But there are other causes, varying from our neglect to aggressively market, to our weakness over the decades in trade negotiations. The latter deficiency is caused in part by not having a cadre of professionals handling our negotiations, particularly when compared to Japan. Too often it has been long-term professionals against changing teams of U.S. negotiators, and I don't mean that disrespectfully to fine, competent people of both political parties who have been thrust into these positions of responsibility.

The firm stance of President Clinton and Trade Ambassador Mickey Kantor in negotiating with Japan on automobiles and car parts is sound. I am optimistic that the problems can be satisfactorily resolved, but we should not be too eager. It is also worth noting that our firmer stance with Japan on trade matters has come since Japan has been a declining factor in purchase of our treasury notes. It is difficult to get tough with your banker.

The United States also must build products that can accommodate the cultures of other nations; we must learn to sell in their languages, not ours; and tens of thousands of U.S. corporations that do not consider marketing in other nations must change course.

We are gradually getting better, but it we can hasten the process, we will reduce the trade deficit that troubles the international currency markets.

But any serious look at trade policy must return to fiscal policy. Last month, Judith H. Bello, former general counsel to the U.S. Trade Representative, wrote in the Washington Post:

The United States will continue to run trade deficits, no matter what happens in trade negotiations, so long as we run federal budget deficits. If Japan and every other trading partner opened their markets completely, we would still run a trade deficit if our savings rate remained inadequate.

There is little that trade negotiators can do about a trade deficit. The power to reduce the U.S. deficit lies with Congress and those within the administration responsible for the federal budget. No matter how many markets any trade representative opens, the effect on the U.S. trade deficit in isolation is peripheral.

U.S. trade negotiators have relatively little power to affect the weakness or strength of the U.S. dollar through their market-opening negotiations. As long as the United States remains heavily dependent on foreign capital to fuel our economic growth, and fails to save more and spend less, the dollar is likely to be relatively weak despite our fundamental competitiveness.

Third, our savings rate must be increased. Again, the biggest impediment to our savings rate is the deficit. But it is more than that.

The United States culture is not dramatically different from that of Canada and other Western industrialized nations, but our savings rate is significantly lower. We save only 4.8 percent of our gross national product, Canada saves 9.1 percent, Germany 10.7 percent, and 19.7 percent in Japan. Because of the low savings rate, the United States is much more dependent on others buying our debt paper.

By making some changes in our Tax Code, we can reward savings rather than debt. Our Tax Code, for example, rewards businesses that create debt to finance growth, rather than financing growth through savings or equity financing. A corporation that buys another corporation by borrowing money can write off the interest payments even through the debt may create hazards for the purchasing company. But if that same corporation more prudently issues stock, the dividends are not deductible. If we changed the tax laws to permit 80 percent of interest to be deductible and 50 percent of dividends to be deductible, the net result would be a wash in Federal revenue, but many corporations would have a more solid base, and our corporate debt base would decline. Similarly, we should create tax incentives for individual Americans to save that would not add to our Nation's debt but would add to our productivity by making investment capital more available. Our people do not have the incentives to save that citizens of many nations have.

Shifts in our culture will not be brought about quickly, but we must work to bring about change.

Fourth, we must do more long-term thinking and face our deficiencies frankly. The fiscal deficiency is an example I have already discussed. We have ducked telling people the truth because it is politically more convenient to duck.

But there are many more examples.

Can we expect to build the kind of a nation we should have if we continue to have 23 percent of our children living in poverty? Can we expect to build a nation that can lead and compete in the future if we continue to neglect the need for quality education in all of the nation?

Financial markets look at our deficits and worry about long-term inflationary pressures. When our fiscal policy does not address the deficits, the Federal Reserve Board is forced to look at the long-term implications of inflation. That is why the quality of appointments to the Federal Reserve Board are so significant. If we in Congress and the Clinton administration addressed our long-term fiscal problems more directly, the pressure would be removed for Federal Reserve Board action.

Germany and Japan are far ahead of the United States on nondefense research—and probably even further ahead of us in applying their research to productive purposes.

Governmental America tends to live from election to election and, even worse, from poll to poll. Corporate America too often lives from quarterly report to quarterly report. Unless we do more long-term planning and acting in both the public and private sectors, our future performance as a nation will be less than outstanding.

Others understand this about us. We must understand this about ourselves.

If we were to address these four areas with courage, not only would the dollar continue to rebound, our hopes and spirit would rebound also. The cynicism and negative attitudes that concern many of us are not caused only by the haters and those who see only the worst in our Government and public officials. The depth of public concern that results in hostility rather than activity is also caused by good, decent public officials of both political parties who do not have the courage to face our fundamental problems or who see an opportunity for partisan advantage rather than an opportunity to lift the Nation.

