S. HRG. 106-517

COMBATING HATE CRIMES: PROMOTING A RESPONSIVE AND RESPONSIBLE ROLE FOR THE FEDERAL GOVERNMENT

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED SIXTH CONGRESS

FIRST SESSION

ON

EXAMINING HOW TO PROMOTE A RESPONSIVE AND RESPONSIBLE ROLE FOR THE FEDERAL GOVERNMENT ON COMBATING HATE CRIMES, FOCUSING ON THE RELATIONSHIP BETWEEN THE FEDERAL GOVERNMENT AND THE STATES IN COMBATING HATE CRIME, ANALYSIS OF STATES' PROSECUTION OF HATE CRIMES, DEVELOPMENT OF A HATE CRIME LEGISLATION MODEL, AND EXISTING FEDERAL HATE CRIME LAW

MAY 11, 1999

Serial No. J-106-25

Printed for the use of the Committee on the Judiciary

U.S. GOVERNMENT PRINTING OFFICE

64-861 CC WASHINGTON : 2000

For sale by the U.S. Government Printing Office
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402

ISBN 0-16-060746-9

cause of homophobia must sicken any civilized human being. Given the lack of protection for gays in many communities, providing federal protection under the federal statute against violence motivated by homophobia is not merely a good idea—it is required by basic human decency.

Although attacks against the disabled are less numerous, the legacy of the Nazi horror make clear that twisted souls can and do view disabled people as sub-human, and, therefore, fair game for violent abuse. Providing the disabled with an additional federal shield against violent abuse, to be used to assist local officials in providing protection, and as a back-stop when the Attorney General certifies that "substantial justice" requires its use, appears to be a welcome step toward protection of an extremely vulnerable minority, with virtually no costs.

Finally, a degree of federal criminal protection against gender-motivated violence is long overdue. We know that a portion of the epidemic of violence aimed at women is traceable to hatred of women as a group. In many settings, state and local officials have also recognized the need to protect women against hate crime. In those settings, the amended federal statute will permit local officials to draw on federal law enforcement resources, and will create a back-stop federal statute for use in those settings where the Attorney General certifies its necessity. In many settings, however, local officials have not yet realized that violence against women is not merely a matter of personal aberration, but is often the result of a deep hatred of women as a group. In those settings, the federal statute will provide an invaluable protection for women who are targets of gender-motivated violence.

It is occasionally argued that recognition of a federal hate crime directed at gender motivated violence would sweep all assaults against women into the federal arena. But such an argument ignores the experience of the 22 states that have enacted gender-based hate crime statutes. In those states, every rape is not prosecuted as a hate crime. In order to evolve from an assault involving a woman to a hate crime, it is necessary to develop significant evidence that the defendant was motivated by hatred of women as a group. Where such evidence does not exist, assaults do not become hate crimes. Where, however, substantial evidence exists that a violent assault against a woman was caused by hatred of women as a group, it is crucial to deploy the criminal law in an effort to deter such violen behavior by singling it out for special attention. It would, I believe, be a callous act of indifference to refuse to grant women the extra protection that a federal hate crime statute might provide when we know that the mere existence of a federal statute (with an enhanced penalty and the greater likelihood of arrest and prosecution) might deter an act of violence by a twisted soul whose hatred of all women leads him to contemplate violence.

Senator SPECTER. We turn now to our final witness, Professor Amar, of the Yale Law School. A very brief personal note. Over the entry of the Yale Law School, there are two stone etchings, two classrooms. In one depiction, there is a professor standing, gesturing, and obviously very vocal, and all the students are sleeping. And in the other stone etching, there is a professor who has his hand on his head, obviously very thoughtful, and all the students are up and very animated.

Before you start your testimony, Professor Amar, which category are you in? [Laughter.]

STATEMENT OF AKHIL REED AMAR

Mr. AMAR. Can I take the fifth, Senator? [Laughter.]

Senator SPECTER. You can, but there is another jurisdiction to prosecute you, I understand.

