than I can. Then I will talk about why I think this piece of legislation is so important for Minnesota and people in the country.

When it comes to hate crimes based on race, religion, or national origin, this legislation essentially moves beyond the very restrictive language we have right now where we can't prosecute people who have committed violent crimes against someone unless that person was involved in some kind of federally protected activity. That is way too narrow a definition. We want to be in a position as a nation where the Federal Government can prosecute, for example, those who murdered James Byrd. It is that simple.

We don't want to have such narrowly restrictive laws and language—and this is where the amendment of the Senator from Utah doesn't do us any good at all—we don't want to have such a narrow definition that we can't prosecute people when they murder a James Byrd. I think it is that simple.

Secondly, we further define the hate crime legislation applied to gender, disability, and sexual orientation when there is an interstate commerce nexus. And in this particular case what we want to make sure of is that as a national community, as the Senate, as the House of Representatives, we care deeply when a Matthew Shepard is murdered, and, indeed, the Federal Government can play a role, and those who commit such a murder because of someone's sexual orientation will be prosecuted, that they will pay the price.

I know there have been some arguments made against this legislation. I am sure my colleague from Oregon will take up those arguments and deal with them in more depth, but as to the argument that somehow this takes on freedom of speech, we are not talking about freedom of speech. We are not talking about somebody in the pulpit saying whatever they want to say about people because of their sexual orientation, as much as I would be in disagreement with what I think would be prejudice or, I would argue, ignorance. But we are talking about an action; we are talking about when there is an act of violence perpetrated against someone because of their sexual orientation. I am not talking about speech. I am talking about violent action.

I believe strongly in this amendment and am proud to support it because I think hate crimes are very special. I came to the human rights rally in Washington, DC—it seems as though it was yesterday; maybe it was a couple months ago—I wanted to speak, and I had an opportunity to introduce Judy and Dennis Shepard. That was, for me, a much greater honor than actually giving a long speech or speaking at all. I wanted to introduce them. I have seen them at so many gatherings where they have been willing, as the parents of Matthew Shepard, who was murdered because of his sexual orientation, to go around the country and support other people and speak out and try to do everything they can in memory of their son, to make sure that this never happens again. I guess we cannot make sure it never happens again, but we can do everything possible to make sure that it never happens again.

That is what this hate crimes amendment is all about—basically, what happens when there is an act of violence against someone because of the color of their skin or their religion. I am sensitive to this. My father was a Jewish immigrant born in the Ukraine, lived in Russia, fled persecution, and came to the United States of America because of religious persecution. When you have this kind of violence against someone because of their religion or their national origin or their gender or their disability or their race or their sexual orientation, it is terrorism because what you are saying to a whole lot of other people is it could happen to you, too. That is the purpose of a lot of these crimes. You are saying to other people who are gay and lesbian, you are saying to other people because of their religion, sometimes you are saying to other people because they are white—not that long ago I think it was in Pittsburgh we saw people murdered just because of the color of their skin; they were white—what you are saying with these kinds of hate crimes is: other people, you could be next.

What you are doing is you are creating a whole second class of citizens who have to live their lives in terror. What you are doing is dehumanizing people. That is what these hate crimes are about.

Now, we should have a high threshold—I am not a lawyer, but we should have a high threshold. We want to make sure that truly these are hate crimes. And believe me, that will have to be proven in our court system. But, colleagues, in all due respect, you have an amendment here that does a good job of getting beyond the very narrow definition so that, indeed, we have a definition of a hate crime that applies to the murder of a James Byrd; we have a definition of a hate crime that applies to the murder of a Matthew Shepard, and I don't know how Senators can vote against it. It is long past time that we passed such a law. We must and I hope we will.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. SMITH of OREGON. Madam President, I wish to say what is in my heart and why I as a Republican stand here in support of a Kennedy amendment on hate crimes.

On June 7, 1998, when James Byrd, Jr., was dragged to death on a dusty Texas road, something happened to me. I was horrified beyond my ability to express it.

On October 12, 1998, when Matthew Shepard was beaten to death on a Wyoming prairie, hung to a fence to die, something happened to me. I, again, had no ability to express the outrage and horror that I felt of such conduct and wondered: What is it in the heart of humankind that could perpetrate such an action upon a fellow human being?

These were people who were murdered not for their property. They were murdered because of who they were. One was a black man and the other was a gay man. I think much of America felt the shock and revulsion that I did. Many of us began to look around and ask: What can I do in my sphere of influence? How can I help to see that this never happens again in my country?

So I was attracted to the whole issue of hate crimes. This is a very controversial thing with many Senators. It is controversial because, frankly, of one clause. It is controversial because it includes a new category: ''. . . or sexual orientation.'' And many of my friends in the Senate believe that disqualifies it from consideration. But it seems to me that our duty as public officials is to help Americans help human beings however we find them; no matter what we may believe their sins are because all of us are sinful.

Many will say that to legislate favorably towards a gay man is to legitimize homosexuality for our society. I used to have that feeling myself, but I do not any longer. I truly believe it is possible to object to a gay marriage and yet come to the defense of a gay person when it comes to violence. And I believe we have a duty to show up to work in the Federal Government when it comes to the issue of hate crimes. Some people believe that, well, all crime is hateful; don't designate some types of crime. But I tell you that I have come to realize that hate crimes are different in this respect. Hate crimes are visited upon one person, but they are really directed at an entire community—in one case, a black man in the African American community, and in the other case, a gay man in the gay and lesbian community. We need to help, and I believe the Kennedy amendment actually helps.

Some see this as controversial because they will stand behind the argument of States rights; that we cannot defend these people at the Federal level because there are State officials and local officials where most police actions and prosecutions occur; that we should leave that to them. I had that feeling until I was visited by a group of conservative Republican law enforcement officers from Wyoming who said, in the case of Matthew Shepard: It would have helped a great deal had the Federal Government shown up with resources and support to help in the prosecution of this horrible tragedy.

The Kennedy amendment allows this to happen, and I support it for that reason, because I believe we need to show up to work.

As a member of the Foreign Relations Committee, I have spoken all over the globe against hate crimes of all kinds. Because of that, I cannot in good conscience remain silent about hate crimes in my own country. It is time to speak out, and it is time to vote on something that will actually make a difference.

In my Subcommittee on European Affairs, I recently held a hearing on the issue of antisemitism. One of the most remarkable witnesses I have ever listened to in the Senate came to testify in that hearing. He is the Nobel Laureate Elie Wiesel. I will never forget what he said to our committee that day. He said:

> To hate is to deny the other person's humanity. It is to see in ''the other'' a reason to inspire not pride, but disdain; not solidarity, but exclusion. It is to choose simplistic phraseology instead of ideas. It is to allow its carrier to feel stronger than ''the other,'' and thus superior to ''the other.'' The hater . . . is vain, arrogant. He believes that he alone possesses the key to truth and justice. He alone has God's ear.

I am afraid there are some like that not just in Nazi Germany about which he was speaking, there are some like that today in Bosnia, in Yugoslavia, Kosovo, in Africa. There are haters still, and there are haters in our own country as well. We are trying to say, once and for all, that when it comes to hate and hate crimes that are directed at these minority communities who live among us as Americans: Your Federal Government cares, too. The Federal Government will show up to work. The Federal Government will try to use the law as well to teach the American people that there is no room for hate, and if you commit a hate crime, we will come after you with the full force of the law at the local, the State, and the Federal level, because while many will say this is just symbolism, I grant you it is in part, but it is symbolism that can be made substance if we change some hearts and minds. In that sense, the law can be a teacher.

That is why I support the Kennedy amendment, because I think we need to change some hearts and minds, as well as some laws, so that the Federal Government can show up to work.

I am going to do something I do not suppose is commonly done here, but I want to speak using a Scripture. I do this because I need to reach out, not to change the minds necessarily of some in my own political base who are the conservative Christians. They are my friends, and many of their views are views I hold. But on this issue, I believe we can care enough to change some hearts and minds. I believe that the God of Christianity, the God whom I worship, said on this Earth that by this shall all men know that ye are my disciples—if you have love one for another. He showed that in a remarkable episode, and I want to share it. I share it with my friends in the Christian community because we need to remember this story when we think somehow that we should not help a community because of what we think their sins may be.

This is the story. It comes from the 8th Chapter of John:

> Jesus went unto the mount of Olives.
>
> And early in the morning he came again into the temple, and all the people came unto him; and he sat down, and taught them.
>
> And the scribes and Pharisees brought unto him a woman taken in adultery; and when they had set her in the midst,
>
> They say unto him, Master, this woman was taken in adultery, in the very act.
>
> Now Moses in the law commanded us, that such should be stoned: but what sayest thou?
>
> This they said, tempting him, that they might have to accuse him. But Jesus stooped down, and with his finger wrote on the ground, as though he heard them not.
>
> So when they continued asking him, he lifted up himself, and said unto them, He that is without sin among you, let him first cast a stone at her.
>
> And again he stooped down, and wrote on the ground.
>
> And they which heard it, being convicted by their own conscience, went out one by one, beginning at the eldest, even unto the last: and Jesus was left alone, and the woman standing in the midst.
>
> When Jesus had lifted up himself, and saw none but the woman, he said unto her, Woman, where are those thine accusers? hath no man condemned thee?
>
> She said, No man, Lord. And Jesus said unto her, Neither do I condemn thee: go, and sin no more.

This happened in a public square. This was a wonderful example of mercy and compassion. It was a wonderful occasion in which, in my view, the greatest of all stood up against violence, violence that was later visited upon Him with hatred.

I point out that if you care about the American family and you perceive homosexuality as a threat to that family institution, remember that adultery, if you want to talk about sins, is a far greater threat to the American family than homosexuality.

What I say to fellow Christians everywhere is, it is time to help. It is time to remember a story and an example. It is time to say to the gay community: I do not agree with you on everything, but I can help you on many things. And particularly when it comes to violence, particularly when it comes to dragging a man to death, particularly when it comes to seeing someone beaten to death on a fence, I would be ashamed if we did not act as the Federal Government to say: We can show up to work, we can help, we can teach, we can change hearts and minds, and we can turn the symbolism into substance by letting Federal authorities bring resources and help make a difference.

I know I may not be in large numbers on my side of the aisle, but I hope they will consider what I have just said. All of the excuses that will be offered today—are we prosecuting people for their thoughts? No, we are prosecuting people for their actions that kill people.

Some will say: There are limitations in the bill so that every hate crime is not a Federal crime. There are limitations that will trigger the Federal response. We will defer to the States.

Some will say: What business is it of ours to put hate crimes on the Defense authorization bill? Some of the most horrible hate crimes I have read about have occurred within the military. It is our business to put it here if that is what it takes to pass it here.

Some will say: Isn't every act of domestic violence or rape a hate crime? I say, it may well be. It may trigger Federal involvement. But just because it includes sexual orientation does not make those victims less American.

Some will say: The Kennedy amendment is not constitutional. I believe it is constitutional. I believe it is OK to say we will help Americans—how we find them—whether they are black, whether they are disabled, or whether they are gay.

So my remarks today, Madam President, are about having a bigger heart and making the Federal law big enough to include communities that are the most vulnerable among us.

I thank the Chair and yield the floor.

The PRESIDING OFFICER. Under the previous order, the hour of 4 o'clock having arrived, the Senator from Utah is recognized to offer his amendment.

AMENDMENT NO. 3474

(Purpose: To authorize a comprehensive study and to provide assistance to State and local law enforcement)

Mr. HATCH. Madam President, our Nation's recent history has been marred by some horrific crimes committed because the victim was a member of a particular class or group. The beating death of Matthew Shepard in Laramie, WY, and then the dragging death of James Byrd, Jr. in Jasper TX. These two spring readily to mind. I firmly believe that such hate-motivated violence is to be abhorred and that the Senate must raise its voice and lead on this issue.

During the last 30 years, Congress has been the engine of progress in protecting civil rights and in driving us as a society increasingly closer to the goal of equal rights for all under the law.

Historians will conclude, I have little doubt, that many of America's greatest strides in civil rights progress took place just before this present moment on history's grand timeline: Congress protected Americans from employment discrimination on the basis of race, sex, color, religion and national origin with the passage of the Civil Rights Act of 1964; Congress protected Americans from gender-based discrimination in rates of pay for equal work with the Equal Pay Act of 1963, and from age discrimination with the passage of the Age Discrimination in Employment Act of 1967; Congress extended protections to immigration status with the Immigration Reform and Control Act in 1986, and to the disabled with the passage of the Americans with Disabilities Act in 1990. And the list goes on and on.

Yet despite our best efforts, discrimination continues to persist in so many forms in this country, but most sadly in the rudimentary and malicious form of violence against individuals because of their membership in a particular class or group. Let me state, unequivocally, that this is America's fight. As much as we condemn all crime, crimes manifesting an animus for someone's race, religion or other characteristics can be more sinister than other crimes.

A crime committed not just to harm an individual, but out of the motive of sending a message of malice to an entire community—oftentimes a community that has historically been the subject of discrimination—is appropriately punished more harshly, or in a different manner, than other crimes.

This is in keeping with the longstanding principle of criminal justice—as recognized by the Supreme Court in its unanimous 1993 decision in Wisconsin versus Mitchell upholding Wisconsin's sentencing enhancement for crimes of animus—that the worse a criminal defendant's motive, the worse the crime.

Moreover, crimes of animus are more likely to provoke retaliatory crimes; they inflict deep, lasting and distinct injuries—some of which never heal—on victims and their family members; they incite community unrest; and, ultimately, they are downright un-American.

The melting pot of America is the most successful multiethnic, multiracial, and multifaith country in all recorded history. This is something to ponder as we consider the atrocities so routinely sanctioned in other countries—like Serbia or Rwanda—committed against persons entirely on the basis of their racial, ethnic or religious identity.

I am resolute in my view that the Federal Government can play a valuable role in responding to crimes of malice and hate. One example here is my sponsorship of the Hate Crime Statistics Act of 1990, a law which instituted a data collection system to assess the extent of hate crime activity, and which now has thousands of voluntary law enforcement agency participants.

Another, more recent example, is the passage in 1996 of the Church Arson Protection Act, which, among other things, criminalized the destruction of any church, synagogue, mosque or other place of religious worship because of the race, color, or ethnic characteristics of an individual associated with that property.

To be sure, however, any Federal response—to be a meaningful one—must abide by the constitutional limitations imposed on Congress, and be cognizant of the limitations on Congress's enumerated powers that are routinely enforced by the courts.

This is more true today than it would have been even a mere decade ago, given the significant revival by the U.S. Supreme Court of the federalism doctrine in a string of decisions beginning in 1992. Those decisions must make us particularly vigilant in respecting the courts' restrictions on Congress's powers to legislate under section 5 of the 14th amendment, and under the commerce clause.

We therefore need to arrive at a Federal response to this matter that is not only as effective as possible, but that carefully navigates the rocky shoals of these court decisions. To that end, I have prepared an approach that I believe will be not only an effective one, but one that would avoid altogether the constitutional risks that attach to other possible Federal Responses that have been raised.

Indeed, Deputy Attorney General Eric Holder testified before the Senate Judiciary Committee that States and localities should continue to be responsible for prosecuting the overwhelming majority of hate crimes, and that no legislation is worthwhile if it is invalidated as unconstitutional. This is worth repeating. Deputy Attorney General Eric Holder testified before the Senate Judiciary Committee that States and localities should continue to be responsible for prosecuting the overwhelming majority of hate crimes, and that no legislation is worthwhile if it is invalidated as unconstitutional.

There are two principal components to my approach:

First my amendment creates a meaningful partnership between the Federal Government and the States in combating hate crime by establishing within the Justice Department a grant program to assist State and local authorities in investigating and prosecuting hate crimes.

Much of the cited justification given by those who advocate broad Federal jurisdiction over these hate-motivated crimes is a lack of adequate resources at the State and local level. Accordingly, before we take the step of making a Federal offense of every crime motivated by a hatred of someone's membership in a particular class or group, it is imperative that we equip States and localities with the resources necessary so that they can undertake these criminal investigations and prosecutions on their own.

Second, my approach undertakes a comprehensive analysis of the raw data that has been collected pursuant to the 28 U.S.C. 534, the law requiring the collection of data on these crimes—a bill that I worked very hard to pass. The Federal Government has been collecting this data for years, but we have yet to analyze it. A comparison of the records of different jurisdictions—some with hate crimes, others without—to determine whether there is, in fact, a problem in certain States' prosecution of hate crimes also is provided for in my amendment.

Before we make all hate crimes Federal offenses, I believe we should provide assistance to the States and analyze whether our assumptions about

what the States are doing, or are not doing, are valid.

It is no answer for the Senate to sit by silently while these crimes are being committed. The ugly, bigoted, and violent underside of some in our country that is reflected by the commission of hate crimes must be combated at all levels of government.