Yes, we can save the dollar.

We can also save the Nation.

Mr. President, if no one else seeks the floor, I question the presence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. DOLE. Mr. President, I understand morning business has ended?

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. The time for morning business has closed.

COMPREHENSIVE TERRORISM PREVENTION ACT

The PRESIDING OFFICER. The clerk will report the pending business.

The legislative clerk read as follows:

A bill (S. 735) to prevent and punish acts of terrorism, and for other purposes.

The Senate continued with the consideration of the bill.

Mr. DOLE. Mr. President, can I just indicate to my colleagues on both sides, I thank the managers of the bill. They have been spending the last hour or so trying to work on some amendments. They are ready to accept a number of amendments. There will probably be a vote on the amendment about to be offered by the Senator from Connecticut. We hope to get a short time agreement on that amendment and finish all the amendments, except the habeas corpus amendments, tonight. So there will be votes tonight. I advise and urge my colleagues, if they have to leave the Capitol, to take their beepers so we can notify them when the votes will occur.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah is recognized.

Mr. HATCH. Mr. President, as I understand it, I believe there is a Senator Robert Kerrey amendment pending; is that the pending business?

The PRESIDING OFFICER. That is the pending amendment.

Mr. HATCH. Mr. President, we are prepared to accept that amendment.

Mr. BIDEN. Mr. President, if the Senator will yield, we are prepared at the same time to accept Hatch amendment No. 1233 relative to airline carriers. I urge that both of these amendments be accepted. They are both at the desk.

The PRESIDING OFFICER. The Chair advises the Senator from Delaware that one amendment has not been called up.

AMENDMENT NO. 1233 TO AMENDMENT NO. 1199

(Purpose: To ensure air carrier security)

Mr. HATCH. Mr. President, I call up amendment No. 1233, the airline carriers amendment, and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Utah [Mr. HATCH] proposes an amendment numbered 1233 to amendment No. 1199.

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

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

The amendment is as follows:

On page 160, between lines 11 and 12, insert the following:

SEC. 901. FOREIGN AIR TRAVEL SAFETY.

Section 44906 of title 49, United States Code, is amended to read as follows:

''§ 44906. Foreign air carrier security programs

''The Administrator of the Federal Aviation Administration shall continue in effect the requirement of section 129.25 of title 14, Code of Federal Regulations, that a foreign air carrier must adopt and use a security program approved by the Administrator. The Administrator shall only approve a security program of a foreign air carrier under section 129.25, or any successor regulation, if the Administrator decides the security program provides passengers of the foreign air carrier a level of protection identical to the level those passengers would receive under the security programs of air carriers serving the same airport. The Administrator shall prescribe regulations to carry out this section.''.

Mr. FORD. Mr. President, first, let me state my support for the amendment being offered concerning aviation security requirements to the substitute to S. 735, the terrorism prevention bill, offered by Senator HATCH. I know that Senator HATCH has worked hard to include an aviation safety issue in the bill, and I appreciate the chance to express my support for those efforts.

On December 21, 1988, Pan Am flight 103 was blown up over Lockerbie, Scotland, killing 270 people. This terrorist act triggered a time consuming, all-out effort to find the people responsible. It also triggered legislation enacted in 1990, to improve security for international and domestic air travelers.

Unfortunately, during negotiations over one particular provision, we were unable to agree with the Department of Transportation on ensuring that all international passengers traveling to and from the United States would have the same types of protection. As a result, section 105 of the Aviation Security Improvement Act of 1990, Public Law 101–604, required the Administrator to develop a system of protection for U.S. carriers and a similar system for foreign carriers. In using the word ''similar,'' Congress did not intend that there would be enormous disparities in security programs between U.S. and foreign airlines serving the United States. The security protection sought was intended to be as close to the same for all passengers, regardless of who actually provided the service. However, the administration, at the time, insisted that section 105 use the word ''similar'' to give the FAA some discretion to address possible differences between foreign carrier requirements and U.S. carrier requirements. Unfortunately, the regulations issued by the Department and FAA to implement section 105 were not stringent enough. As a result, what we have seen is a wide disparity in how foreign carriers screen passengers and how U.S. carriers screen passengers.