Mr. AMAR. Thank you very much, Senator, for allowing me to speak. I have obviously submitted some written testimony. I will just try to summarize very quickly.

Senator SPECTER. We would appreciate that. Your full statement will be made a part of the record.

Mr. AMAR. I admire the symbolic aims of this statute, which are to affirm the equality of all American citizens regardless of race or religious or sexual orientation or gender or disability. I admire the

biggest, I think, substantive idea of the statute, which is to create a State-Federal partnership, what my friend Burt Neuborne called cooperative federalism.

I have some specific questions and concerns about some of the details and the strategy of the bill, and I would just invite the committee to think about whether there might be ways of accomplishing those goals even better than the current version. And this is, I think, very much in the spirit of what Chairman Hatch said in his opening remarks. So let me just identify the questions and concerns.

First is a data question. There are at least three different ways of having an antihate crime strategy. One is vigorous, even-handed enforcement of ordinary rules of assault, murder, rape, and so on. An advantage of that is it doesn't generate any backlash about special rights for special victims and disadvantages that may not symbolically affirm the real importance to the larger community of certain disadvantaged groups.

A second strategy is sentence enhancement, where you have ordinary laws of murder, rape and robbery, but then at the sentencing stage we take into account bigotry and say that makes the crime much more reprehensible, creates more harm, and so we sanction it more severely.

A third is an explicit hate crime statute where that bigotry isn't a specific element of the offense. That has got the advantage of heightened symbolism, but possibly the disadvantage of having to prove bigotry beyond reasonable doubt to a jury, which you don't have in the sentence enhancement model.

So you have at least three different models at the State level, and one data question to ask is what is the experience of the States with those three different approaches. I am not sure that we have analyzed that data in order to figure out what strategy actually will work the best.

Furthermore, in addition to figuring out what strategy might work the best at the State level, if we were trying to come up with a model statute for States to adopt, I think it is relevant to see where the States are failing to identify the precise size and shape of possible Federal intervention, given that many thoughtful citizens and Senators have, in general, a preference for decentralized solutions where possible.

And, again, an analysis of this data might be very helpful. If there really are systematic areas where States are falling down, we could have an even broader consensus, I would hope, in support of Federal crimes and have 95 Senators rather than maybe 60 Senators on board, and that is a more emphatic symbolic statement about what we as Americans hold in common—the equality of all, regardless of race, religion, sexual orientation, sex, disability, and so on.

So one set of questions is how we analyze the data at the State level, and a concern that if we rush in too quickly sometimes we can make a problem worse. Some people think that that might have been the case with the crack/powder distinction and what this Congress did a decade ago.

Then there are some constitutional concerns, and they are created by court doctrine. I don't want to suggest that courts would

clearly invalidate this. I just want to suggest that there are some risks, and the risk, even if some judges vote against it, not a majority even, is it weakens some of the symbolic force of a statute.

One set of problems is created by the recent Supreme Court decision in *City of Boerne,* invalidating a law that this Senate passed, 97 to 3, the Religious Freedom Restoration Act, that signals a narrower understanding of Congress' power under the Reconstruction amendments. I myself am a critic of the *Boerne* decision. I think it wrongly restricted the broad powers that this Congress is supposed to have under the Reconstruction amendments. But you need to take that into account, I think.

That betokens at least a possible concern about the religion language in that prong of the statute that doesn't have a Commerce Clause trigger which goes beyond cases like *Jones* v. *Alfred Mayer,* and I don't know whether the Court is going to go beyond that.

As to the Commerce Clause, of course, there is the *Lopez* case, invalidating another recent statute that this Congress passed. Senator Kennedy's bill, S. 622, has a Commerce Clause trigger, and so I think it is much stronger than the statute in *Lopez.* But I think there are still some possible concerns about the precise nexus between interstate commerce and what the statute targets.

Some possible fairness concerns, double jeopardy concerns. If the State and Federal governments really are working cooperatively and as a team, and if the States prosecute and there is an acquittal, some possible fairness concerns if the Federal Government, which were teammates in the whole process, then comes and tries to whack the defendant a second time.