For supporters of the Kennedy amendment, Federal leadership necessitates Federal control. I do not subscribe to this view, especially when it comes to this problem. Thus, I oppose Senator KENNEDY's amendment. It proposes that to combat hate crimes Congress should enact a new tier of far-reaching Federal criminal legislation. That approach strays from the foundations of our constitutional structure—namely, the first principles of federalism that for more than two centuries have vested States with primary responsibility for prosecuting crimes committed within their boundaries.

As important as this issue is, there is little evidence that a broad federalization of hate crimes is warranted. Indeed, it may be that national enforcement of hate crimes could decrease if States are told the Federal Government has assumed primary responsibility over hate crime enforcement.

In addition, serious constitutional questions exist regarding the Kennedy hate crimes amendment. First, the Kennedy amendment, if adopted, would not be a valid exercise of congressional authority under section 5 of the 14th amendment. The Supreme Court has made clear in recent years that legislation enacted by Congress pursuant to section 5 of the 14th amendment may only criminalize action taken by a State. Just last month, the Supreme Court in the recent United States v. Morrison case re-emphasized the State-action requirement that limits Congress' authority to enact legislation under the 14th amendment. The Court stated:

> Foremost among these limitations [on Congressional power] is the time-honored principle that the Fourteenth Amendment, by its very terms, prohibits only state action. The principle has become firmly embedded in our constitutional law that the action inhibited by the . . . Fourteenth Amendment is only such action as may fairly be said to be that of the States. That Amendment erects no shield against merely private conduct, however, discriminatory or wrongful.

The Kennedy amendment, however, seeks to prohibit private conduct—crimes of violence committed by private individuals against minorities, religious practitioners, women, homosexuals, or the disabled. It therefore is very similar to the provision of the Violence Against Women Act—a bill I worked very hard to pass, called the Biden-Hatch Act—that sought to prohibit crimes of violence committed by private individuals against women. The Supreme Court in Morrison held that that provision of the Violence Against Women Act was not a valid exercise of congressional power under section 5 of the 14th amendment.

To be sure, Congress can regulate purely private conduct under its commerce clause authority. But the Kennedy amendment likely would not be a valid exercise of congressional authority under the commerce clause either. The Supreme Court's 1995 decision in United States v. Lopez, and especially its recent Morrison decision, set forth the scope of Congress' commerce clause power. The Morrison opinion, in particular, changed the legal landscape regarding congressional power in relation to the States. Thus, legislation that was perfectly fine only 2 months ago now raises serious constitutional questions. The Kennedy amendment is not consistent with Lopez and Morrison.

Both Lopez and Morrison require that the conduct regulated by Congress pursuant to its commerce clause power be ''some sort of economic endeavor.'' The Court has held that a statute that is ''a criminal statute that by its terms has nothing to do with 'commerce' or any sort of economic enterprise, however broadly one might define those terms,'' does not meet constitutional muster. Here, the conduct sought to be regulated—hate crimes—is in no sense economic or commercial, but instead, by its very terms, is non-economic and criminal in nature, just like the conduct Congress sought to regulate in the Gun Free Schools Zones Act and the Violence Against Women Act—statutes that were held to be unconstitutional in Lopez and Morrison.

In light of the Morrison decision, the Kennedy amendment makes an effort to require a direct link to interstate commerce before the Federal government can prosecute a hate crime based on sexual orientation, gender, or disability. It permits Federal hate crimes prosecution in four broad circumstances: No. 1, where the hate crime occurred in relation to interstate travel by the defendant or the victim; No. 2, where the defendant used a ''channel, facility or instrumentality'' of interstate commerce to commit the hate crime; No. 3, where the defendant committed the hate crime by using a firearm or other weapon that has traveled in interstate commerce; and No. 4, where the hate crime interferes with commercial or economic activity of the victim. None of these circumstances provides an appropriate interstate nexus that would make the legislation constitutional.

First, the interstate travel requirement of the Kennedy amendment's first circumstance where Federal prosecution would be appropriate does nothing to change the criminal, non-economic nature of the hate crime.

The requirement of the second circumstance, that the defendant commit the hate crime by using a channel, facility or instrumentality of interstate commerce, may provide a interstate nexus, but it is unclear precisely what hate crimes that would encompass: hijacking a plane or blowing up a rail line in connection with a hate crime?

The third circumstance's requirement that the defendant have used a weapon that traveled in interstate commerce would blow a hole in the commerce clause; Congress could then federalize essentially all State crimes where a firearm or other weapon is used; for example, most homicides.

Finally, the fourth circumstance's requirement that the victim be working and that the hate crime interfere with his or her work is analogous to the reasoning the Court rejected in Morrison; that is, that violence against women harms our national economy. In the case of the Kennedy hate crimes amendment, the argument would be that hate crimes harm our national economy and therefore they have a nexus to interstate commerce. The Court in Morrison and in Lopez rejected those ''costs of crime'' and ''national productivity'' arguments because ''they would permit Congress to regulate not only all violent crime, but all activities that might lead to violent crime, regardless of how tenuously they relate to interstate commerce.'' Finally, the Kennedy amendment's catch-all provision, that the Federal government may prosecute a hate crime only if the crime ''otherwise affects interstate or foreign commerce,'' not only merely restates the constitutional test, it misstates the constitutional test. To be constitutional, the conduct must ''substantially affect'' interstate commerce.

In addition to its constitutional problems, the Kennedy amendment has other deficiencies. The amendment provides that where the hate crime is a murder, the perpetrator ''shall be imprisoned for any term of years or for life.'' It does not authorize the death penalty for even the most heinous hate crimes. Accordingly, the horrific dragging death of James Byrd, Jr. on a back road in Jasper, TX, for example, under the Kennedy amendment, would provide only for a life sentence. In the Byrd case, however, State prosecutors tried the case as a capital case and obtained death sentences for the defendants. The Kennedy amendment, then, which purports to provide Federal leadership in the prosecution of hate crimes, would not even provide for the ultimate sentence permitted under duly enacted Texas law.

When we asked the Justice Department what type of proof they had that the States are not doing the job, they promised to provide us evidence. I haven't seen it yet.

That was quite a while ago. There may be, in the eyes of some, and in my eyes, a great reason to try to make Senator KENNEDY's amendment constitutional, and that is what I tried to do in my amendment in order to do something about this if the States are not doing the job. But to this day, I have not had any information indicating that they are not doing the job. And in the Byrd case, they certainly have. In the Shepard case, they certainly have, just to mention a couple of them.

I feel as deeply about hate crimes as Senator KENNEDY or anybody else in

this Chamber. But I want to abide by the Constitution. I recall Justice Scalia's admonition that there should be a presumption that Congress want to enact constitutional legislation, but because of some of the things we are doing, maybe that presumption is unjustified

Supporters of the Kennedy amendment have claimed that it will create a partnership with State and local law enforcement. They have delicately described the legislation as being deferential to State and local authorities as to when the Justice Department will exercise jurisdiction over a particular hate crime. This is hogwash. The amendment does not defer to State or local authorities at all. It would leave the Justice Department free to insert itself in a local hate crime prosecution at the beginning, middle or end of the prosecution, even after the local prosecutor has obtained a guilty verdict. Even if the Justice Department does not formally insert itself into the particular case, it nevertheless will be empowered by the legislation to exert enormous pressure on local prosecutors regarding the manner in which they handle the case—from charging decisions the plea bargaining decisions to sentencing decisions. The Kennedy hate crimes amendment, pure and simple, would expand federal jurisdiction and federalize what currently are State crimes.

By contrast, my amendment would address the issue of hate crimes in a responsible, constitutional way—by assisting States and local authorities in their efforts to investigate and prosecute hate crimes. It provides for a study of this issue to see if there really are States and local governments out there who, for whatever reason, are not investigating and prosecuting hate crimes. And, it would provide resources to State and local governments that are trying to combat hate crimes but lack the resources to do so.

In summary, we must lead—but lead responsibly—recognizing that we live in a country of governments of shared and divided responsibilities. In confronting a world of prejudice greater than any of us can now imagine, President Abraham Lincoln said to Congress in 1862 that the ''dogmas of the quiet past'' were ''inadequate to the stormy present. The occasion is piled high with difficulty, and we must rise—with the occasion. As our case is new, so we must think anew, and act anew.''

In that very spirit, I encourage this body to question the dogma that federal leadership must include federal control, and I encourage this body to act anew by supporting a proposal that seeks to stem hate-motivated crime, while at the same time respecting the primacy states traditionally have enjoyed under our Constitution in prosecuting crimes committed within their boundaries.

Ultimately, I believe the approach I have set forth is a principled way to accommodate our twin aims—our well-intentioned desire to investigate, prosecute, and, hopefully, end these vicious crimes; and our unequivocal duty to respect the constitutional boundaries governing any legislative action we take.

My proposal should unite all of us on the one point about which we should most fervently agree—that the Senate must speak firmly and meaningfully in denouncing as wrong in all respects those actions we have increasingly come to know as hate crimes. Our continued progress in fighting to protect Americans' civil rights demands no less.

Madam President, what the Hatch amendment does in comparison to the Kennedy amendment—and look, like I say, I feel as deeply about this as Senator KENNEDY does, and I respect him for how he feels, and I also respect Senator SMITH from Oregon and the distinguished Senator from Illinois. We are all trying to do the same thing, and that is make sure that hate crimes are prosecuted in our society today. I am very concerned about it, but I am also concerned about meeting the requisites of the Constitution as well. I believe my amendment would do that. I believe it would do it in a far more responsible way than the way the Kennedy amendment does.

What the Hatch amendment does is provide for a comprehensive study so we can find out once and for all—we have the Hate Crimes Statistics Act giving us the statistics; it is something that I helped to do years ago along with Senator KENNEDY. That study would help us to find out just what is happening in our society and whether or not the State and local governments are inadequate or incapable or unwilling to investigate and prosecute hate crimes.

Two, we would provide for an intergovernmental assistance program. We provide technical, forensic, prosecutorial, or other assistance in the criminal investigation or the prosecution of crimes that, one, constitute a crime of violence; two, are a felony under relevant State law; and three, are motivated by animus against the victim by reason of the victim's membership in a particular class or group.

My amendment would provide for Federal grants. We authorize the Attorney General, in cases where special circumstances exist, to make grants of up to $100,000 to States and local entities to assist in the investigation and prosecution of hate crimes. We require grant recipients to certify that the State or local entity lack the resources necessary to investigate or prosecute such crimes. And, we require that the Attorney General shall approve or disapprove grant applications within 10 days of receiving the application. We provide that the Attorney General shall report to Congress on the effectiveness of the program and conduct an audit to assure that the grants awarded are used properly.

What we do not do is we do not create a new Federal crime. We do not give the Justice Department jurisdiction over crimes that are motivated because of a person's membership in a particular class or group; that is, the Hatch amendment does not Federalize crimes motivated because of a person's race, gender, religion, sexual orientation, or disability.

To enact such a broad federalization of hate-motivated crimes would raise serious constitutional concerns. In addition, the Kennedy amendment would federalize all rapes and sexual assaults and, in so doing, would severely burden Federal law enforcement agencies, Federal prosecutors, and Federal courts. My amendment does not authorize Federal interference with State and local investigations and prosecutions. It is not our job to second-guess the investigation and prosecution and sentencing decisions of State and local authorities in cases involving hate crimes. As such, my amendment recognizes the significant efforts of State and local law enforcement in investigating and prosecuting all violent crimes, including hate crimes.

In other words, my amendment would provide the analysis, study, and data to determine whether or not the States are failing or refusing to combat these horrible crimes. It provides the Government assistance to be able to help the State and local people do their job in these areas. Of course, we provide various other kinds of assistance that could be helpful in this matter.

Madam President, I have taken enough time. Parliamentary inquiry. Is it time to send the amendment to the desk?

The PRESIDING OFFICER. The Senator can send his amendment to the desk.

Mr. HATCH. Madam President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Utah [Mr. HATCH] proposes an amendment numbered 3474.

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

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

The amendment is as follows:

At the appropriate place, insert the following:

SEC. ___. COMPREHENSIVE STUDY AND SUPPORT FOR CRIMINAL INVESTIGATIONS AND PROSECUTIONS BY STATE AND LOCAL LAW ENFORCEMENT OFFICIALS.

(a) STUDIES.—

(1) COLLECTION OF DATA.—

(A) DEFINITION OF RELEVANT OFFENSE.—In this paragraph, the term ''relevant offense'' means a crime described in subsection (b)(1) of the first section of Public Law 101–275 (28 U.S.C. 534 note) and a crime that manifests evidence of prejudice based on gender or age.

(B) COLLECTION FROM CROSS-SECTION OF STATES.—Not later than 120 days after the date of enactment of this Act, the Comptroller General of the United States, in consultation with the National Governors' Association, shall select 10 jurisdictions with

laws classifying certain types of offenses as relevant offenses and 10 jurisdictions without such laws from which to collect the data described in subparagraph (C) over a 12-month period.

(C) DATA TO BE COLLECTED.—The data described in this paragraph are—

(i) the number of relevant offenses that are reported and investigated in the jurisdiction;

(ii) the percentage of relevant offenses that are prosecuted and the percentage that result in conviction;

(iii) the duration of the sentences imposed for crimes classified as relevant offenses in the jurisdiction, compared with the length of sentences imposed for similar crimes committed in jurisdictions with no laws relating to relevant offenses; and

(iv) references to and descriptions of the laws under which the offenders were punished.

(D) COSTS.—Participating jurisdictions shall be reimbursed for the reasonable and necessary costs of compiling data collected under this paragraph.

(2) STUDY OF RELEVANT OFFENSE ACTIVITY.—

(A) IN GENERAL.—Not later than 18 months after the date of enactment of this Act, the Comptroller General of the United States shall complete a study and submit to Congress a report that analyzes the data collected under paragraph (1) and under section 534 of title 28, United States Code, to determine the extent of relevant offense activity throughout the United States and the success of State and local officials in combating that activity.

(B) IDENTIFICATION OF TRENDS.—In the study conducted under subparagraph (A), the Comptroller General of the United States shall identify any trends in the commission of relevant offenses specifically by—

(i) geographic region;

(ii) type of crime committed; and

(iii) the number and percentage of relevant offenses that are prosecuted and the number for which convictions are obtained.

(b) ASSISTANCE OTHER THAN FINANCIAL ASSISTANCE.—At the request of a law enforcement official of a State or a political subdivision of a State, the Attorney General, acting through the Director of the Federal Bureau of Investigation and in cases where the Attorney General determines special circumstances exist, may provide technical, forensic, prosecutorial, or any other assistance in the criminal investigation or prosecution of any crime that—

(1) constitutes a crime of violence (as defined in section 16 of title 18, United States Code);

(2) constitutes a felony under the laws of the State; and

(3) is motivated by animus against the victim by reason of the membership of the victim in a particular class or group.

(c) GRANTS.—

(1) IN GENERAL.—The Attorney General may, in cases where the Attorney General determines special circumstances exist, make grants to States and local subdivisions of States to assist those entities in the investigation and prosecution of crimes motivated by animus against the victim by reason of the membership of the victim in a particular class or group.

(2) ELIGIBILITY.—A State or political subdivision of a State applying for assistance under this subsection shall—

(A) describe the purposes for which the grant is needed; and

(B) certify that the State or political subdivision lacks the resources necessary to investigate or prosecute a crime motivated by animus against the victim by reason of the membership of the victim in a particular class or group.

(3) DEADLINE.—An application for a grant under this subsection shall be approved or disapproved by the Attorney General not later than 10 days after the application is submitted.

(4) GRANT AMOUNT.—A grant under this subsection shall not exceed $100,000 for any single case.

(5) REPORT AND AUDIT.—Not later than December 31, 2001, the Attorney General, in consultation with the National Governors' Association, shall—

(A) submit to Congress a report describing the applications made for grants under this subsection, the award of such grants, and the effectiveness of the grant funds awarded; and

(B) conduct an audit of the grants awarded under this subsection to ensure that such grants are used for the purposes provided in this subsection.

(6) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated $5,000,000 for each of the fiscal years 2001 and 2002 to carry out this section.

Mr. HATCH. Madam President, I respect my colleagues. I think we are all here to try to get at the same problem. I respect Senator KENNEDY for his sincere effort to try to do what is right with regard to civil rights matters generally, and with regard to hate crimes in particular.

I feel very much the same way. This is a great country. It is the greatest in the world. We ought to set an example. We ought to do the things that really need to be done. But I think we have to have the facts before we act. I don't think we should federalize crimes. I think this amendment is too broad.

We are approaching this in two different ways. I hope we can somehow or other get together to solve this matter in a way that will make sense—that respects the principles of federalism, that respects the States in their efforts to combat hate crimes. Right now, we are not sure there are any States or local jurisdictions out there that are failing or refusing to investigate and prosecute hate crimes. You can cite the James Byrd and Matthew Shepard cases as two illustrations where State authorities have done a tremendous job in prosecuting horrific, hate-motivated crimes.