Let me give my colleagues an example to show the differences. Let us say that Mr. and Mrs. Jones from Lexington, KY want to go to Germany for a vacation. They decide to take two different carriers. Mr. Jones takes a United States carrier, and Mrs. Jones takes a German carrier. Both leave from Cincinnati. Mr. Jones has to get to the airport at least 2 hours in advance to go through all of the U.S. air carrier security requirements, including security interviews, searches of baggage, x-rays of baggage, and additional security questions at the gate. On average, these types of procedures can take any where from 90 to 120 minutes. Mrs. Jones, however, does not have to go through most if not all of those procedures. Her process time takes on average 20 to 30 minutes. Certainly both Mr. and Mrs. Jones want the highest level of protection reasonably necessary, but why should the procedures be different? They should not, and Senator HATCH is attempting to correct this imbalance.

Over the last several years, we have seen numerous terrorist incidents against foreign airlines, while the number against U.S. airlines has dropped. It seems the procedures may be working for our airlines. We now should extend those same types of protection to other airlines that transport U.S. citizens to and from our country. The goal of the legislation was to protect all of our citizens and all of those people traveling to and from our country. The amendment restates and restores that goal.

Senator HATCH has addressed the imbalance by requiring the same types of security screens for U.S. airlines and for foreign airlines serving the United States. I support the change and appreciate his willingness to address the issue in a nonaviation bill.

VOTE ON AMENDMENTS NOS. 1208 AND 1233, EN BLOC

Mr. HATCH. Mr. President, I urge adoption of the Kerrey amendment No. 1208 and the Hatch amendment No. 1233.

The PRESIDING OFFICER. Is there objection to adopting the amendments en bloc? Without objection, it is so ordered.

The question is on agreeing to the amendments.

The amendments (Nos. 1208 and 1233) were agreed to.

Mr. HATCH. Mr. President, I move to reconsider the vote by which the amendments were agreed to.

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

The motion to lay on the table was agreed to.

Mr. HATCH. Mr. President, I understand the distinguished Senator from Connecticut is prepared to proceed.

SUBMITTED AMENDMENT NO. 1244

Mr. BIDEN. Mr. President, if the Senator will yield for a moment, I say to my friend from Utah, we are prepared to accept several additional amendments that are on the Republican list and the Republican manager, as I understand, is close to being prepared to accept several amendments on the list of the Democrats.

Senator LEVIN has indicated on his amendment No. 1244 that he is willing to withdraw that amendment under an assertion by the chairman of the Judiciary Committee that he would hold hearings on the Levin-Nunn-Inouye amendment.

Mr. HATCH. Mr. President, I think that is a very important issue. It is the issue concerning lying to Congress, whether it should be only those who lie under oath or those not under oath. I think it would be an interesting hearing. We will commit to holding a hearing for Senator LEVIN and the rest of the Senate on that issue.

Mr. BIDEN. Mr. President, I do not think I have to ask unanimous consent, but on behalf of Senator LEVIN then, I ask that his amendment No. 1244 be withdrawn.

The PRESIDING OFFICER. Without objection, the amendment is withdrawn.

So the amendment (No. 1244) was withdrawn.

Mr. LEVIN. Mr. President, I was unaware of the fact that the managers of the bill had already introduced a statement relative to amendment No. 1244, which I had submitted with Senator NUNN and Senator INOUYE.

That amendment would provide some additional tools to Congress investigating terrorism and other activities that are of importance.

Under Hubbard versus United States, decades of case law was overturned wherein lying to Congress was illegal. This amendment would have restored the law to what it was prior to Hubbard, wherein lying to Congress was illegal. I think we will have to restore that law so that we have the investigative tools we need against terrorism.

However, what I have agreed to do is to introduce this in the form of a bill. The Senator from Utah has agreed that the committee would hold hearings into this bill and I thank him for that. I thank the Senator from Delaware.

Mr. President, to reiterate I introduced today a bill on behalf of myself, Senator NUNN, and Senator INOUYE to strengthen Congress' ability to investigate terrorism. The purpose of this legislation is to ensure that Congress has the tools needed to investigate terroist acts and other matters of important public policy and obtain truthful testimony.

The bill would accomplish four specific goals.

Let me discuss briefly each of the four provisions.

First, the bill would make it clear that false statements to Congress are a criminal offense under 18 U.S.C. 1001. This clarification is needed because a recent Supreme Court decision, Hubbard versus United States, overturned decades of case law including its own precedent, United States versus Bramblett, and held that the plain wording of section 1001 limits it to false statements made to the executive branch. The bill would make it clear that the statute prohibits false statements to the ''executive, legislative or judicial branch of the United States,'' including ''any department, agency, committee, subcommittee or office thereof.'' This language is intended to restore the courts' interpretation of section 1001 prior to the Hubbard decision. In applying section 1001 to the judicial branch, the bill would also incorporate the existing case law in a majority of circuits which, prior to Hubbard, had established a judicial function exception to the statute.