So, in a nutshell, my suggestions are the following as possible additions or alternatives. Commission a careful analysis of the existing hate crime data. Consider adoption of a model State statute that States should be encouraged to adopt, and you could even have some pilot programs that States would be involved in to see which ones work better.

Think about a Federal civil right of action, in addition to or instead of the Federal criminal right of action. That might solve some of the double jeopardy fairness concerns, and even commerce concerns. Make more explicit findings about the link to interstate commerce. Invoke the Citizenship Clause of the 14th amendment, as well as the 13th amendment. What you are trying to do is affirm the equal citizenship of all citizens.

And here I conclude. I have even suggested some ways of strengthening the symbolic language of the statute, which is about the Federal role in affirming the equal citizenship of all. So distinctions based on birth, like sex or sexual orientation or race, should play no role in American citizenship.

Thank you, Senator.

[The prepared statement of Mr. Amar follows:]

PREPARED STATEMENT OF AKHIL REED AMAR

My name is Akhil Reed Amar. I hold the Southmayd Chair at Yale Law School, where I teach and write on constitutional law, federal jurisdiction, and criminal procedure. I am grateful to be here to discuss how this Congress can help prevent hate crimes, and thereby affirm the equality of all Americans, regardless of race, religion, sex, sexual orientation, or disability. In analyzing this important topic—which implicates myriad issues of both constitutional law and public policy—I have organized

my thoughts around Senator Kennedy's Bill, S. 622. I admire the goals of the Bill, and I share its vision of equality. I do, however, have some questions and concerns about some of its specific provisions, and about its general strategy. Also, I will try to identify some other legislative strategies that this Committee might consider to better implement the aims of the Bill.

I admire the aims of the Bill. The Bill seeks to prevent hate crimes when possible and to punish them when they nonetheless occur. The Bill tries to achieve these aims via a close state-federal "partnership" in which federal jurisdiction "supplements" state prosecutions, and the federal government offers "assistance to States." (Sec. 2, paras. 10, 11.) The Bill appropriately acknowledges that states "are now and will continue to be responsible for the prosecuting the overwhelming majority of violent crimes in the United States, including violent crimes motivated by bias." (Sec. 2, para. 9, emphasis added.) Symbolically, I understand the Bill as an effort to stand with the victims of hate crime and against those who perpetrate or pooh-pooh these crimes. I see the Bill as a noble effort to affirm the national government's commitment to equality, and to express its emphatic disapproval of those who harm others simply because of who the victims are—because, that is, of the victims' race, religion, sex, orientation, or disability.

Given that most of the fight against hate crimes will be waged by states, an important part of the Bill is its symbolism, placing the federal government firmly on record against those who, for example, kill homosexuals or Jews and those who apologize for such unspeakable conduct by blaming the victims—"they asked for it." And substantively, the most important part of the Bill is the federal assistance it promises to states; the federal crimes it creates are likely to be less important substantively because—as the Bill itself admits—the vast majority of prosecutions will continue to be at the state level. With this understanding of the Bill, I now turn to my questions and concerns.

I. THE DATA QUESTION

Substantively, what particular strategy is most likely to work in actually preventing violent hate crimes? One strategy is simply to vigorously prosecute hate criminals using ordinary laws of murder, assault, and so on. This is indeed an anti-hate crimes strategy; it stands against a look-the-other way world where prosecutors and judges do not take hate crime as seriously as other crime. In a look-the-other-way world, bigotry becomes a kind of excuse or mitigation: a "queer-basher" is treated more leniently than other thugs because "he couldn't help being repulsed" or because "the victim asked for it by flaunting his identity." A second strategy is to use ordinary laws of murder, assault, and so on, but to treat bigotry as a sentencing enhancer justifying more severe punishment because the bigotry in effect compounds the crime and makes it more reprehensible. A third strategy is to enact laws specifying bigotry as a specific offense element that must be charged in the indictment and proved beyond reasonable doubt to the jury.