I don't think anybody should have to suffer from hate crime activity. I think my amendment does not go as far as Senator KENNEDY's, but I think it will certainly handle the problem in a way that respects federalism, respects the Constitution, and respects the nine decisions of the Supreme Court over the last 8 years that have reinforced the principle of federalism. In the end, I think my amendment will do what all of us here on the floor would like to see done—promote the investigation and prosecution of hate crimes—in a way that is constitutionally sound.

I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Mr. DURBIN. Madam President, let me say at the outset to my colleague and friend, the Senator from Utah, Mr. HATCH, that it was my honor to serve on the Judiciary Committee when he was chairman and I was a member of that committee. I hope someday to return. It is an interesting and exciting assignment. Occasionally we even agreed. They were rare moments, but there were those moments. I never, at any moment in time, lost any respect for the Senator from Utah and the values he espouses. I believe he is a person of good faith who will genuinely try to find a common ground. I sincerely hope he will.

I listened to his explanation of his amendment on this issue, and I really think it comes down to a classic debate, which has been on the floor of this Senate many times in its history, when we were discussing whether or not African Americans were to become full citizens of the United States with all of their rights and responsibilities. There were those on the floor who said: It is not a Federal issue; let the States decide; the Federal Government should not get involved in this.

There have been issues involving religious persecution—whether it is people of the Senator's faith, or my faith, or many others. There have been those who said this a State-and-local matter to decide, it should not be a Federal issue.

The same thing was true when it came to elevating women in America from their status in the Constitution—which we revere, but a Constitution which, frankly, did not give the women the right to vote when it was initially drafted. When the debate came on about the rights of women, it was usually couched in terms of federalism: Should the Federal Government get involved in this; or, this is a State issue.

We can remember the hot debates over the equal rights amendment and all that entailed. The same thing has been true throughout history, the way I read it—whether we are talking about blacks, women, or people of a certain faith, or whether we are talking about people who have certain disabilities. We have always come down to this debate: Is this issue any business of the Federal Government?

I respectfully disagree with my colleague and friend, the Senator from Utah. I think when it comes to hate crimes, this is an issue for the Nation to solve. To leave it to individual States to make the decisions is in fact to subject some Americans to less protection than others when it comes to being victims of hate crimes.

Mr. HATCH. Will the Senator yield?

Mr. DURBIN. I am happy to yield.

Mr. HATCH. Madam President, I haven't said this isn't an issue for the Federal Government. I think it may be. But the point is, we ought to get the facts, and we ought to find out if State and local authorities are failing or refusing to investigate and prosecute hate crimes. We ought first to find out whether State and local authorities are, in fact, denying individuals the equal protection of the laws. So far, the Justice Department has produced precious little evidence to the Judiciary Committee that would indicate

that State and local authorities are abdicating their responsibility to combat hate-motivated crimes. And we asked for the Justice Department to get us this information, if there is any, a long time ago.

Yet we have had actually nine decisions by the Supreme Court over the last 8 years reinforcing the principle of federalism—the principle that State governments and the federal government have distinct areas of responsibility. It is true that these Court decisions are, in many instances, 5–4 decisions, which shows again how important the Supreme Court really is in all of our lives.

I am a proud cosponsor of the Violence Against Women Act. I remember the passion when we passed it. There were real concerns whether it would be upheld by the Supreme Court. Part of it was not upheld by the Supreme Court, the part that I was concerned about. But up to that point, I thought there was a chance.

But with the Morrison decision, I don't think there is a chance that the Kennedy amendment, as it currently is written, will survive a constitutional challenge. And I think that we ought to at least make an attempt to abide by the Constitution, if nothing else. This is not a matter of States rights. I think there may be a role for the Federal Government. But right now, let's at least get the facts. In the process, we can lend assistance, both financial and otherwise, to the States to help them with these serious problems.

I am very grateful for my distinguished colleague and his respectful remarks. They mean a lot to me because I happen to believe he is one of the most articulate Members of this body. I believe he is very sincere. It is true that we agree on much more than just a few things.

But I just want to make it clear that my amendment offers a different approach—an approach that I think is constitutional, that will get us there without going through another 2 or 3 years and then having it overruled as unconstitutional and having to start all over again. I know that the amendment I have offered is constitutional. I know we can implement it from day one, without any fear that it will be struck down by the Supreme Court as violative of the Constitution. And I know it will make an impact and really do something about hate crimes, rather than just make political points on the floor.

I thank my colleague.

Mr. DURBIN. I thank the Senator from Utah.

Let me say first how proud I am to cosponsor the legislation that has been introduced by the Senator from Massachusetts, Mr. KENNEDY, and the Senator from the State of Oregon, Mr. SMITH. It is bipartisan legislation. Senator CARL LEVIN of Michigan is also one of the lead sponsors of it as well.

The difference, as I understand it, between the proposal of the Senator from Utah and the proposal of Senators KENNEDY and SMITH really comes down to one basic point. As I understand it, the Senator from Utah is looking to, first, provide grants to States and localities so they can prosecute these crimes when they are found deserving; and, second, to study the issue to determine whether or not there is a need for Federal legislation.

As I understand the amendment before us by Senators KENNEDY and SMITH, it basically creates a Federal cause of action, expanding on what we now have in current law in terms of hate crimes, and expanding the categories of activities that would be covered by this hate crime legislation.

I say to the Senator from Utah, if he is on the floor, I believe the Senator from Massachusetts will provide ample evidence of the need for this legislation. I believe the statistics are not only there but they are overwhelming in terms of the reason he is introducing this amendment and why we need this national cause of action.

Second, during the course of my remarks I would like to address squarely the issue raised by the Senator from Utah, an issue that has been raised by the Supreme Court. It is, frankly, whether or not we have the authority to create this cause of action.

The Senator uses recent Supreme Court decisions relating to the commerce clause. When it came to the Violence Against Women Act, it is my understanding the Supreme Court ruled that they could not find the necessary connection between the Violence Against Women Act and the commerce clause to justify Federal activity in this area.

If the Senator from Utah will follow this debate, I think he will find that the Senator from Massachusetts and the Senator from Oregon are taking a different approach. They are using the 13th amendment as a basis for this legislation. They also establish an option of the commerce clause. But they are grounding it on a 13th amendment principle of law and Federal jurisdiction, which our Department of Justice agrees would overcome the arguments that have been raised in the Supreme Court under its current composition of overextension of the commerce clause.

I hope as the Senator from Utah reflects on this debate, the information provided by the Senator from Massachusetts, and the new constitutional approach to this, that he may reconsider offering this amendment. As good as it is to study the problem further and to provide additional funds, it doesn't address the bottom line; that is, to make sure there will at least be the option of a Federal cause of action in every jurisdiction in America.

I would be happy to yield to the Senator from Utah for a question.

Mr. HATCH. I thank my colleague.

If I could comment, I believe the distinguished Senator from Massachusetts can show that there are hate crimes in our society. I think that he will have a difficult time, however, showing that that State and local prosecutors are unwilling to investigate and prosecute hate-motivated crimes. That is why I asked the Justice Department to provide to us data and information on the specific instances where State and local authorities failed or refused to investigate and prosecute hate crimes.

Years ago, under the leadership of Senator KENNEDY and myself, the Senate passed the Hate Crime Statistics Act to collect data on the incidence of hate crimes. We have statistics. I am sure there are hate crimes, but I am not sure there is any evidence to show that these hate crimes are not being prosecuted in the respective States. I'm just not sure. That is one reason I think we should cautiously approach this, rather than approach it in a way that I believe would be unconstitutional.

I thank my colleague.

Mr. DURBIN. If the Senator will look closely at the Kennedy-Smith amendment, he will find before the Federal cause of action can be initiated—as I understand it, but I defer to either of the major sponsors—before there can be a Federal indictment under this proposed hate crime, the Department of Justice must certify two things: First, reasonable cause to believe that the crime was motivated by bias; second, addressing the very issue raised by the Senator from Utah, the U.S. attorney has to certify that he has consulted with State or local law enforcement officials and determined one of the following situations is present, and he lists four situations.

First, the State does not have jurisdiction or does not intend to exercise jurisdiction; second, the State has requested that the Justice Department assume jurisdiction; third, the State doesn't object to the Justice Department assuming jurisdiction; or fourth, the State has completed prosecution and the Justice Department wants to initiate a subsequent prosecution.

When the Senator from Utah suggests that the Kennedy-Smith amendment will necessitate Federal control, I think, frankly, that when you look at the certification required by the Federal Government before the action can be undertaken, we clearly have a situation where the State has either no jurisdiction, or has invited the Justice Department to initiate the prosecution, or they have completed their prosecution.

In this amendment, the first option is clearly being given to the States. If they have the authority and exercise it, clearly they will not be preempted by this Federal cause of action, as I understand it. If that is the case, I think it addresses the major concern raised by the Senator from Utah.

Why do we need this new law? We have a 30-year-old Federal statute which says when it comes to hate crimes, we have to find a specific federally protected activity. Congress, in the past, tried to ''prophesize,'' if you will, the types of activities

that might be involved in a hate crime. We came up with six activities: Enrolling in or attending a public school or private college; No. 2, participating in a service or action provided by State or local government; No. 3, applying for employment or actually working; No. 4, service on a jury in State or Federal court; No. 5, traveling in interstate commerce or using a facility of interstate commerce; and No. 6, enjoying the goods and services of certain places of public accommodation.

We have said over the years if this activity is involved and there is evidence of a hate crime, then the Federal prosecutors can step in.

I believe—and I don't want to put words in their mouths —Senators KENNEDY and SMITH have said we have found too many cases arising which do not fall within the four corners of these six federally protected activities. Therefore, they are offering an amendment which gives Federal prosecutors more opportunity to consider the possibility of prosecution.

I am wearing a button today that says ''Remember Matthew.'' Matthew, of course, is Matthew Shepard. Two years ago, Matthew Shepard, an openly gay college student in Wyoming, was brutally beaten. He was burned, he was tied to a wooden fence in a remote area, and left to die in freezing temperatures from exposure.

Despite this heinous act which we all read about, no Federal prosecution was even possible under the Shepard case. The existing State crime law and federally protected activities that are defined in it did not include what happened to Matthew Shepard. The current Federal statute does not include hate crimes based on a victim's sexual orientation, gender, or disability. The Kennedy-Smith amendment, which I am cosponsoring, corrects that very grievous omission.

I think the Senator from Utah would concede that when we are talking about hate crimes, we should certainly include crimes based on sexual orientation, gender, or disability. The Matthew Shepard case would not have been included, as I understand it. That is why the Kennedy-Smith amendment is so important.

Mr. HATCH. If the Senator will yield, I am having a little bit of difficulty, so I ask how the 13th amendment applies. As I read the 13th amendment, it says, in section 1:

> Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

In section 2:

> Congress shall have power to enforce this article by appropriate legislation.

How does the Kennedy amendment qualify under the 13th amendment? As I made clear, it doesn't qualify under the 14th amendment because of the arguments I made, pure Supreme Court arguments, that are recent in decision. I missed something on the 13th amendment because that is the amendment that abolished slavery.

Mr. DURBIN. Let me reply.

Mr. HATCH. Please tell me. This is a sincere question.

Mr. DURBIN. I am happy to defer to the sponsors of the amendment to respond and yield time if they desire.

The information I have been given is this: Under the 13th amendment, Congress may prohibit hate crimes based on actual or perceived race, color, religion, or national origin, pursuant to that amendment. Under the 13th amendment, Congress has the authority not only to prevent the ''actual imposition of slavery or involuntary servitude'' but to ensure that none of the ''badges and incidents'' of slavery or involuntary servitude exist in the United States.

What the Justice Department and what the sponsors of this amendment have concluded is that the 13th amendment gives the appropriate Federal jurisdiction and nexus to pursue this matter under the question of whether or not this is a badge or incident of that form of discrimination.

I don't want to go any further. I am sure the Senator from Massachusetts will explain this in more detail, but this 13th amendment nexus, I think, overcomes the concern of the Senator from Utah about the interpretations recently handed down.

Mr. HATCH. I don't mean to keep interrupting, but as I read that, I can see if what the Senator is after is a hate crime of keeping somebody involuntarily in servitude, but I don't know of many of those today. I am sure that may happen. We are talking about all kinds of hate crimes that certainly don't fit within the 13th amendment. If that is the way we are going to get at it, I think that is a very poor way of getting at a resolution for a hate crime problem.

Reading again, section 1:

> Neither slavery—

And I don't know of many instances of slavery in this day and age; in fact, I don't know of any, but there may be some. But we can get them constitutionally, right now, if they do that —

> nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States or any place subject to their jurisdiction.

Section 2:

> Congress shall have power to enforce this article by appropriate legislation.

If there is such a thing, if there is such a hate crime today as slavery, or involuntary servitude not required because of a due conviction, then we have the absolute power today, federally, to go in and prosecute under the Constitution itself under the 13th amendment.

Maybe I am missing something, or maybe I just haven't thought it through or I am too tired. I can't see how the 13th amendment provides a nexus whereby the Kennedy amendment becomes constitutional. It doesn't. In some ways, I wish the Kennedy amendment were constitutional. I worked hard back in those days to pass the Violence Against Women Act. I am working hard right now to pass it again in a form that is constitutional. We thought it was constitutional. I have to say, I had my qualms about it and my qualms proved to be accurate.

Today, we know what the Court has said. It has been the principle debate in this country since the beginning. The Court has said that Congress' power in relation to the States is limited. They are 5–4 decisions that are valid and are constitutional. For us to fly in the face of those just because we want to federalize hate crime activity, is, I think, constitutionally improper. That is what worries me.

These Supreme Court cases outlining the limits of congressional power under the principle of federalism are quite recent decisions. They are not old-time decisions that have been disqualified or overly criticized. They are decisions that basically advise us of the law right now.

I just wanted to make that point because I am concerned: How do you make the Kennedy amendment constitutional? I don't think you can under current law.

Now let's face it. If another Court comes in and reverses the nine major federalism decisions that the Supreme Court has handed down in the last few years, and ignores the principle of stare decisis and ignores the principle of federalism, I suppose that at that point you could enact the Kennedy legislation with impunity. But right now, I don't see how you do it if we, as Members of Congress, are trying to exert our influence and our obligation and our oath to uphold the Constitution of the United States.

I am sorry to interrupt.

Mr. DURBIN. I am happy to yield to the Senator from Utah. Let me say parenthetically I think there is more value to this dialog and exchange than many monologs we hear on the Senate floor.

I thank the Senator for his interest and staying to question me, and I am sure we will question him during the course of this debate.

I know there are other Members seeking recognition at this point. I will try to wrap up.

I do not want to in any way misrepresent the amendment that is been offered by Senators KENNEDY and SMITH. I think the statements I have made to date are accurate. The Local Law Enforcement Enhancement Act that is before us, the Kennedy-Smith amendment, was drafted carefully and modified to assure its constitutionality under current Supreme Court precedents, as has been referred to by the Senator from Utah. It has been reexamined in light of the Morrison decision. Moreover, the Department of Justice and constitutional scholars have examined this bill and have confidently

determined that the Local Law Enforcement Act will stand up to constitutional scrutiny.

Congress may prohibit hate based on race, color, religion, or national origin pursuant to its power to enforce the 13th amendment to the U.S. Constitution because under the 13th amendment Congress has the authority not only to prevent the actual imposition of slavery or involuntary servitude but to ensure that none of the ''badges and incidents'' of slavery or involuntary servitude exists in the United States, which goes to the very point of the Senator from Utah. He reads the 13th amendment and says this goes far beyond prohibiting slavery. But I might say the Supreme Court, in interpreting congressional authority under the 13th amendment, said it could reach beyond the simple question of prohibiting slavery or involuntary servitude. By using the language ''badges and incidents,'' it opened up the opportunity for Congress to consider this authority and for this amendment to be introduced.

None of the Supreme Court's recent Federalism decisions casts doubt on Congress' powers under the 13th amendment to eliminate the badges and incidents of slavery. United States v. Morrison involved legislation that was found to exceed Congress' powers under the 14th amendment. The Court in Morrison, for example, found Congress lacked the power to enact the civil remedy of the Violence Against Women Act pursuant to the 14th amendment because the amendment's equal protection guarantee extends only to ''state action.'' The Senator from Utah, who was one of the proponents of this and deserves high praise for it, makes this point in his opening statement on his amendment.

Since the Violence Against Women Act was interpreted by this Court to go beyond State action—that is, Government action—the Court struck it down. We are trying our best to reinstate it, but that is the standard.

The 13th amendment, however, not the 14th amendment, which they used to strike down the Violence Against Women Act, plainly reaches private conduct as well as Government conduct, and Congress thus is authorized to prohibit private action that constitutes a badge, incident, or relic of slavery.

Moreover, this hate crimes amendment would not only apply except where there is an explicit and discrete connection between the prescribed conduct and interstate or foreign commerce, a connection that the Government would be required to allege and prove in each case. This is consistent with Morrison. Like the prohibition of gun possession in the statute at issue in the Lopez case, the Violence Against Women Act civil remedy required no proof of connection between the specific conduct prohibited and interstate commerce. This amendment requires that a nexus exist between the prohibited conduct and interstate or foreign commerce.