In the wake of the Oklahoma City bombing and other incidents in recent years, Congress needs to take a close look at the causes and solutions to terrorist acts. In examining witnesses, Congress needs to have the most familiar of prosecutorial weapons to combat false testimony, section 1001. At the same time, restoring the statute's application to Congress as it existed prior to the Hubbard decision is not to say that section 1001 can't be improved. I understand the Senate Judiciary Committee is planning hearings on this statute and may wish to legislate some changes. I support that process. The question is what happens in the meantime—do we leave section 1001 off the books for some time or do we get it back on the books now with respect to Congress?

False statements to Congress ought to be illegal, and we ought to act now to get that law back on the books.

Getting the law back on the books is also important, by the way, for another reason. Last month, every Senator filed a financial disclosure statement. Until we amend section 1001, none of those financial disclosure statements are subject to criminal enforcement under section 1001. In this time of low public confidence in Congress, we shouldn't be letting ourselves off the hook by failing to take this opportunity to apply section 1001's prohibition on false statements to ourselves, in the same way we apply it to the executive branch.

Second, the bill would make it clear that obstruction of a congressional inquiry by an individual acting alone is a criminal offense under 18 U.S.C. 1505. This clarification is needed because a 1991 D.C. Circuit Court of Appeals decision, United States versus Poindexter, held that section 1505 ''is too vague to provide constitutionally adequate notice that it prohibits lying to the Congress.'' The decision reasoned that, by using the term ''corruptly,'' section 1505 may prohibit only those actions which induce another person to obstruct congressional inquiry, and not those which, in themselves, obstruct Congress. In other words, the court held that a person who induces another to lie to obstruct Congress violates section 1505, but a person who alone obstructs Congress is outside the reach of the statute.

No other Federal circuit has taken a similar approach. In fact, other circuits have interpreted ''corruptly'' to prohibit false or misleading statements not only in section 1505, but in other Federal obstruction statutes as well, including section 1503 prohibiting obstruction of a Federal grand jury. These circuits have also interpreted the Federal obstruction statutes to prohibit the withholding, concealing, altering, or destroying documents.

Our bill would affirm the interpretations of these other circuits. Specifically, the amendment would include a definition of ''corruptly'' in section 1515 of title 18 which provides definitions for the entire chapter of Federal statutes prohibiting obstruction of Federal inquiries. This definition would make it clear that section 1505 is intended to prohibit the obstruction of a congressional investigation by a person acting alone as well as when inducing another to obstruct Congress, and that this prohibition includes making false or misleading statements to Congress as well as withholding, concealing, altering, or destroying documents requested by Congress.

This bill is not intended to expand section 1505, but to clarify the conduct it was always meant to prohibit. Moreover, by limiting the definition of ''corruptly'' to how it is used in section 1505, we are not intending to limit how this term is interpreted in other chapter 73 obstruction provisions. The definition applies only to section 1505 because the Poindexter decision interprets only that section, and we are unaware of any similar limitation on any other Federal obstruction statute.

Third, the bill would make it clear that any Federal employee or officer, acting in an official capacity, who resists a Senate subpoena under 28 U.S.C. 1365 by claiming some type of privilege must have the written approval of the Attorney General and relevant agency head in order to avoid enforcement. This issue arose in one past congressional investigation, for example, when a Federal employee attempted to assert executive privilege without having any authorization to do so. That's why, in 1988, the Senate adopted by unanimous consent a bill authored by Senator Rudman and Senator INOUYE, S. 2350, containing this clarification. That bill was never taken up by the House—now is a good time to resurrect it.

The Senate currently has explicit statutory authority, under 28 U.S.C. 1365, to obtain court enforcement of subpoenas issued to private individuals and State officials. This statute does not, however, provide for enforcement of subpoenas to Federal employees or officers acting in an official capacity, in order to keep what may be political disputes between the legislative and executive branches out of the courtroom. The problem has been to determine when an employee is acting within his or her official capacity. Requiring written support for the employee's actions from the Attorney General and agency head ensures that the individual is acting in compliance with and not contrary to the decisions of his or her superiors.