Which of these strategies is most likely to be effective? This question implicates federalism—one obvious way to try to answer this question would be to analyze the actual practices of different states that have pursued different strategies. I believe that state data have been collected pursuant to the Hate Crime Statistics Act. Has this data been systematically analyzed? I have not yet seen any detailed analysis, and, in keeping with Chairman Hatch's remarks, I think careful analysis would be useful. Suppose the data suggests that sentencing enhancement actually works better at preventing hate crimes than specific new hate crime offenses (perhaps because bigotry need not be formally charged and proved)? Suppose simple vigorous and even-handed enforcement worked best of all (perhaps because it avoids the backlash generated by the perception of "special rights" for special classes)?

Data collection is desirable for a second reason. Analyzing state data will not only help each individual state figure out how best to combat hate crimes, it will also help illuminate whether and to what extent there is a need to add a new *federal* crime to the books. For example, suppose the data suggest that the real problem is not state bigotry or indifference but rather inadequate resources to deal with certain special problems raised by hate crimes (say, because the average hate criminal has plotted his crime with more care and is harder to catch than the average nonhate criminal). In this case, the best solution might be increased federal assistance rather than enhanced federal jurisdiction that might reduce the sense of accountability of local authorities.

In addition, many Senators and citizens of good faith ordinarily start with a presumption in favor of state as opposed to federal solutions. Such Americans could well be brought to support new federal crimes if the data actually shows that states are not doing their job. Data here could thus help forge a broader consensus than

might currently exist. Part of the goal of the Bill, I think, should be to muster an overwhelming majority of Senators to demonstrate to those who hate just how wide and deep is the consensus against them.

One objection to data collection is that people are dying now, and this Congress needs to do something. But surely, this Congress needs to do the right thing, and new federal crimes are not always the best answer. A decade ago, inner cities were being ravaged by crack, and this Congress decided it had to do something. It dramatically increased the federal penalty for crack compared to powder cocaine. Many leaders of the Black Caucus supported this effort to do something to save black inner city children from the crack plague. Today, many of these same leaders now think that this Congressional approach was mistaken-and indeed, may have made racial problems worse. Another objection to data collection is that—substantive efficacy aside—America needs a strong symbolic statement from Congress now, and this symbolic statement can't wait. I agree, and would propose that the Committee consider an even stronger symbolic statement than S. 622 currently contains. In addition, a strong commitment of federal assistance today will put the federal government's money where its mouth is, and thus send a very strong signal.

II. CONSTITUTIONAL CONCERNS

The final reason for care before defining new federal crimes is that such new crimes might face tough sledding in the federal courts. If these crimes were to be invalidated by courts, it would be a big symbolic defeat for the equality vision-even if the grounds for invalidation were rooted in "technical" federalism objections. Even if these new crimes survived court challenge, they might not do so easily and unanimously. The very fact of judicial dissent—or of a large bloc Congressional votes against the Bill itself—might weaken the symbolic strength of the Bill, as compared with a Bill that virtually all Senators and judges could easily accept as a strong affirmation of our common ground as Americans. This takes me to my next set of questions involving judicial doctrines of federalism and general constitutional concerns.

A. The Boerne *problem*

Section 4 creates a new federal crime for violent hate crimes based on "race, color, religion, or national origin." This part of Section 4(c)(1) has no explicit requirement that the crime be linked to interstate commerce, and it regulates criminal activity that is not itself commercial. Under the Supreme Court's 1995 Lopez[1] decision, this prong of Section 4 will be hard to defend in court under Congress's commerce clause power. The most sturdy argument to uphold this prong in court derives from Congress's power under Section 2 of the Thirteenth Amendment. Section 2, paragraph 8 of S. 622 pointedly invokes this authority, by finding that "violence motivated by bias that is a relic of slavery can constitute badges and incidents of slavery." I applaud Congress's explicit effort to invoke the Thirteenth Amendment. Indeed, in an article on hate crime that I published eight years ago in the *Harvard Law Review*, I suggested that drafters of anti-hate crimes statutes should "state explicitly that the ordinance is designed to implement the Thirteenth Amendment by eliminating various badges and incidents of slavery and caste-based subordination."[2]