Madam President, there are many who believe that a hate crime prevention statute is unnecessary. I don't put the Senator from Utah in that category. He has made it clear he is opposed to hate crimes, and I trust his word. I believe he is genuine when he says it. The question is, Who will have the power to enforce it? If the Senate neither has the authority nor wants the authority, if the State does not want to prosecute a hate crime, and yet it has been committed and truly there is a victim, the Kennedy-Smith amendment says we will create the opportunity for a Federal cause of action.

We are not forcing the Federal cause of action, but only in the instance where the State either doesn't have authority or has not exercised the authority or in fact defers to the Federal Government or in fact has completed its prosecution and left open the opportunity for such a Federal cause of action.

I wish we did not even have to debate hate crimes legislation. Alan Bruce of my staff has been a person I have turned to many times on issues of this magnitude on this subject. He was the one who gave me this button to wear in the Chamber and can remember Matthew Shepard. It is a grim reminder that there are still people in America who will not accept tolerance as the norm, and if we think it is rare, we only have to go to our new technology of the Internet to find the hate being spewed on so many web sites, efforts by small-minded people in this democratic society to turn our anger against our brothers and sisters who live in America, who happen to be a different color, of a different sexual orientation, a different religion, a different gender. This amendment really tries to address it and say that America as a nation will make it clear that we will not tolerate this sort of hateful, spiteful conduct when it results in violence against one of our brothers and sisters.

How many times have we read these harrowing details: Jasper, TX, with James Byrd, Jr., 2 years ago dragged to his death when he was hooked by a chain to the back of a pickup truck. They literally found this African-American's body in pieces.

The brutal hate-motivated deaths of James Byrd and Mathew Shepard received national attention. Since their deaths, our Nation has thought long and hard about whether this is an America we can tolerate. I think it is not.

Madam President, I bring your attention to two crimes in my own State of Illinois just in the last year.

April 5, 1999: Naoki Kamijima, 48 years old, a Japanese American shopowner was shot to death in Crystal Lake, IL, right outside of Chicago. The gunman was allegedly searching stores for employees of certain ethnic groups before finding and shooting Mr. Kamijima. Reportedly, the gunman said to employees he left behind after questioning them on their ethnic background, ''This is your lucky day.'' Hours later, Mr. Kamijima was shot dead, leaving a wife and two teenage children. His crime? He was an Asian-American. A Korean neighbor of the gunman said he used to chase her car when she drove through the neighborhood.

On the Fourth of July, 1999, a time of celebration across America, a shadow was cast over Illinois. Benjamin Smith, an individual associated with a racist, antisemitic organization, killed an African-American man, Ricky Birdsong, the former basketball coach at Northwestern University. Then he went on, this same Benjamin Smith, to wound six Orthodox Jews in Chicago. I met the father of one of the young boys whose son was terrorized that night. His life will never be the same. His only crime in the eyes of Benjamin Smith? He did not practice the right religion. Then Benjamin Smith went on to kill a Korean student in Bloomington, IN.

Sadly, these incidents are only the tip of the iceberg. There are so many other incidents of hate violence in my State and around the Nation. Since 1991, 70,000 hate crime offenses have been reported in our country. Launching a comprehensive Government analysis of currently available hate crime data would likely be time consuming and not bring us any closer to solving the real problem of hate violence in this Nation.

Mr. President, the Local Law Enforcement Act offers a sensible approach to help deter this kind of discriminatory violence. This legislation has bipartisan support: Senator GORDON SMITH, Senator TED KENNEDY, Senator CARL LEVIN, and so many others. It is supported by law enforcement, civil rights and civic groups, and religious organizations. I am proud to cosponsor this legislation. I urge my colleagues to support its passage.

I yield the floor.

The PRESIDING OFFICER (Mr. STEVENS). The Senator from Louisiana.

Mr. BREAUX. Mr. President, I start by commending the distinguished chairman of the Judiciary Committee for his important observations about this legislation; also, to commend the principal sponsors of this legislation, Senator KENNEDY and Senator SMITH, for bringing this matter to the attention of our colleagues and seeking our support for this legislation.

I do not think this is that complicated an issue, quite frankly. I do not think the issues are so complex that they call for an extended psychological discourse on the makeup of the American population. Quite frankly, the issues are fairly simple. America stands for the constitutional principle that all men and women are created equal and that we are all guaranteed the rights of life, liberty, and the pursuit of happiness regardless of who we are or where we are from or what we think, what our political views are, or what is the essence of our makeup as a

human being. That is a right that is guaranteed to all Americans in the Constitution. I think no one really questions that.

That principle does not mean everyone in America has to agree with everybody else. In fact, I think that, far from it, we are a nation that certainly encourages diversity of thinking, differences among competing ideas, and differences among the respected beliefs of all the people who make up our great Nation.

That constitutional principle does not even mean that we have to like each other. Certainly there are instances when Catholics do not like Protestants, and Protestants do not like Jews, and Jews do not like Muslims, and Cajun Americans may have differences with British Americans. For that reason alone they do not particularly care for each other; they do not like each other; they do not want to associate with each other. That also is their constitutional right, I suggest, in this country to take that opinion of people with whom they disagree. But our constitutional principles do, in fact, guarantee clearly that we as Americans cannot do violence or do harm to other people in our country, especially when that violence or harm is based solely on whom these other people might be.

To do violence solely because of someone's religious beliefs, their personal ideas, or concepts about what is right and what is wrong, or because of their religion or where they are from is especially repugnant to all of us as Americans. You do not have to like everybody, but you certainly cannot harm anybody, and especially you cannot harm anybody solely for whom they happen to be or who they are.

This legislation then is aimed at adding crimes that are motivated by a bias against people solely because of their gender or solely because of their sexual preference or perhaps because of some disability they might have. I, therefore, think this legislation which the authors bring to the Senate is appropriate and should be supported. It will send a clear message throughout this country that these types of activities in this country will not be tolerated.

Again, in America, our right to not embrace or befriend someone with whom we do not want to be associated, for whatever reason, is guaranteed. But what is also guaranteed is their right under the Constitution of the United States to be protected against violence and harm that others might do unto them solely because of who they are.

As Americans, we certainly should be proud of our multicultural and multiethnic heritage. We are a diverse nation and when we look at other nations that are having problems because of their heritage or their diversity, we can be proud in this country that we, in fact, are a different nation than many others. Therefore, this legislation sends a strong and clear message that domestic terrorism and violence against people in our country based merely on who they are or what they believe is something that deserves national protection, and Federal legislation is, in fact, important.

A hate crime against any American is a crime against all Americans, and this legislation saying that is a Federal right upon which we will insist is appropriate and proper and deserves our support.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. REED. Mr. President, I rise this afternoon to speak for this legislation and commend Senator KENNEDY for his sponsorship, along with my colleagues, of this legislation. Senator KENNEDY has long been an advocate for a society in which individuals reach out not with hate but with fellowship. I am pleased to see other supporters, like Senator SMITH, who are also in the vanguard of this great effort.

This afternoon we are here because of the murders of James Byrd and Matthew Shepard and others—because these acts of violence tear at the very fabric of our society.

Unfortunately, over the past 2 years, we have seen far too many cases of these types of crimes of violence, motivated strictly by prejudice and hatred of people, not because of their character but because of some perception of their failings in the eyes of others.

In my own State of Rhode Island, in May 1998 a group of seven to ten men stomped and battered a Cranston bartender and an acquaintance as they were coming out of a Providence night club, while laughing and screaming anti-gay epithets. The waiter suffered fractured bones in his jaw, head and collarbone, cracked ribs, and a puncture wound to his chest caused by a broken bottle. The acquaintance suffered a fractured eye socket and bruises.

According to Providence, Rhode Island city officials, the number of hate crimes reported in Providence has grown in recent years. In 1998, 25 such crimes were reported, and, last year, 32 were reported.

In February 1999, in an incident which took place in Pawtucket, Rhode Island, two men were walking home with a female friend from a church function and were assaulted by a third man. While yelling obscenities and anti-homosexual slurs, the third man hit one of the men over the head with a full wine bottle, and then jumped on top of him and punched him repeatedly in the face and head. He then threw him up against a brick wall and continued to hit him while yelling anti-gay epithets.

In California, three men pled guilty to racial terrorism for burning a swastika outside a Latino couple's residence.

In Florida, a Puerto Rican man was allegedly beaten by three white men who yelled racial slurs.

In Ohio, a 23-year-old Hispanic male was gunned down by three assailants. Police reported it as a racially motivated incident. The list goes on and on.

This amendment would simply extend the current definition of Federal hate crimes to include crimes committed on the basis of someone's gender, sexual orientation, or disability. It would allow the Federal Government to prosecute an alleged perpetrator who commits a violent crime against someone just because that person is gay, blind, or female.

This amendment basically brings our civil rights statutes in line with the most recent definition of hate crimes promulgated by this Congress.

This amendment also eliminates the restrictions that have prevented Federal involvement in many cases in which individuals were killed or injured because of bias or prejudice.

It also supports State and local efforts to prosecute hate crimes by providing Federal aid to local law enforcement officials. In particular, it authorizes the Justice Department to issue grants of up to $100,000 to State, local, and Indian law enforcement agencies that have incurred extraordinary expenses associated with investigating and prosecuting hate crimes.

This amendment does not federalize all violent hate crimes. It provides for Federal involvement only in the most serious incidents of bodily injury or death, and only after consultation with State and local officials, a policy that is explicitly reflected in a memorandum of understanding entered into by the Department of Justice with the National Association of District Attorneys last July.

Finally, the Department of Justice has reviewed this amendment and believes it does meet the constitutional standards recently articulated in Supreme Court cases. For crimes based on gender, sexual orientation, disability, religion, and national origin, the amendment has been carefully drafted to apply only to violent conduct in cases that have an ''explicit connection with or effect on interstate commerce.''

This amendment has attracted broad bipartisan support from 42 Senators, 191 Members of the House of Representatives, 22 State attorneys general, and more than 175 law enforcement, civil rights, and religious organizations. This demonstrates the huge support (for strengthening Federal hate crimes legislation, support) which cuts across party lines and which reaffirms a fundamental belief and tenet of our country: That people should be able to be individuals, to be themselves without fear of being attacked for their individuality, for their personhood, for their very essence.

These hate crimes are very real offenses. They combine uncontrolled bigotry with vicious acts. These crimes not only inflict personal wounds, they wreak havoc on the emotional well-being of people throughout this country, because they attack a person's identity as well as his or her body. Although bodies heal, the scars left by

these attacks on the minds of the victims are deep and often endure for many years.

There is no better way for us to reaffirm our commitment to the most basic of American values: the dignity of the individual and the right of that individual to be himself or herself. We can do that by voting in favor of this amendment. I believe it is our duty. I am pleased to join this great debate and lend my support to this amendment. I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. JEFFORDS. Mr. President, I rise today to support the Hate Crimes Prevention Act. I applaud Senators KENNEDY and SMITH of Oregon, and others for providing us an amendment on the Department of Defense authorization bill which will be of great assistance in the prosecution of hate crimes.

This legislation will provide the Federal Government a needed tool to combat the destructive impact of hate crimes on our society. The amendment also recognizes that hate crimes are not just limited to crimes committed because of race, color, religion, or national origin, but are also directed at individuals because of their gender, sexual orientation, or disability.

Any crime hurts our society, but crimes motivated by hate are especially harmful. Hate crimes not only target individuals but are also directed to send a message to the community as a whole. The adoption of this amendment would help our State and local authorities in pursuing and prosecuting the perpetrators of hate crimes.

Many States, including the State of Vermont, have already passed strong hate crimes laws. I applaud them for their endeavor. An important principle of this amendment is that it allows for Federal prosecution of hate crimes without impeding the rights of States to prosecute these crimes.

Under this amendment, Federal prosecutions would still be subject to the current provision of law that requires the Attorney General or another senior official of the Justice Department to certify that a Federal prosecution is necessary to secure substantial justice. Such a requirement under current law has ensured that the States are the primary adjudicators of the perpetrators of hate crimes, not the Federal Government. Additionally, Federal authorities will consult with the State and local law enforcement officials before initiating an investigation or prosecution. Both of these are important provisions to ensure that we are not infringing on the rights of States to prosecute these crimes.

Senate adoption of this amendment will be an important step forward in ensuring that the perpetrators of these harmful crimes are brought to justice. I urge my colleagues to take a strong stand against hate crimes by supporting this important legislation.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Has the Senator from Vermont completed his statement?

Mr. JEFFORDS. Yes. I have yielded the floor.

Mr. REID. Mr. President, in Las Vegas a gay man was shot to death because he was gay. In Reno, someone went to a city park with the specific purpose to find someone who was gay, found him, and killed him. These types of incidents have happened not once, not twice, but numerous times in Nevada, and thousands of times around this country.

I only mention two of the occasions where someone's son, someone's brother was killed. They were human beings. These people were killed not because of wanting to steal from them, not because of wanting to do anything other than to kill them because of who they were. They were killed because someone hated them.

Mr. President, I rise today in support of the Local Law Enforcement Act of 2000. I am an original cosponsor of the freestanding legislation authored by the senior Senator from Massachusetts, Mr. KENNEDY. I commend Senator KENNEDY for his tireless efforts to ensure that the Senate consider and pass this important and much-needed measure. This is important legislation, and I am very happy that we are now at a point where this legislation can be debated in the Senate.

Hate crimes legislation is needed because, according to the FBI, nearly 60,000 hate crimes incidents have been reported in the last 8 years. In 1998, the latest year for which FBI figures are available, nearly 8,000 hate crimes incidents were reported. But these figures are more frightening when we ponder how many hate crimes are not reported to law enforcement authorities.

Unfortunately, the Federal statutes currently used to prosecute hate-based violence need to be updated. That is what Senator KENNEDY is doing. These Federal laws, many of which were passed during the Reconstruction era as a response to widespread violence against former slaves, do not cover incidents of hate-based crimes based upon a person's sexual orientation, gender, or disability. In 1998, again, the last year for which statistics are available, there were 1,260 hate crimes incidents based on sexual orientation reported to law enforcement. Many more took place. These are only the ones that were reported. This figure, which represents about 16 percent of all hate crimes reported in 1998, demonstrates that current law must be changed to include sexual orientation under the definition of hate crimes.

I have listened to the debate on the floor today. I think we all have some remembrance of the terrible series of events which occurred in Jasper, TX, a couple years ago. On June 7, the country paused to remember the second anniversary of James Byrd, Jr.'s horrific death, when he was dragged along a rural back road in Texas. This man was just walking along the road when certain people, because of the color of his skin, grabbed him, beat him, and if that wasn't enough, they tied him, while he was still alive, to the back of their pickup and dragged him until he died.

Due to the race-based nature of the Byrd murder, Federal authorities were able to offer significant assistance, including Federal dollars, to aid in the investigation and prosecution of that case to ensure that justice was served.

Unfortunately, the same cannot be said about another case that has already been talked about here on the floor today; the case of Matthew Shepard. He was a very small man. In spite of his small size, two men, assisted by one or both of their girlfriends, took this man from a bar because he was gay, and, among other things, tied him to a fencepost and killed him.

This was gruesome. It was a terrible beating and murder of this student from the University of Wyoming. But, what makes this case even more disturbing is that Wyoming authorities did not have enough money to prosecute the case. They did, of course, but in order to finalize the prosecution of that case, they had to lay off five of their law enforcement employees. The local authorities could not get any Federal resources because current hate crimes legislation does not extend to victims of hate crimes based upon sexual orientation.

If there were no other reason in the world that we pass this legislation than the Matthew Shepard case, we should do it. I have great respect for those people in Wyoming who went to great sacrifice to prosecute that case.

The hate crimes legislation being offered to the Defense Authorization bill is a sensible approach to combat these crimes based upon hate. The measure would extend basic hate crimes protections to all Americans, in all communities, by adding real or perceived sexual orientation, gender, or disability categories to be covered.

The amendment would also remove limitations under current law which require that victims of hate crimes be engaged in a federally protected activity.

There may be those who are listening to this debate and wondering why we need to protect those people who are handicapped or disabled? We need only look back at some of the genocide of the Second World War and recognize that Hitler was totally opposed to anyone who was not, in his opinion, quite right. He went after people who had disabilities.

So there are people, as sad as it may seem, who not only are hateful of people who are of a different color, a different religion, a different sexual orientation, but also someone who does not have all their physical or mental capacities.

We must give law enforcement the tools they need to combat this kind of

violence, to help ensure that every American can live in an environment free of terror brought on by hatred and violence.

As Senator KENNEDY will say, this amendment has been carefully drafted and modified to assure its constitutionality under current Supreme Court precedents and has been reexamined in light of the recent Morrison decision which invalidated the civil rights remedy in the Violence Against Women Act. I appreciate the work done by Senator KENNEDY and the Judiciary Committee for taking such a close look at this legislation.