By establishing this procedural requirement, the bill does not address the underlying issue of which executive branch officials have the authority to assert particular types of privilege—it simply says that without having at least the written authorization of the Attorney General and agency head, no subpoenaed Federal employee, acting in his official capacity, has a legal basis for resisting enforcement of that subpoena. In the case of executive privilege, for example, I and other colleagues believe that only the President may assert that privilege. On the other hand, it is possible that other statutory privileges may provide grounds for resisting a subpoena, such as the Privacy Act, and may be properly asserted without the President's personal involvement. The bill to section 1365(a) does not attempt to resolve these types of issues. Rather it says that a Federal employee can avoid enforcement of a Senate subpoena only by having the written authorization of the Attorney General and agency head to assert any privilege in opposition to that subpoena.

The fourth and final provision of the bill is also taken from the Rudman-Inouye bill that passed the Senate. This provision would make it clear that Congress may compel an immunized individual to provide truthful testimony in depositions as well as hearings. In the past, some individual granted immunity from criminal prosecution by Congress have refused to provide testimony in any setting other than a hearing on the ground that the relevant statute, 28 U.S.C. 6005, was limited to appearances ''before'' a committee, while the comparable judicial

immunity statute applied to proceedings ''before or ancillary to'' court or grand jury appearances. The bill would reword the congressional immunity statute to parallel the language in the judicial immunity statute, and make it clear that Congress can grant immunity and compel testimony not only in proceedings before a committee but also in depositions conducted by committee members of staff. Again, this provision was approved by unanimous consent as part of the Rudman-Inouye bill that passed the Senate in 1988, but was never considered by the House.

If Congress is to investigate terrorism or any other issue important to the public, congressional committees must have clear authority to punish false statements and obstruction, enforce subpoenas and compel truthful testimony. Our bill would help provide that clear authority.

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

AMENDMENT NO. 1205

Mr. HATCH. Mr. President, I believe there is a Pressler amendment No. 1205 that has been called up but set aside; is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. HATCH. I have been authorized by the distinguished Senator from South Dakota, Senator PRESSLER, to withdraw that amendment.

The PRESIDING OFFICER. The amendment No. 1205 is withdrawn.

So the amendment (No. 1205) was withdrawn.

Mr. BIDEN. Mr. President, for the benefit of my Democratic colleagues, I believe that we will be able to accept—and we are clearing this now—the Brown amendment No. 1229, as amended, and the McCain-Leahy amendment No. 1240 that relates to special assessments, and the Shelby amendment No. 1230.

It is my hope and expectation that the Republican manager of the bill may be able to accept, with some possible modification, Senator NUNN's amendment No. 1213 on posse comitatus, and Senator LEAHY's amendment No. 1247 on foreign policy.

But while we are trying to work that out, I suggest that maybe it is appropriate for the Senator from Connecticut to proceed. Mr. President, if I have not already, I ask unanimous consent to be added as a primary cosponsor to the Senator's amendment.

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

Mr. BIDEN. Mr. President, I spoke to this amendment at length earlier today and yesterday. I yield the floor.

AMENDMENT NO. 1247, AS MODIFIED, TO AMENDMENT NO. 1199

(Purpose: To give the President authority to waive the prohibition on assistance to countries that aid terrorists)

Mr. HATCH. Mr. President, I send to the desk on behalf of Senator Leahy a modification to the Leahy amendment No. 1247.

The PRESIDING OFFICER. Without objection, the amendment will be so modified.

The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Utah [Mr. HATCH], for Mr. LEAHY, proposes an amendment numbered 1247, as modified.

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

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

The amendment is as follows:

On page 18, strike lines 18 through 24 and insert the following:

''SEC. 620G. PROHIBITION ON ASSISTANCE TO COUNTRIES THAT AID TERRORIST STATES.

''(a) PROHIBITION.—No assistance under this Act shall be provided to the government of any country that provides assistance to the government of any other country for which the Secretary of State has made a determination under section 620A''.

''(b) WAIVER.—Assistance prohibited by this section may be furnished to a foreign government described in subsection (a) if the President determines that furnishing such assistance is important to the national interests of the United States and, not later than 15 days before obligating such assistance, furnishes a report to the appropriate committees of Congress including—

''(1) a statement of the determination;

''(2) a detailed explanation of the assistance to be provided;

''(3) the estimated dollar amounts of the assistance; and

''(4) an explanation of how the assistance furthers United States national interests.''.

Mr. HATCH. Mr. President, I urge adoption of the amendment, as modified.

The PRESIDING OFFICER. If there is no further debate, the question is on agreeing to the amendment, as modified.

The amendment (No. 1247), as modified, was agreed to.

Mr. HATCH. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

Mr. BIDEN. Mr. President, we are just awaiting the modification language on Senator BROWN's amendment 1229. As soon as we have that and have a chance to look at it, it will be sent to the desk. We will ask that it be considered and we will accept that as well.