But there are problems. First, as that article mentioned,[3] it might be difficult to bring religious as opposed to racial bigotry under the canopy of the Thirteenth Amendment. In the landmark 1968 case of *Jones* v. *Alfred Mayer*, the Supreme Court upheld a law regulating private race discrimination under the Thirteenth Amendment but pointedly noted that. "the statute in this case deals only with racial discrimination and does not address itself to discrimination on grounds of religion or national origin."[4] It gets worse. Two years ago, the Supreme Court decided the *City of Boerne* v. *Flores*[5] *case, and invalidated the Religious Freedom Restoration Act, which this Senate passed by a 97 to 3 vote in 1993. Boerne* offered a narrow reading—in my view, an inappropriately narrow reading—of this Congress's power under Section 5 of the Fourteenth Amendment. *Boerne* said that under Section 5 of the Fourteenth Amendment, Congress could only "enforce" rights that judges would recognize under Section 1 of the Fourteenth Amendment. Although the Court

---

[1] *United States* v. *Lopez*, 115 S.Ct. 1624 (1995) (striking down a federal criminal offense created by the Gun-Free Schools Act of 1990 as beyond the proper reach of Congressional power under the commerce clause).

[2] Akhil Reed Amar, The Case of the Missing Amendments: *R.A.V.* v. *City of St. Paul*, 106 Harv. L. Rev. 124, 160 n. 187 (199 1)

[3] See id. at 159.

[4] *Jones* v. *Alfred H. Mayer Co.*, 392 U.S. 409,413 (1968).

[5] 117 S. Ct. 2157 (1997).

said very little about the Thirteenth Amendment, and not a word about the *Jones* case, the logic of *Boerne* is ominous. If Section 5 of the Fourteenth is to be strictly construed, why not Section 2 of the Thirteenth, which is written in almost identical language? Although *Boerne* did not address this issue in detail, it does suggest that the current Court may be disinclined to extend *Jones* even an inch more. (It further suggests that this Court is not particularly deferential to this Congress, a point confirmed by the very great number of recent Congressional statutes that the Court has invalidated in the last decade.)

I am a critic of the Court's decision in *Boerne*, and indeed have assailed it in print (in the February, 1999 issue of the *Harvard Law Review*).[6] I think the *Boerne* Court clearly misconstrued the letter and spirit of the Reconstruction Amendments, which were designed to give this body—the Congress of the United States—broad power to protect the rights of all Americans to liberty and equality. I further think that this Congress should have power to reach certain private action under the first sentence of the Fourteenth Amendment—the citizenship clause, which has no state action requirement. *But the current Court seems to think otherwise.* Thus it is unclear whether the religion language of proposed section (c)(1) would pass judicial muster.

B. The Lopez *problem*

Perhaps in anticipation of this problem, Section (c)(2) follows a different strategy, defining a new federal hate crime involving both violence on the basis of "religion, gender, sexual orientation, or disability" and also a link to interstate or foreign commerce. The idea here is that even if the Thirteenth and Fourteenth Amendments are not enough to uphold federal power, the commerce clause is broad enough. (I also note that "religion" appears in both (c)(1) and (c)(2).)

But once again, there are problems. Unlike the statute struck down by the 1995 *Lopez* case, Section (c)(2) has an explicit commerce trigger. But it seeks to regulate criminal conduct that is not itself particularly commercial. And the *Lopez* decision signals a stricter understanding of the commerce clause than was once dominant. How much stricter is uncertain. *Lopez* was a 5–4 case, and Justices Kennedy and O'Connor seemed to suggest in a concurrence that careful Congressional findings about impact on interstate commerce could make a difference.[7] At this point, S. 622 makes some findings about commercial impact (Sec. 2, paras. 4–7), but in rather conclusory terms, a court might think. Is there specific data about how often bias targets actually move across state lines to avoid their stalkers, or how often these stalkers actually cross state lines in search of their prey?