I have shared with my colleagues two incidents in Nevada. There are many, many others. There are incidents in all 50 States and the District of Columbia of people who have been kidnaped, beaten, raped, and murdered as a result of their sexual orientation. Court records reveal that in each of these cases, with rare exception, there is hate that spews out of these people's mouths before the act takes place, derogatory names and slurs as they are taking people to their deaths, brutal sadistic murders.

These victims are someone's son, someone's daughter, someone's brother, someone's sister, someone's loved one. People should not be killed because they are different; they should not be killed because someone has a certain, misguided standard of how someone else should be. People should not be killed because of hate.

We live in America, the land of freedom and opportunity. We should make sure we stand for morality based upon people's accomplishments, not because of their race, color, creed, or sexual orientation.

I extend my congratulations to Senator KENNEDY for the work he has done. I hope these two men, Senators HATCH and KENNEDY, who have worked so closely on legislation over the years, will see that this important aspect of the law which needs to be revised is revised in such a way that we can all hold our heads high and say: When these crimes take place in the future, authorities in States such as Wyoming will not have to lay off five law enforcement officers to prosecute the crime.

The PRESIDING OFFICER (Mr. SMITH of Oregon). The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I thank all of our colleagues for addressing this issue on this Monday afternoon. We generally, on Monday afternoons as well as on Friday afternoons, have less heavy matters before our body.

This afternoon we have had a very impressive series of statements that have urged us to take the action on tomorrow to move ahead and pass strong hate crimes legislation. I listened earlier to a number of our colleagues. I thought there were many excellent statements, which I am hopeful our Members will have a chance to review in the early morning in the CONGRESSIONAL RECORD. These statements have been absolutely superb. We have had a wide variety of different Members from different backgrounds and experiences, different political viewpoints, speak on this issue. That is the way it should be because we are talking about a matter of fundamental importance for our society and our country. We are talking about what our country is really about, what steps we are prepared to take to make America, America.

We have shown that over a period of time, certainly since the end of the Civil War, this Congress has taken steps to guarantee the protection of constitutional rights, going back to 1866. In the more modern time, we enacted civil rights legislation in the early 1960s, after the extraordinary presence of Dr. King who awakened the conscience of our Nation in the latter part of the 1950s and early part of the 1960s. We went ahead and took action in 1964 on what was known as the Public Accommodation Act. We were asked: Will the kinds of enforcement mechanisms stand up under constitutional challenge? And they did.

Then, in 1965, we took action in order to preserve the right to vote for our citizens. Now it seems almost extraordinary that a large number of Americans were denied the right to vote. At that time, it was debated for some time. We took strong steps to ensure that America was going to be America in terms of the right to vote. In 1968, we had our Fair Housing Act to make sure that citizens whose skin was a different color were not going to be denied the opportunity to purchase homes. We took action in 1968 to protect that right. It wasn't very effective. We had to come back and revisit that again in 1988. Still, the progress went on. In 1988, we passed legislation to protect the rights of the disabled in our society. We had made some progress with what is known as Title VII over time, but the Americans with Disabilities Act was the legislation that established protections. We were saying to the American people—and the American people supported it—that if individuals have a disability, they should not be discriminated against in our society.

This is what we are talking about. We are talking about forms of discrimination. Discrimination is rooted in the basic emotion of hatred, of distrust, and of bigotry. We have seen it manifested in race relations in our country. Hatred, distrust and bigotry have also been reflected in other ways: on the basis of religion, national origin, sexual orientation, gender, and disability. We freed ourselves from discrimination based on national origin with the 1965 Immigration Act. The Immigration Act had certain rules for those who came from the Asian Pacific Island triangle. We only permitted less than 150 Asians to come onto our shores prior to 1965. Then we also had what was called the national origin quota system which discriminated against people who came from a number of the European countries. All of this is part of our national history.

One of the amazing and important aspects of the progress that America has made in recent time is in trying to free us from the stains of discrimination. We are talking not only about those who have been discriminated against but those who have perpetrated the discrimination.

We are talking about a continuum of this Nation attempting to define what America ought to be—a nation free from the forms of discrimination and hatred and bigotry. That is what distinguishes hate crimes from other criminal activities. Crimes based upon hatred and bigotry wound not only the individual, but they also wound and scar an entire community.

Hate crimes occur on a daily basis in the United States of America. Numerous hate crime incidents have been mentioned by our colleagues and illustrated time and again. According to FBI statistics, nearly one hate crime is committed every hour.

My colleagues and I want to take action that will move this country forward and free us from those acts of hatred that divide us.

We can't solve all of these problems, but there is no reason, when we have violence in our society, that those who are charged with protecting the Constitution of the United States ought to be standing on the sidelines when violence based upon discrimination is taking place in the United States of America. Why should we limit ourselves—those who have a responsibility—from helping and assisting those who are involved in local enforcement and State law enforcement, particularly when we are talking about these hate crimes against women in our society?

An individual was charged in Yosemite this past year with the murder of four women. He told the police investigators he had fantasized about killing women for three decades. A gay, homeless man in Richmond, VA, was found with a severed head and left at the top of a footbridge in James River Park near a popular gay meeting place. In Crystal Lake, IL, a Japanese American shopowner was shot to death outside of Chicago, based upon the fact of discrimination against Asians. Three synagogues in Sacramento, in July of 1999, were destroyed by arson on the basis of anti-Semitism.

These things are happening today. With all due respect to my friend and colleague from Utah, his legislation is basically to have a further study about whether these kinds of activities are taking place. This amendment that he has, on page 1, talks about studies, the collection of data, the data to be collected. Then it shows the number of relevant offenses, the percentage of offenses prosecuted. It continues on with the identification of trends. Then it has provisions for grants to local communities, and eligibility, and grants of $100,000.

We have had the FBI doing the study for the last 10 years. We have the figures that the FBI has produced. The one thing that the FBI has testified to, and is very clear about in their studies, is they believe it is vastly underestimating the amount of hate crimes that are taking place, because in so many instances there isn't the local training or prioritizing of hate crimes by local communities and State communities in order to collect the information or data on this.

So we do know that this is happening today. It is happening in increasing numbers. The reports that we do have basically underestimate the amount of action and activity that is taking place, and the States themselves—some of them—have taken action. But very few, if any, have taken the kind of comprehensive action we are talking about.

There are enormous gaps in the activities of the States in the kinds of protections they are providing. Others have talked about it, and I am glad to get into the various kinds of protections that we are talking about here, the reasons for this legislation. Again, I say, this is our opportunity—and tomorrow—to say whether we are going to be serious about taking action in this area of bigotry and hatred that is focused on particular groups in our society. We have been willing to take action in the past. We were willing to do it in the past. I have mentioned six or eight instances when this Congress thought there was such a compelling reason for us to take the action that we went ahead and took that action in order to try to do something about discrimination in our society.

We have the same issue in a different form before the Senate now. In the early 1960s, we had discrimination against blacks because we were not going to permit them to vote. We passed legislation and then implementing legislation. We said we were not going to protect discrimination and bigotry, discriminating against blacks in the areas of housing. We did the same regarding the disabled on the Americans With Disabilities Act. We made progress on discrimination against women in our society, and we have made progress as well in terms of understanding the various challenges on freeing ourselves from some forms of discrimination on the basis of sexual orientation—although we have made very little in that area.

The question is not the issue on sexual orientation. It is about violence against individual Americans. That is what it is about when you come down to it. It is violence based on bigotry. You can read long books about the origins of hatred and the origins of bigotry and the origins of prejudice and how they develop against individuals or individual groups. Many of them are different in the way that they did develop. But there is no difference about what is there basically when it is expressed in terms of violence. It is still violence against those individuals, and that is what we are attempting to address.

I will put in the RECORD the various justifications, in terms of the constitutional issues. We can get into those and debate and discuss those in the course of the evening. We believe we are on sound basis for that. We have spent a great deal of time in assuring that the legislation was going to meet the challenges of Supreme Court decisions. I believe that we do. I respect those who believe we have not. But we are talking about taking action and doing it now.

There are all kinds of reasons in this body why not to take action. But if we want to try to have an important response to the problems of hate crimes in our society, this is the way to do it. It is a bipartisan effort, and it has been since the development of our initial efforts under the leadership of Senator Simon and others a number of years ago, with just the collection of material. It has been, since that time, basically bipartisan, and it is on this measure now. It is whether we in the Senate are going to say that we have enough of the Matthew Shepard cases, that we have enough of the kind of vicious murdering on the basis of race, that we have enough prejudice and discrimination and expression of violence against Jewish individuals in our society, and we have had enough in terms of the violence against those who have a different sexual orientation. That is what the issue is, no more and no less.

I want to take a few moments, and if others want to address the Senate, I will obviously permit them to do so. I want to give the assurances to our colleagues about how this particular legislation has been fashioned and has been shaped. It is targeted, it is limited, it is responsive in terms of its constitutional standing and how it basically complements the work of the States, which are attempting to try to deal with those issues, and how it is positive in terms of helping those States, and how, in many circumstances—for example, in a number of the rapes or aggravated sexual assaults, because criminal penalties under State laws are actually more severe than under Federal laws, the prosecution quite clearly would fall in those circumstances.

As has been pointed out, in all the hate crimes prosecutions, the Federal authorities consult with the State and local enforcement officials before initiating an investigation or prosecution. The Federal jurisdiction allows the States to take advantage of the Department of Justice resources and personnel. Even if the State authorities ultimately bring the case, the Federal jurisdiction also allows the Attorney General to authorize the State prosecutor to bring a case based on Federal law, when that should be important or necessary.

In cases where the States have adequate resources to investigate and prosecute a case and it appears determined to do so, the Federal Government will not file its own case. As has been the case under existing law, prosecutions under expanded case law would occur primarily in four situations: where the State does not have jurisdiction or the State prosecutors decline to act; or, after consultation between Federal and local authorities there is a consensus that a Federal prosecution is preferable because of the higher penalties and procedural advantages due to the complexity of the case; third, the state does not object to the Justice Department assuming jurisdiction; or fourth, that the State prosecution does not achieve a just result and the evidence warrants a subsequent Federal prosecution.

Those are very limiting factors because they effectively give the States veto rights over Federal jurisdiction. We are talking about having an extremely effective remedy, one that will be in the interest of justice but one that is carefully sharpened in terms of its scope to make sure that we maintain local involvement and consider local priorities.

The point is made that the Federal Hate Crimes Act would, in many cases, continue to overlap State jurisdiction. People have opposed this proposal for that reason. Violent crimes, whether motivated by discriminatory animus or not are generally covered under State law, and such an overlap is common. For example, there is overlapping Federal jurisdiction in cases of many homicides, in bank robberies, in kidnapings, in fraud, and other crimes.

We have been willing to do it in other circumstances, and I believe that we must have overlapping jurisdiction for violent crimes based on animus and hatred as well. We must take meaningful steps to do something about it. Clearly, I think we have an important responsibility to act.

The importance of the amendment is to provide a backstop to State and local enforcement by allowing a Federal prosecution, if it is necessary, to achieve an effective just result and to permit Federal authorities to assist in local investigations.

As has been mentioned, every Federal prosecutor would have to prove motivation beyond a reasonable doubt in all cases. The prosecution would present evidence that indicated that a motivating factor in the defendant's conduct was bias against a particular group. That is a question for the jury to decide. Obviously, the prosecutor must convince the jury that the crime was based upon bias in order to secure a conviction.

I withhold and yield the floor.

The PRESIDING OFFICER (Mr. FITZGERALD). The Senator from Utah is recognized.

Mr. HATCH. Mr. President, I listened carefully to the comments of my colleague. He knows I have great respect for him in regard to civil rights matters. I have great commendation for him. I feel deeply, as he does. However, there is no use kidding about it. I

think we ought to be prudent in the approach that we take. I think we ought to be constitutionally sound as well.

In all of the comments of my dear friend, he still hasn't answered this basic question, which is: Can those who are pushing this very broad legislation that would federalize all hate crimes—and all crimes are hate crimes, by the way. I believe that is, if not wholly true, certainly substantially true—but can those who want to enact this broad legislation federalizing all hate-motivated crimes tell me the number of instances, if any, in which State or local authorities have refused or failed to investigate and prosecute hate crimes? If there are any cases in which State or local authorities have refused or failed to investigate and prosecute a hate crime, was it because the State or the local jurisdiction was unwilling, for whatever reason, to bring the prosecution?

These questions haven't been answered. We asked them at the hearings, and the Justice Department couldn't answer them. In fact, Deputy Attorney General Holder testified that States and localities should be responsible for prosecuting the overwhelming majority of hate crimes. He said:

> State and local officials are on the front lines and do an enormous job in investigating and prosecuting hate crimes that occur in their communities. In fact, most hate crimes are investigated and prosecuted at the State level.

That is the Deputy Attorney General of the United States of America.

We have never denied that hate crimes are occurring. Nobody can deny that. I want to get rid of them as much as anybody—certainly as much as the distinguished Senator from Massachusetts.

But we have yet to hear of specific instances where States have failed or refused to prosecute. We have heard lots of horrific stories about hate crimes from Senators KENNEDY, REID, and DURBIN. But I think they have neglected to finish the story.

In each case, the Shepard case and the Byrd case, for example—heinous crimes, no question about it—that should never have occurred; that should have been prosecuted; and were prosecuted. The State prosecutors investigated those cases. They prosecuted the defendants. In the Byrd case, the prosecutors even obtained the death penalty, something that could not be obtained if the Kennedy amendment had been passed and the Federal Government had brought the case. Think about that. I think some crimes are so heinous that the death penalty should be imposed. Certainly the Byrd case, where racists chained James Byrd to a truck and dragged him to death on a back road in Jasper, Texas, warranted the death penalty. But in all of those cases, there ought to be absolute proof of guilt. The crime ought to be so heinous that it justifies the penalty, and there should be no substantial evidence of discrimination. In the Byrd case and the Shepard case, the defendants were fully prosecuted to the fullest extent of the law.

The question is not whether hate crimes are occurring. They are. We have them in our society—the greatest society in the world. We have some hate crimes. They are occurring. We all know it. They are occurring, and they are horrific and are to be abhorred. The question, though, is whether the States are adequately fighting these hate crimes, or whether we need to make a Federal case out of every hate-motivated crime.

My amendment calls for an analysis of that question. If my amendment passes and causes an analysis of that question, and we conclude that hate crimes are not being prosecuted by the State and local prosecutors, my gosh, I think then we are justified to federalize, if we can do it constitutionally, many of these crimes.

A prudent thing, in my view in light of the constitutional questions that are raised by the Kennedy amendment, would be to do the analysis first.

But my amendment does more than that. My amendment provides funds to assist State and local authorities in investigating and prosecuting hate-motivated crimes. My amendment provides resources and materials to be able to help States and localities with hate crimes. We are not ignoring the problems that exist.

Deputy Attorney General Eric Holder conceded in his testimony before our committee, and he acknowledged that an analysis of the hate crimes statistics that have been collected needs to be conducted to determine whether State and local authorities are failing to combat hate crimes. Eric Holder testified that the statistics we have are, to use his term, ''inadequate.'' In his testimony, Deputy Attorney General Holder repeatedly argued that the Justice Department should be permitted to involve itself in local hate crime cases where local authorities are ''unable or unwilling to prosecute the case.'' Holder admitted in his testimony that there are ''not very many'' instances—later in his testimony, he said, ''rare instances''—where local jurisdictions, for whatever reason, are unwilling to proceed in cases that the Justice Department ''thinks should be prosecuted.''

At the hearing, I asked Deputy Attorney General Holder if he could identify ''any specific instances in which State law enforcement authorities have deliberately failed to enforce the law against the perpetrator of a crime.'' I asked him a specific question, to give me any specific instances in which State law enforcement authorities have deliberately failed to enforce the law against the perpetrator of a crime.

I went further and I asked him, ''So the question is, can you give me specific instances where the States have failed in their duty to investigate and prosecute hate crimes.'' Deputy Attorney General Holder responded with only a handful of specific instances—and they were not instances where the State or local authorities refused to act but instances where the Justice Department felt that it would have tried the case differently or sought a harsher sentence, or where the Justice Department was not pleased with the verdict that State prosecutors obtained. The few cases Holder identified generally were not cases where State officials abdicated their responsibility to investigate and prosecute hate-motivated crimes.

I have to believe there may be some such cases, but the ones Mr. Holder identified were not persuasive. They did not show any widespread pattern of State and local authorities refusing or failing to investigate and prosecute hate crimes. I am happy to receive them from my distinguished friend from Massachusetts, and I am sure he may be able to cite some. Are there so many of them that we justify federalizing all hate crimes and dipping the Federal nose into everything that is done on the State and local levels? I don't know—in my mind, the case for doing so has not yet been made.