We will also accept in a moment, I believe, Senator SHELBY's amendment relating to fertilizer research, amendment No. 1230.

Now that we have interrupted the Senator from Connecticut 12 times—but we are making progress here; we are accepting important amendments—I will at the end of the comments by my friend from Connecticut urge we accept additional amendments.

Mr. HATCH. Mr. President, I ask unanimous consent that we proceed to the Lieberman amendment No. 1215, pursuant to a 20-minute time agreement to be divided equally between both sides.

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

The Senator from Connecticut is recognized.

Mr. LIEBERMAN. Mr. President, I thank the Chair. Let me express my thanks and gratitude to the Senate majority leader, to the Democratic leader, the chairman of the Judiciary Committee, and to the ranking Democratic member for breaking what looked to be the coming of gridlock on an issue and a problem on which none of us want gridlock, and we should not allow it to exist. I think we have now limited the number of amendments, and we have clearly accepted some across party lines. And we are quite appropriately moving toward doing something to put us squarely against those who would terrorize America.

Mr. President, when I came to the Senate, I got interested in this threat of terrorism because it seemed to me, particularly after the cold war ended, that we in America might surprisingly find our security threatened more directly, our lives threatened more directly by terrorists than we had enduring the long years of the cold war by a heavily armed enemy. The reason is that there are extremist movements throughout the world. There are, sadly, extremist movements within our own country who practice acts of terrorism either to carry out a political purpose or to create panic and insecurity and chaos in our society.

I thought we ought to begin to act and do something about that. We conducted hearings and we visited with experts. Mr. President, these inquiries into the problem of terrorism led me to this sad conclusion, which is that it is very difficult to defend against terrorists in a way that gives absolute security in the sense that they, by their nature, as we have seen in our time, will strike at undefended targets. In the aftermath of the events in Oklahoma City, we might increase security at Federal and public buildings, and one could imagine that we can surround every public building in America with security guards, and yet the terrorist bent on destruction and chaos will tragically go down the street and strike at a public building or an office building or a place where people gather.

So it seems to me that the best defense against terrorism, international and domestic, is an offense. And the offense is to be prepared, to keep an eye and an ear out for those who would commit terrorist acts.

None of us wants to stop people from saying what they believe in this great democracy and writing and demonstrating what they believe. But when some group has indicated or given reason to law enforcement authorities to believe that they are capable of, or are planning or considering a criminal act, I want our Government to be there. I want our Government to be listening. I want our Government to have undercover agents there so that we can

strike to stop those terrorist acts, those violent acts, such as the awful assault in Oklahoma City, before they occur.

Mr. President, that is the purpose of this amendment.

AMENDMENT NO. 1215 TO AMENDMENT NO. 1199

(Purpose: To amend the bill with respect to revisions of existing authority for multipoint wiretaps)

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

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Connecticut [Mr. LIEBERMAN], for himself and Mr. BIDEN, proposes an amendment numbered 1215 to Amendment No. 1199.

Mr. LIEBERMAN. Mr. 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:

Insert at the appropriate place in the amendment the following new section:

SEC. . REVISION TO EXISTING AUTHORITY FOR MULTIPOINT WIRETAPS.

(a) Section 2518(11)(b)(ii) of title 18 is amended: by deleting ''of a purpose, on the part of that person, to thwart interception by changing facilities.'' and inserting ''that the person had the intent to thwart interception or that the person's actions and conduct would have the effect of thwarting interception from a specified facility.''

(b) Section 2518(11)(b)(iii) is amended to read:

''(iii) the judge finds that such showing has been adequately made.''

Mr. LIEBERMAN. Mr. President, this amendment deals with what in law enforcement circles is called a multipoint wiretap. It is a very rare kind of electronic surveillance that is tied to the movements of the suspected criminal rather than to the particular telephone line he or she is using.

For all other wiretaps except these rare multipoint taps, law enforcement officers have to convince a court that there is probable cause to believe that a specific phone is being used to facilitate an ongoing crime, where a judge is persuaded that a criminal is moving around and using different phones or locations for the purpose, on the part of that person, to thwart interception, which is the wording in the law today. However, the judge may authorize a multipoint wiretap. With such a court order, the criminal's conversations can be listened to through wiretaps on those telephones that the criminal actually ends up using.

Let me point out again that what has to be shown here is that the person is moving around and using different phones or locations for the purpose of thwarting electronic interception. Now, no interceptions may take place until a specifically named individual is using the phone. So law enforcement officers must first establish, through physical surveillance, through observation during the 30-day life of these orders—they are limited to 30 days—that the targeted individual is actually using the phone. If someone else begins to use the phone and the targeted individual is not part of that conversation, the wiretap must stop—even, surprisingly, if other criminal activity is being discussed.