But the more Congress tries to stress that it is really concerned about interstate commerce the more the symbolic message of an anti-hate Bill is blunted. Is this really a Bill about using a telephone or travelling on a highway, or is it instead simply about hate?

The combination of *Lopez* and *Boerne* is more powerful than each case in isolation. In tandem, these two cases are like two claws of a pincer squeezing Congressional power—and anyone who doubts the strength of this one-two combination should consult a recent Fourth Circuit case, *Brzonkala* v. *Virginia Polytechnic Institute*, invalidating a portion of the 1994 Violence Against Women Act on the basis of *Boerne* and *Lopez*.[8] This Fourth Circuit opinion may or may not be upheld if and when the Supreme Court reaches the issue involved in that case. But it is a straw in the wind suggesting some of the judicial difficulties the current version of S. 622 might face.

C. The double jeopardy problem

Even if courts were to dismiss these possible constitutional objections and uphold the new federal crimes defined by Section 4, a final problem would arise. Is it really fair to subject a private citizen to federal prosecution after, say, he has been acquitted in a state prosecution? Court doctrine allows for prosecution by dual sovereigns,[9] but this doctrine is hard to explain in situations where both governments are working in close partnership to investigate and prosecute a given crime. If the state cannot get two bites at the apple, and neither can the feds, why should the two governments acting as a team get two bites?[10]

---

[6] See Akhil Reed Amar, Intratextualism, 112 Harv. L. Rev. 747, 821–27 (1999).

[7] *United States* v. *Lopez*, 115 S.Ct. 1624, 1642 (1995) (Kennedy, J. concurring, joined by O'Connor, J.) (calling for "a stronger connection or identification with commercial concerns") (emphasis added).

[8] See *Brzonkala* v. *Virginia Polytechnic Institute*, 169 F.3d 820 (4th Cir. 1999) (en banc).

[9] See, e.g., *Bartkus* v. *Illinois*, 359 U.S. 121 (1959) (upholding state prosecution for bank robbery following a federal acquittal for robbing the same federally insured bank).

[10] See generally Daniel A. Braun, Praying to False Sovereigns: The Rule Permitting Successive Prosecutions in the Age of Cooperative Federalism, 20 Am. J. Crim. L. 1 (1992).

In a 1995 *Columbia Law Review* article on the Double Jeopardy issues raised by the Rodney King case,[11] Jon Marcus (now a federal prosecutor) and I argued that from a civil liberties perspective, it makes a good deal of sense to allow federal prosecution of state officials who abuse the rights of private citizens. Even after state officials have been acquitted in state court on state criminal charges—as were the Los Angeles officers in the *Rodney King* case—federal criminal prosecution in federal court for federal offenses might well appropriate, we argued. State courts and state prosecutors might predictably go easy on state officials, and these officials wield special and awesome powers over the rest of us. To protect the rights of ordinary citizens, it seems fair to hold abusive officials to a very high standard. But private citizens, we argued, were very different, and double prosecution of them in situations where state and federal governments are acting as a team seems unfair. (A separation of powers analogy is that a federal officer who wields special power over fellow citizens is subject to impeachment and ordinary criminal prosecution, but private citizens are not subject to this kind of double-whacking.)

S. 622 thus poses a dilemma. It seeks to both strengthen the partnership between state and federal governments and yet deny that partnership when it comes to fundamental principles underlying double jeopardy and collateral estoppel. If the two governments really are one team in investigating and prosecuting, as contemplated by S. 622, then when a defendant is prosecuted by teammate and wins an acquittal, is it fair for the other teammate to ignore that verdict?