Deputy Attorney General Holder also testified that no hate crimes legislation is worthwhile if it is invalidated as unconstitutional. It would be one thing if we were talking about a Supreme Court case that was decided 100 years ago. We are talking about a case, however, the Morrison case, that was decided one month ago and invalidates exactly what Senator KENNEDY is doing today. If we find out that States are refusing to prosecute hate crimes, then we would be justified under the 14th amendment in enacting legislation directed at State officials or people acting under color of law who are denying victims of hate crimes the equal protection of the laws. If that were shown, then we would be justified, especially if such conduct were pervasive, or especially if there were a considerable number of cases where State officials were denying the equal protection of the laws by refusing to prosecute crimes committed against certain groups or classes of people. The supporters of the Kennedy amendment, I have to believe, will be able to come up with one, or two, or maybe three cases where State officials denied the equal protection of the laws in this manner. But even if then can, would that justify federalizing all hate crimes?

Mr. President, 95 percent of all criminal activity is prosecuted in State and local jurisdictions—95 percent. There are good reasons for that. Frankly, they do every bit as good a job as Federal prosecutors do.

But if you put in ''gender,'' as Senator KENNEDY does in his amendment, then every rape or assault becomes a Federal crime. I can just hear some of the very radical groups demanding that U.S. attorneys in Federal court bring cases in every rape case because every rape, in my opinion, is a hate crime.

However, there is no evidence that the States are not handling those sorts of cases properly. They may be in a better position to handle them well. It may be that the federal government needs to provide enough money, so that as a backup, the DNA postconviction and even preconviction DNA testing can be conducted and we can see that justice is done.

I am not unwilling to consider doing that. In fact, I am considering doing just that. I take no second seat to any Senator in this Chamber in the desire to get rid of hate crimes. But I do think you have to be wise and you can't just emotionally do it because you want to federalize things and you want to get control of them, when, in fact, the State and local governments are doing a fairly decent job. If they are not, that is another matter. I want to see the statistics. That is one reason I want a study, an analysis of these matters, so that we can know.

Senator KENNEDY and I fought on this very floor for the Hate Crimes Statistics Act. I have taken a lot of abuse through the years for having done so by some on the conservative side, and by some on the liberal side for not doing more. We have the statistics. We have a pretty good idea that these crimes are being committed. We just haven't got an analysis, nor do we have the facts, on whether the States are doing an adequate job of combating these crimes. And why should we go blundering ahead, federalizing all these crimes, when we are not really sure that the State and local governments are not doing a good job. In fact, the evidence I have seen appears to show that the States are taking their responsibilities in this area seriously.

My amendment does a lot. It calls for a study to determine whether these hate-motivated crimes are not being prosecuted at the State level in the manner that they should be. There are those in our body who even fight against that. I am talking about the Congress as a whole. I hope there is nobody in the Senate who would fight against that. We should do an analysis and a study. We should know. We have the statistics.

I do want to clear up one thing. The Department of Justice did send up a handful of cases in which the Department felt the result in hate crime litigation was inadequate. But the very few cases they identified in no way justify this type of expansive legislation. That is what I am concerned about.

Now, if we find that the States are refusing to do their jobs, that is another matter. We would be justified under the equal protection clause of the 14th amendment to enact remedial legislation prohibiting the States from denying our citizens the equal protection of the laws by refusing or failing to combat hate crimes.

Supporters of the Kennedy amendment argue that their amendment is limited because the Justice Department could exercise jurisdiction only in four instances. Supporters of the Kennedy amendment call these instances ''exceptions''—as in the Justice Department will not exercise jurisdiction over State prosecutions of hate crimes, ''except'' when one of the four circumstances outlined in the amendment is present. But these so-called ''exceptions'' to the exercise of federal jurisdiction are exceptions that swallow the rule.

The Kennedy amendment raises serious constitutional decisions or questions. The amendment is not consistent with the Supreme Court's decisions in United States v. Lopez and United States v. Morrison, just decided last month. The amendment attempts to federalize crimes committed because of the victim's actual or perceived race, color, religion, national origin, gender, sexual orientation, or disability.

Last month's Supreme Court decision in United States v. Morrison changed the legal landscape with regard to congressional power vis-a-vis the States. In light of the Morrison decision, we first should take adequate steps to ensure that legislation is constitutional. And where serious constitutional questions are raised, we should responsibly pursue less intrusive alternatives. In the case of hate crimes legislation, we should at least determine whether a broad federalization of these crimes is needed, and whether a broad federalization of these crimes would be constitutional in light of Morrison. What may have been constitutional in our minds pre-Morrison may not be constitutional today.

I was the primary cosponsor of the Violence Against Women Act. It may never have come up had Senator BIDEN and I not pushed it as hard as we did. I believed it was constitutional at the time, or I wouldn't have done it. But it clearly was stricken as unconstitutional by the Supreme Court.

As the father of three daughters and a great number of granddaughters, I certainly want women protected in our society. If the State and local governments are not doing that, I will find some way. I think perhaps Senator KENNEDY, I, and others of good faith can find some way of making sure that these wrongs are righted.

But Congress has a duty to make sure that legislation it enacts is constitutional. Justice Scalia, as I stated earlier, recently criticized Congress for failing to consider whether legislation is constitutional before enacting it. Here is what he said:

> My court is fond of saying that acts of Congress come to the court with the presumption of constitutionality. But if Congress is going to take the attitude that it will do anything it can get away with, and let the Supreme Court worry about the Constitution [let the Supreme Court worry] perhaps the presumption is unwarranted.

He is saying that we have a constitutional obligation to live within the constraints of the Constitution. Although Morrison was a 5–4 decision, as many important decisions are, it is the supreme law of this land. And the Kennedy approach is unconstitutional.

It is unconstitutional because under the 14th amendment it seeks to criminalize purely private conduct. In the Morrison case, the Supreme Court reaffirmed that legislation enacted by Congress under the 14th Amendment may only criminalize State action, not individual action. So it really is unconstitutional from that standpoint, from the standpoint of the 14th Amendment.

In addition, the Kennedy amendment is unconstitutional under the commerce clause. In Morrison, the Supreme Court emphasized that the conduct regulated by Congress under the commerce clause must be ''some sort of economic endeavor. Here, the conduct sought to be regulated—the commission of hate crimes—is in no sense economic or commercial, but instead is non-economic and criminal in nature. Accordingly, it is just like the non-economic conduct Congress sought to regulate in the Gun Free Schools Zones Act and the Violence Against Women Act—statutes held to be unconstitutional in Lopez and Morrison.

In an effort to be constitutional, the Kennedy amendment provides that federal jurisdiction can only be exercised in four circumstances where there is some sort of link to interstate commerce. These circumstances, however, probably do not make the amendment constitutional.

First, the interstate travel circumstance set forth in the Kennedy amendment arguably may provide an interstate nexus, but it does nothing to change the criminal, generally non-economic nature of a hate crime. The same can be said for the other circumstances set forth in the Kennedy amendment authorizing the exercise of federal jurisdiction. The second circumstance's requirement, that the crime be committed by using a ''channel, facility or instrumentality of interstate'' commerce, also may provide a interstate nexus, but it is unclear precisely what hate crimes that would encompass: hijacking a plane or blowing up a rail line in connection with a hate crime? Such occurrences, if happening at all, surely are so infrequent as to make the Kennedy amendment unnecessary. And I might add, in these cases they have been prosecuted by state and local officials who have the right and power to do so. So there seems little or no reason to want the Kennedy amendment on that basis. But without some economic activity, it still makes you wonder.

The third circumstance's requirement that the defendant have used a weapon that traveled in interstate commerce would eviscerate the limits on commerce clause authority the Court stressed in Lopez and Morrison. If using a weapon that happened to have traveled in interstate commerce to commit a hate crime provides a sufficient interstate nexus authorizing congressional action federalizing hate

crimes, then by the same logic Congress could federalize essentially all State crimes where a firearm or other weapon is used. And that would include most homicides had assault cases.

The fourth circumstance's requirement that the victim be working and that the hate crime interfere with such working is analogous to the reasoning the Court rejected in Morrison. In Morrison, the Court rejected the argument that gender-motivated violence substantially affects interstate commerce. It can only be presumed that the Court would similarly conclude that violence motivated by disability, sexual orientation or gender—again—does not substantially affect interstate commerce. The Court in Morrison and in Lopez rejected these ''costs of crime'' and ''national productivity'' arguments because they would permit Congress to regulate not only all violent crime, but all activities that might lead to violent crime, regardless of how tenuously they relate to interstate commerce.

Finally, the Kennedy amendment's catch-all provision—that federal prosecution is permitted where the hate crime ''otherwise affects interstate or foreign commerce''—not only merely restates the constitutional test, it restates it wrongly. Under Lopez and Morrison, the conduct sought to be regulated under the commerce clause must ''substantially affect'' interstate commerce. The Kennedy amendment provides for a much lower standard.

With regard to the first amendment, the Kennedy amendment also has the potential to have a chilling effect on constitutionally protected speech. Under the amendment, the Federal Government could obtain a criminal conviction on the basis of evidence of speech that had no role in the chain of events that led to any alleged violent act proscribed by the statute. Evidence that a person holds racist or other bigoted views that are unrelated to the underlying crime cannot form the basis for a prosecution—otherwise the statute would be unconstitutional under the first amendment.

The Kennedy hate crimes amendment is also bad policy. It would place significant burdens on federal law enforcement and Federal courts, undermine State sentencing regimes, and unduly interfere with State prosecution of violent crime.

The Kennedy amendment prohibits hate crimes based upon the victims gender. I mentioned this earlier. Accordingly, the amendment, on its face, could effectively federalize all rapes and sexual assaults. Not only would such a statute likely be unconstitutional, it also would be bad policy. Seizing the authority to investigate and prosecute all incidents of rape and sexual assault from the States could impose a huge burden on Federal law enforcement agencies, Federal prosecutors, and the federal judiciary.

I know that the Supreme Court is very concerned about the proliferation of federal crimes, as are all Federal courts in our country. They think we federalize far too many laws when, in fact, the States are doing a good job in prosecuting those crimes. And there is little or no reason for us to intrude that much on State laws when they are doing a good job.

Authorities in Jasper, TX, secured a death penalty against the murderers of James Byrd, Jr., without either State or Federal hate crimes legislation. In contrast, the Kennedy amendment does not provide for the death penalty, even in the case of the most heinous hate crimes. Under the Kennedy amendment, then, a State could prosecute the same criminal acts more harshly than under the Kennedy hate crimes amendment. As a result, the Kennedy amendment would provide a lesser deterrent against hate-based criminal conduct.

If there was ever a case justifying the death penalty, it certainly was the case of James Byrd, Jr. But then again it makes my point. The State and local prosecutors were fully capable of taking care of this matter. And why should we intrude the Federal Government's unwanted nose under the tent in this matter when the States are perfectly capable of taking care of these matters.

The Kennedy amendment also would unduly interfere with state prosecutions of hate crimes. Contrary to claims by supporters of the Kennedy amendment, the amendment would not defer to State or local authorities at all. The amendment leaves the Justice Department free to insert itself in a local prosecution at the beginning, middle or end of the prosecution, and even after the local prosecutor has obtained a guilty verdict.

Even if State or local authorities inform the federal government that they intend to prosecute the case and object to Federal interference, the Justice Department, nevertheless, is empowered by the amendment to exert enormous pressure on local prosecutors regarding the manner in which they handle the case, from charging decisions to plea bargaining decisions to sentencing decisions. In essence, the federal government can always exercise jurisdiction under the Kennedy amendment. And in so doing, the Kennedy amendment works an unwarranted expansion of federal authority to prosecute defendants—even when a competent State prosecution is available.

In my view, hate crimes can be more sinister than non-hate crimes. A crime committed not only to harm an individual, but out of the motive of sending a message of hatred to an entire community—often a community that historically has been the subject of prejudice or discrimination—is appropriately punished more harshly or in a different manner than other crimes.

In Wisconsin versus Mitchell, the Supreme Court essentially agreed that the motive behind the crime can make the crime more sinister and more worthy of harsher punishment. In that case, the Court upheld the State of Wisconsin's sentencing enhancement for hate crimes.

There is a limited role for the federal government to play in combating hate crime. The federal government can assist State and local authorities in investigating and prosecuting hate crimes. In addition, the Hate Crimes Statistics Act of 1990, which I sponsored, provides for the nationwide collection of data regarding hate crimes.

Because I believe there is a federal role to play, I have introduced legislation, held hearings, and am offering this amendment today. The Federal government has a responsibility to help States and local governments solve our country's problem of hate-motivated crime.

But for a federal response to be meaningful, it must abide by the limitations imposed on Congress by the constitution, as interpreted by the Supreme Court. This is especially true today in light of the Supreme Court's decisions in Lopez and Morrison, which emphasized that there are limits on congressional power. The Morrison case was decided just last month and changed the legal landscape regarding congressional power in relation to the States.

We should be concerned, as the Supreme Court is, about the proliferation of companion Federal crimes in areas where State criminal statutes are sufficient. The Kennedy amendment would vastly expand the power and jurisdiction of the Federal Government to intervene in local law enforcement matters.

Repeatedly, supporters of the Kennedy amendment have argued the State and local authorities are either ''unable or unwilling'' to investigate the prosecute hate crimes. Let's examine this rationale closely.

First, the argument that State and local authorities are unable to get serious about hate crimes: I do not dispute that in certain cases the resources of local jurisdictions may be inadequate. We can solve that. But that cannot mean that we therefore should federalize these crimes. That soft-headed logic would lead us to argue that because State and local resources are inadequate to, for example, educate our young people in some parts of the country, then the Federal Government should conduct a nationwide takeover of elementary and secondary education. That, of course, would be the wrong solution. The right solution to a problem involving inadequate resources at the local level is to try to provide some Federal assistance where requested and where needed. That is what my amendment does.

If it is not enough money, then let's beef up the money. That is what my amendment does. It provides the monetary means whereby we can assist the States if they do not have the money to investigate and prosecute hate-motivated crimes. With regard to postconviction DNA evidence, it may mean we have to do more from a Federal Government standpoint.

Second, I have even more difficulty stomaching the second argument put forth by supporters of the Kennedy amendment, that State and local authorities are unwilling to get serious about hate crimes. I admit that I am not certain what the supporters of the Kennedy amendment mean when they say ''unwilling.'' I assume that we all understand and appreciate that in numerous cases State and local officials are unwilling to go forward because the evidence does not warrant going forward. Supporters of the Kennedy amendment cannot possibly mean to cover all of these cases. So what do they mean? A subset of these cases? Does the Federal Government intend to review every case where local officials fail to go forward, second guess their judgments, and then pick and chose on which of those cases they want to proceed? The true answer is that no one knows what supporters of the Kennedy amendment mean when they claim that States are ''unwilling'' to deal with hate crimes.

If we want to act responsibly and sensibly, we ought to do what I suggest in my amendment—(1) conduct a comprehensive analysis of whether there, in fact, is unwillingness at the local level in the handling of crimes motivates against persons because of their membership in a particular class or group and (2) provide some grant monies to States who may lack resources.

The amendment I have offered does not go as far as legislation I have offered in the past, but this is not because I do not believe that hate crimes are not a problem. Rather, it is because the Supreme Court has ruled as recently as a month ago in this area, and I do not think we can ignore that. The recent decision in Morrison requires that we step back and prudently assess whether legislation like the Kennedy amendment would pass constitutional muster, and I think more than an overwhelming case can be made that it does not.

Let's assume that if this amendment is ultimately adopted, and 2 or 3 years from now the Supreme Court decides the case based upon that amendment, and I am right and the Kennedy amendment is overturned, that means we are 3 more years down the line unable to do anything about hate crimes in our society when, if we do the appropriate analysis and get the information and do not walk in there emotionally, and try to give the State and local governments the monetary support and the other types of support we describe in our amendment, we could start tomorrow combating hate crimes at the federal level. The day my amendment is passed doing something about hate crimes, that will really be substantial and will work. It is a throw of the dice if we adopt the Kennedy amendment and that becomes law because I do not believe it can be possibly upheld by the Supreme Court in light of current constitutional law.

My amendment is very limited and does not raise the constitutional questions raised by the Kennedy amendment. At the same time, it provides for Federal assistance to State and local authorities in combating hate crimes.

With regard to both amendments, I find no fault at all—in fact, I commend my distinguished colleague from Massachusetts, my friend from Oregon, and others who are pushing the Kennedy amendment because they believe something has to be done about hate crimes in our society. I find no fault with that. In fact, I admire them for doing that. I find no fault with people trying to write laws, but I do believe we can be 3 years down the line and lose all that time in making headway against hate criminal activity in our society.

Where, if we do it right today and do it in a constitutionally sound way, as my amendment does, then we will have truly accomplished something. Perhaps we can get together and find some way of doing this so it brings everybody together; I would like to see all civil rights bills, all bills that involve equal protection under the laws pass unanimously, if we can. I want to work to that end.

I pledge to work with my colleagues from Massachusetts, Oregon, Vermont, and others in this body in trying to get us there. We are all after the same thing, and that is to have a better society so that people realize there are laws by which they have to live, that there are moral laws by which they should live, and that people realize this society has been a great society and will continue to be, the more we are concerned about our fellow men and women and equality under the law.