Now, because of these standards, these obstacles, these requirements, multipoint wiretaps are actually quite rarely used. They have, however, proved, according to testimony submitted by Deputy Attorney General Jamie Gorelick to the Judiciary Committee, highly effective tools in prosecuting today's highly mobile criminals who may switch phones frequently for many reasons. Some may move from one cellular phone to another in order to defraud the phone company. Others may switch from phone to phone because it is consistent with the kind of ruthless lives they lead. Others may be changing phones to avoid being tapped, and those are the people —particularly if they are considering carrying out a terrorist act of violence—that I am concerned about in introducing this amendment. Changes in technology make the likelihood that anyone, including criminals, of course, is going to use many different phone lines in the course of a day.

Under current law, unless law enforcement can establish that criminals are switching phones with the specific intent to thwart detection, surveillance, a wiretap, a multipoint wiretap cannot be obtained from a court. That is the law. Proving specific intent in such a situation is very difficult—even where someone may be moving so frequently that a standard wiretap on a particular phone is effectively useless.

So my amendment would allow courts to authorize multipoint wiretaps, either where law enforcement could persuade a judge that a criminal was changing phones frequently for the purpose of avoiding interception, or where the very fact that the criminal was moving around and changing phones had the effect of thwarting surveillance, regardless of why he or she is doing it. And that would ease the difficult task of proving the intention of the criminal to thwart detection. It captures situations also where the target is frequently moving and changes phones for any reason.

Mr. President, my amendment does not change, in any respect, protections in existing law against abuse of these multipoint wiretaps. For instance, no application for a multipoint wiretap may be filed by any Federal law enforcement officer without the approval of top Justice Department officials. They have to go right to the top for approval. And, of course, a judge cannot authorize a multipoint tap without finding probable cause that a specific person is committing a crime or criminal act.

So this is not going to invite any wanton abuse of wiretap authority. The wiretap cannot begin until law enforcement has verified that the target—even after the court orders it—is using the particular phone and only the communications of that person can be intercepted. If other conversations are heard and a conversation involving a target person, for instance, turns out to be personal, the tap has to be turned off. Given the highly secretive nature of most terrorists, given the fact that they are operating in a sophisticated way, and just as all the rest of us, moving around using phones, cellular phones, electronic surveillance is one of our best weapons once we have reason to believe that a criminal act, terrorist act, is being carried out, to find out what the intention of the perpetrator or terrorist is, and to stop that act before any innocent victims are hurt or, God forbid, killed.

The amendment that I am offering was in the President's original bill. I think it is modest and narrowly circumscribed, but enhances the ability of law enforcement officers to help.

Mr. President, how much of the 10 minutes remains?

The PRESIDING OFFICER (Mr. DeWINE). The Senator has 3 minutes and 50 seconds.

Mr. LIEBERMAN. Mr. President, finally, under current law, let me say that these tools are used very sparingly but effectively. I certainly do not anticipate their being used very often in our battle against terrorism, whether the terrorists be domestically or internationally inspired.

However, I do want to be sure that when our law enforcement officials—fighting and working to protect our safety—need these tools, that they will be ready and waiting so that swift and certain preventive action can be taken.

We owe that to our law enforcement officials. But truly more to the point, we owe it to the millions and millions of Americans, innocent people going about their daily lives, who deserve as best we are able to be protected from the hard and thoughtless hand of death that terrorism would wreak upon them.

Mr. President, that concludes my statement.

I yield so much of the remainder of my time as desired by the distinguished ranking Democrat of the Judiciary Committee, the Senator from Delaware [Mr. BIDEN].

Mr. BIDEN. I thank my friend from Connecticut.

The way I look at this, this is real simple. Real simple and basic. There is nothing real complicated about this. Right now, this can be done. Right now, all that has to be proven is there is an intent to evade. All we are saying is if the effect is evasion, and the effect is avoiding the tap on the phone that they think may be tapped, that they be able to do it based on the effect, not having to prove an intent to thwart eavesdropping. I want to make that clear to everyone here.

This still requires an initial finding that this guy is probably a bad guy. It still requires a judge to say that there

is probable cause to look at this guy. This is no great leap in anything. Civil libertarians should not worry, law enforcement should be encouraged, and the American people should feel some mild additional sense of security in being able to do what the Senator from Connecticut is suggesting that the President very badly wants, and that was deleted from the bill.