III. ALTERNATIVES

Here are some alternative solutions this Committee should consider:

1. Commission a careful analysis of existing hate crime data.

2. Consider adoption of a "model" state statute that states should be encouraged to adopt. This proposal symbolically affirms a strong national commitment without any arguable federal overreaching. This model statute might even follow the development of two or three different federal antihate pilot programs, whereby the federal government would invite cooperating states to implement these different pilot programs for, say, 5 years. If, say, Minnesota follows program A and Wisconsin follows program B, we can see in the field the comparative strengths and weaknesses of each strategy. And of course state cooperation can be induced by federal funds. This pilot program/model statute approach takes advantage of the virtues of a federal system and state laboratories, and showcases cooperative federalism.

3. Consider creating a federal civil right of action instead of a federal criminal law. The proposed federal criminal law is likely to be a mere "feelgood" law that will rarely be used, as a practical matter, given the predominance of state prosecution, and the provisions of the Justice Department's "Petite Policy."[12] And it raises double jeopardy concerns that civil causes of action avoid. Further, a civil cause of action is even better at symbolically affirming victims, since it tries to compensate them, and gives them control of litigation. Because civil litigation seeks compensation for past injury rather than criminal punishment, it might be easier to link to the commerce clause as an arguably commercial regulation.

4. Make more explicit findings about the link to interstate commerce. Of course, this may require more careful analysis of actual hate crime data.

5. Consider explicitly invoking the citizenship clause of the Fourteenth Amendment in addition to the Thirteenth Amendment. (I am not hugely optimistic that the current Court would accept this basis for Congressional power; but such an assertion is well supported by the letter and spirit and original intent of the Fourteenth Amendment.)

6. Counterbalance any perceived "weakening" of the Act that would result from omitting or trimming Section 4 by an even stronger statement of principle. In its findings (Section 2) Congress should say something like this: "Acting under our powers to protect the rights of every American citizen to freedom and equality, as contemplated by the Fourteenth Amendment, this Congress declares that all Americans are equal citizens, regardless of race, color, religion, national origin, gender, sexual orientation, or disability." [Alternative version: "We hold these truths to be self evident, that all persons-regardless of race, color, religion, na-

[11] See Akhil Reed Amar and Jonathan L. Marcus, Double Jeopardy Law After Rodney King, 95 Colum. L. Rev. 1, 4–27 (1995).

[12] Under this policy, the Justice Department will generally refrain from prosecuting an individual after a state prosecution for the same crime, unless there are compelling reasons for a second trial. The policy is set forth in the United States Attorneys' Manual, Sec. 9–2.142.

tional origin, gender, sexual orientation, or disability—are created equal; that they are endowed by their Creator with certain unalienable rights; that among these rights are life, liberty, and the pursuit of happiness; that to secure these rights, governments are instituted; and that it is the duty of government to protect these rights from those who seek to cause bodily injury to any person on account of that person's actual or perceived race, color, national origin, religion, sexual orientation, gender, or disability."]

Thank you, Mr. Chair and members of the Committee.

Senator SPECTER. Well, we thank you all. I regret that other Senators were not here, but this is not atypical.

Mr. NEUBORNE. Senator, one moment, because the notion about data I think is terribly important.

Senator SPECTER. You may proceed.

Mr. NEUBORNE. There was something in the Attorney General's testimony that I would like to just highlight, and that is the extraordinary success of the recent statute dealing with church bombings, 247. The usual apprehension rate in arson—it is a very hard crime to solve, as you well know—is only about 16 percent.

Once that statute was passed and they were able to create the kind of joint Federal-State task forces, the apprehension rate for church bombings has gone up to 34 percent. So they have more than doubled the apprehension rate in the short time that that statute has been in effect. I suggest to the Senate that that is a very powerful piece of data pressing in favor of enacting this legislation.

Senator SPECTER. Well, thank you very much, Professor Neuborne, for that observation.

We do have staff here noting the testimony, and it is part of the record and it is very helpful. I think that all of the views have been very forcefully expressed. I frankly wish we had time for extended questioning, but we do not. So, again, I thank you for your participation.

[Whereupon, at 12:00 p.m., the committee was adjourned.]