We differ on the ways to get there at this point. Maybe we can get together and find some way of resolving the differences. I find no fault with my colleagues, other than that I think Morrison is so clear, and it was decided only a month ago. I do find fault in that sense, to push an amendment probably is unconstitutional.

I find no fault with the motivations behind those supporting the Kennedy amendment. In fact, I am very proud of my colleagues for wanting to do something in this area, to make a difference in our society and help our society be even better. I commend them and thank them for their efforts in that regard, but I do think we ought to do it in a constitutional way. I do think we ought to do it in a thoughtful way. I do think we ought to do it in an analytical way. I do think we ought do it in a way that will bring people together, not split them apart. And I do think we ought to do it in a way that will help State and local prosecutors, rather than Federal prosecutors, to handle these cases in manners that are proper and acceptable in our society. I do think it ought to be done in a way that does not burden our Federal courts with a plethora of cases, in addition to the drug cases burdening our courts today, when State and local governments are totally capable of taking care of it, perhaps with some monetary assistance from the Federal Government.

I look forward to finding a way whereby Senator LEAHY and I and others can get together to resolve these problems of postconviction DNA testing because regardless of where one stands on the death penalty, for or against it, that is not the issue. The issue is justice, and that is what the issue is here as well.

Does anyone in this body think I like opposing this amendment? I don't think so. I have stood up on too many of these matters for them to think that. But defending the Constitution is more important to me than ''feeling good'' about things or just ''feeling emotional'' about things. I do feel emotionally about hate crimes. I do want to stamp them out. I do want to get rid of them. I want to start now, not 3 years from now when we have to start all over again because the Court rules that the Kennedy amendment is unconstitutional.

I have taken enough time. I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, on tomorrow we will have the opportunity to choose between the proposal of the Senator from Utah and the amendment Senator SMITH and I are recommending to our colleagues.

When it is all said and done, as I mentioned earlier, the proposal that has been put forward by my friend and colleague from Utah is basically to conduct a study about the problems and frequency of hate crimes, permits up to $5 million in authorization, and permits the Justice Department to provide grants for prosecution. That is really the extent of the amendment of the Senator from Utah.

He has outlined his reasons for supporting that particular approach. I heard him say earlier he believes that it is really going to solve the problem and that it is going to really deal with the issue of hate crimes. Of course, I do not believe that to be the case.

We reviewed this issue on a number of different occasions in the Judiciary Committee. I understand his position. I respect it, although I do have some difficulties in being persuaded by it this evening.

For example, he basically has not questioned the existing limited hate crimes legislation that is on the books, 18 U.S.C. §245, dealing with the issue of race, color, religion, and national origin in our society, even though it is restricted in its application. He did not say we ought to eliminate that situation. He did not really refer to eliminating current hate crimes law.

The fact is, we have very limited hate crimes legislation on the books. Current law is restricted, as the Justice Department testified before the Judiciary Committee, in ways that virtually deny accountability for the serious hate crimes that are committed by individuals on the basis of race, color,

religion, or national origin in our society. Specifically, it requires the federal government to prove that the victim was engaged in a federally protected activity during the commission of the crime. We are trying to address this deficiency and to expand current law to include gender, disability, and sexual orientation.

Those of us who will favor our position tomorrow believe the ultimate guarantor of the right for privacy, liberty, and individual safety and security in our society is the Constitution of the United States. That is where the repository for protecting our rights and our liberties is enshrined. It is enshrined in the Constitution, as interpreted by the Supreme Court. But ultimately we are the ones who help define the extent of the Constitution's protection.

When we find that we have inadequate protection for citizens because of sexual orientation, or gender, or race, that challenge cries out for us to take action.

My good friend from Utah does not mind federalizing class action suits to bring them into the Federal court. He does not mind federalizing property issues in the takings legislation, to bring those into Federal court. For computer fraud, he does not mind bringing those crimes in Federal courts. But do not bring in Federal power to do something about hate crimes. I find that absolutely extraordinary.

Why are we putting great protection for property rights and computer fraud and class actions into Federal court, giving them preference over doing something about the problems of hate crimes in our society that even Senator HATCH admits are taking place? We see from the data collected by the FBI and various studies that hate crimes are taking place. That is a fact. Look at the statistics that have been collected over the last few years, from 1995 through 1998. We see what is happening with regard to race, religion, national origin, ethnic background, sexual orientation, and disability. As we have heard from the FBI and the Justice Department, they believe the FBI statistics vastly underestimate what is happening in our society.

The fact is, hate crimes are unlike any other crimes. Listening to the discussion of those who are opposed to our amendment, one would think these crimes were similar to pick-pocketing cases, misdemeanors, or traffic violations.

The kind of impact that hate crimes have in terms of not only the individual but the community is well understood. It should be well understood by communities and individuals. I do not have to take the time to quote what the American Psychological Society says about the enduring kind of burden that individuals undergo when they have been the victims of hate crimes over the course of their lifetime, even in contrast to other crimes of violence against individuals. It has a different flavor, and it has an impact on the victim, the family and the community. Hate crimes are an outrageous reflection of bigotry and hatred based on bias that cannot be tolerated in our society.

We have an opportunity to take some moderate steps to do something about it—to untie the hands of the Department of Justice. That is what tomorrow's vote is about. We have the constitutional authorities on our side, including the Justice Department, and others.

I will include the list of distinguished constitutional authorities that are supporting our positions.

Mr. President, I ask unanimous consent that the U.S. Department of Justice letter dated June 13, 2000, on the constitutionality of the Local Law Enforcement Enhancement Act of 2000 be printed in the RECORD.

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

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, DC, June 13, 2000.

Hon. EDWARD KENNEDY,
U.S. Senate, Washington, DC.

DEAR SENATOR KENNEDY: This letter responds to your request for our views on the constitutionality of a proposed legislative amendment entitled the ''Local Law Enforcement Enhancement Act of 2000.'' Section 7(a) of the bill would amend title 18 of the United States Code to create a new §249, which would establish two criminal prohibitions called ''hate crime acts.'' First, proposed §249(a)(1) would prohibit willfully causing bodily injury to any person, or attempting to cause bodily injury to any person through the use of fire, a firearm, or an explosive or incendiary device, ''because of the actual or perceived race, color, religion, or national origin of any person.'' Second, proposed §249(a)(2) would prohibit willfully causing bodily injury to any person, or attempting to cause bodily injury to any person through the use of fire, a firearm, or an explosive or incendiary device, ''because of the actual or perceived religion, national origin, gender, sexual orientation, or disability of any person,'' §249(a)(2)(A), but only if the conduct occurs in at least one of a series of defined ''circumstances'' that have an explicit connection with or effect on interstate or foreign commerce, §249(a)(2)(B).

In light of *United States* v. *Morrison*, 120 S. Ct. 1740 (2000), and other recent Supreme Court decisions, defendants might challenge the constitutionality of their convictions under §249 on the ground that Congress lacks power to enact the proposed statute. We believe, for the reasons set forth below, that the statute would be constitutional under governing Supreme Court precedents. We consider in turn the two proposed new crimes that would be created in §249.

1. PROPOSED 18 U.S.C. §249(A)(1)

Congress may prohibit the first category of hate crime acts that would be proscribed—actual or attempted violence directed at persons ''because of the[ir] actual or perceived race, color, religion, or national origin,'' §249(a)(1)—pursuant to its power to enforce the Thirteenth Amendment to the United States Constitution. Section 1 of that amendment provides, in relevant part, ''[n]either slavery nor involuntary servitude . . . shall exist within the United States.'' Section 2 provides, ''Congress shall have power to enforce this article by appropriate legislation.''

Under the Thirteenth Amendment, Congress has the authority not only to prevent the ''actual imposition of slavery or involuntary servitude,'' but to ensure that none of the ''badges and incidents'' of slavery or involuntary servitude exists in the United States, *Griffin* v. *Breckinridge*, 403 U.S. 88, 105 (1971); *see Jones* v. *Alfred H. Mayer Co.*, 392 U.S. 409, 440–43 (1968) (discussing Congress's power to eliminate the ''badges,'' ''incidents,'' and ''relic[s]'' of slavery). '''Congress has the power under the Thirteenth Amendment rationally to determine what the badges and incidents of slavery, and the authority to translate that determination into effective legislation.''' *Griffin*, 403 U.S. at 105 (quoting Jones, 392 U.S. at 440); *see also Civil Rights Cases*, 109 U.S. 3, 21 (1883) (''Congress has a right to enact all necessary and proper laws for the obliteration and prevention of slavery, with all its badges and incidents''). In so legislating, Congress may impose liability not only for state action, but for ''varieties of private conduct,'' as well. *Griffin*, 403 U.S. at 105.

Section 2(10) of the bill's findings provides, in relevant part, that ''eliminating racially motivated violence is an important means of eliminating, to the extent possible, the badges, incidents, and relics of slavery and involuntary servitude,'' and that ''[s]lavery and involuntary servitude were enforced . . . through widespread public and private violence directed at persons because of their race.'' So long as Congress may rationally reach such determinations—and we believe Congress plainly could—the prohibition of racially motivated violence would be a permissible exercise of Congress's broad authority to enforce the Thirteenth Amendment.

That the bill would prohibit violence against not only African Americans but also persons of other races does not alter our conclusion. While it is true that the institution of slavery in the United States, the abolition of which was the primary impetus for the Thirteenth Amendment, primarily involved the subjugation of African Americans, it is well-established by Supreme Court precedent that Congress's authority to abolish the badges and incidents of slavery extends ''to legisla[tion] in regard to 'every race and individual.''' *McDonald* v. *Santa Fe Trail Transp. Co.*, 427 U.S. 273, 288 n.18 (1976) (quoting *Hodges* v. *United States*, 203 U.S. 1, 16–17 (1906), and citing *Jones* v. *Alfred H. Mayer Co.*, 392 U.S. 409, 441 n.78 (1968)). In McDonald, for example, the Supreme Court held that 42 U.S.C. §1981, a Reconstruction-era statute that was enacted pursuant to, and contemporaneously with, the Thirteenth Amendment, prohibits racial discrimination in the making and enforcement of contracts against all persons, including whites.—See McDonald, 427 U.S. at 286–96.

The question whether Congress may prohibit violence against persons because of their actual or perceived religion or national origin is more complex, but there is a substantial basis to conclude that the Thirteenth Amendment grants Congress that authority, at a minimum, with respect to some religions and national origins. In *Saint Francis College* v. *Al-Khazraii*, 481 U.S. 604, 613 (1987), the Court held that the prohibition of discrimination in §1981 extends to discrimination against Arabs, as Congress intended to protect ''identifiable classes of persons who are subjected to intentional discrimination solely because of their ancestry or ethnic characteristics.'' Similarly, the Court in *Shaare Tefila Congregation* v. *Cobb*, 481 U.S. 615, 617–18 (1987), held that Jews can state a claim under 42 U.S.C. §1982, another Reconstruction-era antidiscrimination statute enacted pursuant to, and contemporaneously

with, the Thirteenth Amendment. In construing the reach of these two Reconstruction-era statutes, the Supreme Court found that Congress intended those statutes to extend to groups like ''Arabs'' and ''Jews'' because those groups ''were among the peoples [at the time the statutes were adopted] considered to be distinct races.'' Id.; see also Saint Francis College, 481 U.S. at 610–13. We thus believe that Congress would have authority under the Thirteenth Amendment to extend the prohibitions of proposed §249(a)(1) to violence that is based on a victim's religion or national origin, at least to the extent the violence is directed at members of those religions or national origins that would have been considered races at the time of the adoption of the Thirteenth Amendment.

None of the Court's recent federalism decisions casts doubt on Congress's powers under the Thirteenth Amendment to eliminate the badges and incidents of slavery. Both *Boerne* v. *Flores*, 521 U.S. 507 (1997), and *United States* v. *Morrison*, 120 S. Ct. 1740 (2000), involved legislation that was found to exceed Congress's powers under the Fourteenth Amendment. The Court in Morrison, for example, found that Congress lacked the power to enact the civil remedy of the Violence Against Women Act (''VAWA''), 42 U.S.C. §13981, pursuant to the Fourteenth Amendment because that amendment's equal protection guarantee extends only to ''state action,'' and the private remedy there was not, in the Court's view, sufficiently directed at such ''state action.'' 120 S. Ct. at 1756, 1758. The Thirteenth Amendment, however, plainly reaches private conduct as well as government conduct, and Congress thus is authorized to prohibit private action that constitutes a badge, incident or relic of slavery. See Griffin, 403 U.S. at 105; Jones, 392 U.S. at 440–43. Enactment of the proposed §249(a)(1) therefore would be within Congress's Thirteenth Amendment power.

2. PROPOSED 18 U.S.C. §249(A)(2)

Congress may prohibit the second category of hate crime acts that would be proscribed—certain instances of actual or attempted violence directed at persons ''because of the[ir] actual or perceived religion, national origin, gender, sexual orientation, or disability,'' §249(a)(1)(A)—pursuant to its power under the Commerce Clause of the Constitution, art. I., §8, cl. 3.

The Court in *Morrison* emphasized that ''even under our modern, expansive interpretation of the Commerce Clause, Congress' regulatory authority is not without effective bounds.'' 120 S. Ct. at 1748; *See also United States* v. *Lopez*, 514 U.S. 549, 557–61 (1995). Consistent with the Court's emphasis, the prohibitions of proposed §249(a)(2) (in contrast to the provisions of proposed §249(a)(1), discussed above), would not apply *except where* there is an explicit and discrete connection between the proscribed conduct and interstate or foreign commerce, a connection that the government would be required to allege and prove in each case.

In *Lopez*, the Court considered Congress's power to enact a statute prohibiting the possession of firearms within 1000 feet of a school. Conviction for a violation of that statute required no proof of a jurisdictional nexus between the gun, or the gun possession, and interstate commerce. The statute included no findings from which the Court could find that the possession of guns near schools substantially affected interstate commerce and, in the Court's view, the possession of a gun was not an economic activity itself. Under these circumstances, the Court held that the statute exceeded Congress's power to regulate interstate commerce because the prohibited conduct could not be said to ''substantially affect'' interstate commerce. Proposed §249(a)(2), by contrast to the statute invalidated in *Lopez*, would require pleading and proof of a specific jurisdictional nexus to interstate commerce for each and every offense.

In *Morrison*, the Court applied its holding in *Lopez* to find unconstitutional the civil remedy provided in VA WA, 42 U.S.C. §13981. Like the prohibition of gun possession in the statute at issue in *Lopez*, the VA WA civil remedy required no pleading or proof of a connection between the specific conduct prohibited by the statute and interstate commerce. Although the VA WA statute was supported by extensive congressional findings of the relationship between violence against women and the national economy, the Court was troubled that accepting this as a basis for legislation under the Commerce Clause would permit Congress to regulate anything, thus obliterating the ''distinction between what is truly national and what is truly local.'' *Morrison*, 120 S. Ct. at 1754 (citing *Lopez*, 514 U.S. at 568). By contrast, the requirement in proposed §249(a)(2) of proof in each case of a specific nexus between interstate commerce and the proscribed conduct would ensure that only conduct that falls within the Commerce power, and thus is ''truly national,'' would be within the reach of that statutory provision.

The Court in *Morrison* emphasized, as it did in *Lopez*, 514 U.S. at 561–62, that the statute the Court was invalidating did not include an ''express jurisdictional element,'' 120 S. Ct. at 1751, and compared this unfavorably to the criminal provision of VA WA, 18 U.S.C. §2261(a)(1), which does include such a jurisdictional nexus. *See id.* at 1752 n.5. The Court indicated that the presence of such a jurisdiction nexus. *See id.* at 1752 n.5. The Court indicated that the presence of such a jurisdictional nexus would go far towards meeting its constitutional concerns:

''The second consideration that we found important in analyzing [the statute in *Lopez*] was that the statute contained ''no express jurisdictional element which might limit its reach to a discrete set of firearm possessions that additionally have an explicit connection with or effect on interstate commerce.'' [514 U.S.] at 562. Such a jurisdictional element may establish that the enactment is in pursuance of Congress' regulation of interstate commerce.''

Id. at 1750–51; *see also id.* at 1751–52 (''Although *Lopez* makes clear that such a jurisdictional element would lend support to the argument that [the provision at issue in *Morrison*] is sufficiently tied to interstate commerce, Congress elected to cast [the provision's] remedy over a wider, and more purely intrastate, body of violent crime.'')

While the Court in *Morrison* stated that Congress may not ''regulate noneconomic, violent criminal conduct based solely on that conduct's aggregate effect on interstate commerce,'' *id.* at 1754, the proposed regulation of violent conduct in §249(a)(2) would *not* be based ''solely on that conduct's aggregate effect on interstate commerce,'' but would instead be based on a specific and discrete connection between each instance of prohibited conduct and interstate or foreign commerce. Specifically, with respect to violence because of the actual or perceived religion, national origin, gender, sexual orientation or disability of the victim, proposed §249(a)(2) would require the government to prove one or more specific jurisdictional commerce ''elements'' beyond a reasonable doubt. This additional jurisdictional requirement would reflect Congress's intent that §249(a)(2) reach only a ''discrete set of [violent acts] that additionally have an explicit connection with or effect on interstate commerce,'' 120 S. Ct. at 1751 (quoting *Lopez*, 514 U.S. at 562), and would fundamentally distinguish this statute from those that the Court invalidated in *Lopez* and in *Morrison*. Absent such a jurisdictional element, there exists the risk that ''a few random instances of interstate effects could be used to justify regulation of a multitude of intrastate transactions with no interstate effects.'' *United States* v. *Harrington*, 108 F.3d 1460, 1467 (D.C. Cir. 1997). By contrast, in the context of a statute with an interstate jurisdictional element (such as in proposed §249(a)(2)(B)), ''each case stands alone on its evidence that a concrete and specific effect does exist.''

The jurisdictional elements in §249(a)(2)(B) would ensure that each conviction under §249(a)(2) would involve conduct that Congress has the power to regulate under the Commerce Clause. In *Morrison*, the Court reiterated its observation in *Lopez* that there are '''three broad categories of activity that Congress may regulate under its commerce power.''' 120 S. Ct. at 1749 (quoting *Lopez*, 514 U.S. at 558):

''First, Congress may regulate the use of the channels of interstate commerce. . . . Second, Congress is empowered to regulate and protect the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities. . . . Finally, Congress' commerce authority includes the power to regulate those activities having a substantial relation to interstate commerce, . . . i.e., those activities that substantially affect interstate commerce.''—*Id.* (quoting *Lopez*, 514 U.S. at 558–59).

Proposed §249(a)(2)(B)(i) would prohibit the violent conduct described in §249(a)(2)(A) where the government proves that the conduct ''occurs in the course of, or as the result of, the travel of the defendant or the victim (a) across state lines or national borders, or (b) using a channel, facility, or instrumentality of interstate or foreign commerce.'' A conviction based on such proof would be within Congress's powers to ''regulate the use of the channels of interstate commerce,'' and to ''regulate and protect . . . persons or things in interstate commerce.'' Proposed §249(a)(2)(B)(ii) would prohibit the violent conduct described in §249(a)(2)(A) where the government proves that the defendant ''uses a channel, facility or instrumentality of interstate or foreign commerce in connection with the conduct''—such as sending a bomb to the victim via common carrier—and would fall within the power of Congress to ''regulate the use of the channels of interstate commerce'' and ''to regulate and protect the instrumentalities of interstate commerce.''

Proposed §249(a)(2)(B)(iii) would prohibit the violent conduct described in §249(a)(2)(A) where the government proves that the defendant ''employs a firearm, explosive or incendiary device, or other weapon that has traveled in interstate or foreign commerce in connection with the conduct.'' Such a provision addresses harms that are, in a constitutionally important sense, facilitated by the unencumbered movement of weapons across state and national borders, and is similar to several other federal statutes in which Congress has prohibited persons from using or possessing weapons and other articles that have at one time or another traveled in interstate or foreign commerce. The courts of appeals uniformly have upheld the constitutionality of such statutes. And, in *Lopez* itself, the Supreme Court cited to the jurisdictional element in the statute at issue in *United States* v. *Bass*, 404 U.S. 336 (1971), as an example of a provision that ''would ensure, through case-by-case inquiry, that the firearm possession in question affects interstate commerce.'' 514 U.S. at 561. In *Bass*, 404 U.S. at 350–51, and in *Scarborough* v. *United*

States, 431 U.S. 563 (1977), the Court construed that statutory element to permit conviction upon proof that a felon had received or possessed a firearm that had at some time passed in interstate commerce.

Proposed §249(a)(2)(B)(iv)(I) would apply only where the government proves that the violent conduct ''interferes with commercial or other economic activity in which the victim is engaged at the time of the conduct.'' This is one specific manner in which the violent conduct can affect interstate or foreign commerce. This jurisdictional element also is an exercise of Congress's power to regulate '''persons or things in interstate commerce.'' *Morrison*, 120 S. Ct. at 1749 (quoting *Lopez*, 514 U.S. at 558). As Justice Kennedy (joined by Justice O'Connor) wrote in *Lopez*, 514 U.S. at 574, ''Congress can regulate in the commercial sphere on the assumption that we have a single market and a unified purpose to build a stable national economy.''

Finally, proposed §249(a)(2)(B)(iv)(II) would prohibit the violent conduct described in §249(a)(2)(A) where the government proves that the conduct ''otherwise affects interstate or foreign commerce.'' Such ''affects commerce'' language has long been regarded as the appropriate means for Congress to invoke the full extent of its authority. *See, e.g., Jones* v. *United States*, 120 S. Ct. 1904 (2000), No. 99–5739, slip op. at 5 (May 22, 2000) (''the statutory term 'affecting . . . commerce,' . . . when unqualified, signal[s] Congress' intent to invoke its full authority under the Commerce Clause''); *Allied-Bruce Terminix Cos.* v. *Dobson*, 513 U.S. 265, 273 (1995) (''Th[e] phrase—'affecting commerce'—normally signals Congress's intent to exercise its Commerce Clause powers to the full.''). Of course, that this element goes to the extent of Congress's constitutional power does not mean that it is unlimited. Interpretation of the ''affecting . . . commerce'' provision would be addressed on a case-by-case basis, within the limits established by the Court's doctrine. There likely will be cases where there is some question whether a particular type or quantum of proof is adequate to show the ''explicit'' and ''concrete'' effect on interstate and foreign commerce that the element requires. See Hamilton, 108 F.3d at 1464, 1467 (citing *Lopez*, 514 U.S. at 562, 567). But on its face this element is, by its nature, within Congress's Commerce Clause power.

In sum, because §249(a)(2) would prohibit violent conduct in a ''discrete set'' of cases, 120 S. Ct. at 1751 (quoting *Lopez*, 514 U.S. at 562), where that conduct has an ''explicit connection with or effect on'' interstate or foreign commerce, id., it would satisfy the constitutional standards articulated in the Court's recent decisions.

The office of Management and Budget has advised that there is no objection from the standpoint of the Administration's program to the presentation of this letter.

Sincerely,

ROBERT RABEN,
Assistant Attorney General.

Mr. KENNEDY. I was startled to hear my friend and colleague suggest that when they asked the Justice Department which States took no action in the Federal Government prosecution, he said there was not any. He did not read his response from the Justice Department because I have in my hand the response from the Justice Department that lists their response. I am not going to take the time tonight to go all the way through, but they have been listed. He ought to ask his staff for that because it has been sent to the Judiciary Committee, of which he is the chairman.

Included in the Justice Department's response are cases showing instances where the Department has pursued cases Federally when the State cannot respond as effectively as the Federal Government. For example, when State penalties are less severe than Federal penalties or where there are differences in applicable criminal procedure.

The idea that there really aren't times when States are unable to prosecute a case just does not hold water, because the cases are out there and have been supplied by the Justice Department.

Furthermore, this chart shows what is happening across the country in the various States. Eight States have absolutely no hate crimes statutes, 22 States have criminal statutes for disability bias crimes, 21 States plus the District of Columbia have criminal statutes for sexual orientation bias crimes, and 20 States identify gender bias crimes.

But, if you are in any of these States shown on this chart which are colored gray, including many in the Northeast, as well as out in the West, and you are involved in the beating or battering of an individual American because of their sexual orientation, there are no hate crimes statutes under which to prosecute the perpetrator.

The States shown in yellow on the chart have no hate crimes statutes at all. As I said, the States shown in gray have no protection at all for crimes committed because of a person's sexual orientation. Many of those States that have hate crimes laws are inadequate because they do not include all of the categories, including sexual orientation, gender and disability.

We have one particular State, Utah, where a judge found the hate crime law to be incomplete because it specified no classes of victims—the State included itself as having a hate crimes law. The judge was forced to dismiss the felony charges against two defendants who allegedly beat and terrorized people in a downtown city. The case was effectively dismissed because the state hate crime law was so vaguely drafted that it failed to provide any of the protections that other state hate crimes law do that clearly define classes of people who are protected by race, religion, national origin, ethnic background, gender, sexual orientation, or disability.

The reality in the United States today is that either we believe we have some responsibility to protect our fellow Americans from these kinds of extraordinary actions based upon bigotry and prejudice or we don't.

We have taken action in the past. We have done it when the action was based upon bigotry and prejudice and denial of the right to vote. We have taken action when prejudice and bigotry have denied people public accommodation. We have taken action against bigotry and prejudice when people have been denied housing. We have taken action against bigotry and prejudice toward people with disabilities.

Now we are asking the Senate to take action when there is violence against American citizens based upon prejudice and bigotry. That is why this vote tomorrow is so important. That is what the issue is about. It is very basic and fundamental, and it is enormously important.

It is part of a continuing process of the march towards a fairer and more just America. We have been trying to free ourselves from the stains of discrimination on the basis of race. We are making progress in terms of religion, national origin, and ethnic background. We are doing it with regard to gender, disability, and sexual orientation.

What we are doing with this legislation is saying, at least in these areas, protect American citizens from prejudice and discrimination and violence that is being directed towards them. Let us make that a priority; let all Americans know that we are not going to fight prejudice and discrimination with one hand tied behind our backs. The Federal Government should have both hands involved in trying to protect our citizens from this form of discrimination.

I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I don't disagree with the Senator that hate crimes are occurring, but they are being prosecuted by State and local officials. That is the point. Many of the cases —and there aren't a lot of cases that the Justice Department has provided—are cases where the Justice Department felt there should have been a greater remedy and there should have been greater sentencing. But they are not in large measure cases where State refused or failed to prosecute the perpetrators of these horrendous crimes.

The fact is, there are not a lot of cases that can be produced, and the Justice Department has not been able to produce them. I don't disagree that hate crimes are occurring and we should stamp them out, but they are being prosecuted by State and local officials to the fullest extent of the law. The Federal Government may disagree on how they prosecute sometimes, but the fact is, they are being prosecuted. No one has shown, certainly not the Justice Department, that these truly horrific crimes are not being prosecuted, let alone on a large scale. The fact is, they are being prosecuted.

The cases identified by the Justice Department, a handful of cases, were in large measure cases where State officials, investigators, and prosecutors got verdicts and sentences. In other words, they were brought and verdicts and sentences were obtained. The Federal Government would have tried the cases differently or might have sought a higher or more harsh sentence. But they are not cases where the State refused to prosecute a hate crime.

My colleague is right: We should do everything in our power to stop hate

crimes in our society. But no one to this date has been able to show that there is a widespread, endemic failure at the State level to prosecute these crimes. There is no real evidence that the States are being slovenly in their duties. That is one reason why I think it is very important that we objectively analyze these matters. We will have more time to debate this, hopefully a little more time tomorrow.

Finally, when Mr. Holder, the Deputy Attorney General, appeared before the committee, he could not cite one case, not a single case. After a month of research, the Justice Department came up with a handful of cases. That was it. Not because they weren't prosecuted at the State level, they were. They just differed with the way they were prosecuted. That is not good enough. These are some of the things that bother me.

I am willing to work with the distinguished Senator from Massachusetts and the distinguished Senator from Oregon and others who want to do something. If the amendment I am offering is not good enough, I am willing to work to see if we can find something that will bring us together and do a better job, certainly, to stamp out any type of hate criminal activity. But I am very loathe to federalize all crimes so that the Federal Government can second-guess State and local prosecutors every time a criminal activity occurs. I think one could say in many respects all crimes are hate crimes, even though they are not categorized as such now. They are prosecuted, and that is the important thing.

Mr. President, I will ask unanimous consent, unless there is anyone else who desires to speak.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, as I mentioned, the cases were provided by the Justice Department.

Let me give you one case, U.S. v. Kila, 1994, a Federal jury in Fort Worth, Texas acquitted three white supremacists of Federal civil rights charges arising from unprovoked assaults upon African Americans, including one incident where the defendants knocked a man unconscious as he stood near a bus stop. For several hours, the defendants walked throughout the town accosting every African American they met, ordering them to leave whatever place or area they were in. Some of these encounters consisted of verbal harassment; in others, Black victims were shoved on the streets, their hats knocked off. Throughout their movements through the city, the subjects were using racial epithets and talking about white supremacy.

The subjects' parade of racial hate erupted into serious violence with the assault on Ali—that is the name of the individual—at the bus stop, an assault which knocked him unconscious. According to witnesses, Ali was punched in the face after he fell to the ground, and kicked in the head. He was transported by ambulance to the hospital, having sustained head injuries. He did not have medical insurance. When the doctors asked him to remain for further tests, he left against their wishes.

The Federal Government became involved in the case when State officials went to the U.S. Attorney's Office asking for Federal assistance. The State could only proceed on misdemeanors, and in their judgment, the conduct warranted felony treatment, treatment available under Federal law. Some of the jurors revealed after the trial that although the assaults were clearly motivated by racial animus, there was no apparent intent to deprive the victims of the right to participate in any federally protected activity.

It is this federally protected activity barrier under current law that is unduly restrictive, and must be amended.

The Government's proof that the defendants went out looking for African Americans to assault was insufficient to satisfy the statutory requirements and effectively the case was dropped.

I could go back as far as 1982. Maybe in some cases defendants get tried for a misdemeanor, as they did in a Western State case I mentioned previously, but they are not getting prosecuted with the full weight of the law. That is what we are talking about. In the 1982 case that I referred to, two white men chased a man of Asian descent from a night club in Detroit and beat him to death. The Department of Justice prosecuted the perpetrators under existing hate crimes laws, but both defendants were acquitted—despite substantial evidence to establish their animus based on the victim's national origin. Although the Justice Department had no direct evidence of the basis for the jurors' decision, the Government's need to prove the defendants' intent to interfere with the victim's engagement in a federally protected right—the use of a place of public accommodation, was the weak link in the prosecution.

These defendants committed murder on the basis of hate. Do we need more cases? I am glad to stay here and go through a whole pile of them. These are examples of what we are talking about. This is what is taking place. The question is whether we are going to do something about it. That is the issue that will be presented to this body tomorrow.

I will take a moment to read into the RECORD the letter from Judy Shepard addressed to the members of the Judiciary Committee:

Thank you for your hard work and commitment to combating hate violence in America. I appreciate the opportunity to testify before your committee last year. As the mother of a hate crime victim, I applaud your interest in trying to address this serious problem that has torn at the very fabric of our nation. However, I do have concerns with your bill (S. 1406) as currently written, and I would like to take this opportunity to discuss them with you.

As I am sure you remember from our visit last fall, two men murdered my son Matthew in Laramie, Wyoming in October 1998 because he was gay. Though your amendment is well intentioned, it fails to address hate crimes based on sexual orientation, nor does it include disability or gender. The time has long passed for halfway measures to address this devastating violence. While I appreciate your efforts, the appropriate and necessary response is the Smith-Kennedy measure (S. 622), and I strongly urge you to support this approach.

Though forty states and the District of Columbia have enacted hate crime statutes, most states do not provide authority for bias crime prosecutions based on sexual orientation, gender, or disability. Including the District of Columbia, only 22 states now include sexual orientation-based crimes in their hate crime statutes, 21 include coverage of gender-based crimes, and 22 include coverage for disability-based crimes.

There is currently no law that allows federal assistance for localities investigating and prosecuting hate crimes based on sexual orientation. As a result, though Matt's killers were brought to justice, the Laramie law enforcement officials told me, as I know they told you last year, that they were forced to furlough five employees to be able to afford to bring the case. The Smith-Kennedy amendment would add sexual orientation, gender and disability to current law, while your amendment would not. I urge you to support the Smith-Kennedy amendment, which is more comprehensive and inclusive.

I know that legislation cannot erase the hate or pain or bring back my son, but I believe that passage of this legislation is an essential step in the healing process and will help allow the federal government to assist in the investigation and prosecution of future hate crimes.

Again, I respect your commitment to making America a more understanding and just country where hate crimes are no longer tolerated. But I urge you to promptly address my concerns that are shared by so many others, so our nation can be safe for all people, including gay people like my son Matthew.

Sincerely,

JUDY SHEPARD.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Utah is recognized.

Mr. HATCH. Mr. President, I don't mean to prolong this, but in the handful of cases they don't like what happened. In that case, I may agree with the Senator that there should have been a verdict against the defendants, but a jury in the United States found otherwise. That doesn't mean we should federalize all hate crimes. That is what I am concerned about.

I will just put forth my offer to work with the Senator to see if we can find some way of bringing everybody together in a way that will not intrude the Federal Government into all the local and State prosecutions in this country, which certainly the Senator's amendment would do. That is what I am concerned about. We will chat overnight and talk about it and see what we can do.

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MORNING BUSINESS

Mr. HATCH. Mr. President, I ask unanimous consent that the Senate proceed to a period of morning business with Senators permitted to speak therein for up to 10 minutes each.

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