It is my hope that our friends on the Republican side may be able to accept this amendment. If there is any time left, I ask that it be reserved.

Mr. President, I rise in support of Senator LIEBERMAN's amendment, which I believe will improve the current authority for what are known as roving, or multipoint, wiretap orders. This provision was proposed by the President, but is not included in the Republican substitute.

Multipoint wiretaps allow law enforcement officers to obtain a judicial order to intercept the communications of a particular person—not just for one specified phone, as with most wiretap orders, but on any phone that person may use.

A recent prosecution will help illustrate how multipoint wiretaps work. In that case, involving one of the world's biggest international drug traffickers, agents determined that a courier was contacting his bosses by using a number of randomly chosen public phones around his home.

A multipoint wiretap was obtained and up to 25 phones were identified to prepare for the chance that the target would use one of them. Anytime he used one of those phones, the agents were able to initiate a wiretap. Interceptions obtained in this way led to 53 Federal indictments and a 19-ton cocaine seizure.

Under current law, the Government can get a multipoint wiretap order only if it can show that the defendant is intending to thwart surveillance—usually by switching from phone to phone.

The Senator's amendment would allow multipoint wiretaps where the defendant's conduct has the effect of thwarting surveillance—regardless of the defendant's intent.

This small change is desperately needed by law enforcement—because while officers will often be able to show that the individual is changing telephones frequently enough to make a standard wiretap impossible, it may be difficult to prove that he is doing so with intent to thwart a wiretap.

Changes in technology have made this proof even more difficult. A target may use more than one phone for reasons other than avoiding surveillance.

The current intent requirement virtually requires an officer to wait to apply for a multipoint wiretap until the officer somehow hears the target say ''I am changing phones because I don't want the cops to tap this conversation.''

Let me give you an example of one ongoing case in which a multipoint wiretap order could not be obtained because of the requirement to prove intent to thwart surveillance.

In this case, the targets are using electronic scanning equipment to capture cellular phone and identification numbers from unsuspecting and innocent phone users.

The particular targets in this case are cloning a new phone number—allowing them to use it without authority—every 2 weeks or so and thereby effectively avoiding surveillance.

The officers are hard-pressed to prove that every time the target clones a new number, he did so for the purpose of thwarting interception—rather than simply to avoid paying for the calls.

Because wiretaps are extraordinarily powerful and intrusive, the law contains numerous protections against abuse.

The Government must, of course, prove probable cause that a specific person is committing a crime—as with any wiretap application.

The application must be approved by a top Justice Department official—the Attorney General, the Deputy Attorney General, the Associate Attorney General, an Assistant Attorney General, or an Acting Assistant Attorney General;

The judge must find that the standards for issuing a multipoint order have been met;

The application must identify the person believed to be committing the offense and whose communications are to be intercepted;

The Government must minimize the intrusiveness of a wiretap—by turning the wiretap off when the conversation is personal, for instance; and

Any interception cannot begin until law enforcement has clearly determined that the target is using that particular phone. And once the target is off the phone, the interception must end.

In practice, this latter requirement means that if the agents are out on surveillance and they see their target move to a new phone, they can begin interception of the new phone. It also means that if their target hands the phone to his buddy, they must stop the interception immediately.

A multipoint wiretap order does not allow the police to intercept a slew of different telephones in a number of places and monitor every conversation on those phones.

The amendment proposed by the administration, and offered in modified form by Senator LIEBERMAN, would not change any of the basic protections in the current multipoint wiretap statute.

The narrow, but necessary change that the Senator's amendment would make is not intended to make this authority a run-of-the-mill everyday surveillance technique.

I understand that multipoint wiretaps are used sparingly—in fact, the Justice Department reports that last year only 10 multipoint wiretaps were conducted and that only 4 have been approved to date this year.

The new authority provided by this amendment must be utilized responsibly. And I reiterate that Senator LIEBERMAN's amendment will not change any of the protections built into the multipoint wiretap statute besides broadening the intent standard to include an effects standard.

We must provide law enforcement with the tools they need to meet the demands of an ever-complex and changing criminal element. In today's increasingly mobile and high-technology world, we need to provide law enforcement with the ability to move with the criminals. It is now simply too easy for law enforcement to get left behind as the criminals move from place to place and from phone to phone.

At the same time we must be cautious not to infringe on civil liberties. I believe the amendment Senator LIEBERMAN offers today accomplishes both of these goals.

It is a narrow but necessary expansion of the multipoint wiretap authority—but one that also includes protections against abuse.

I urge my colleagues to support this amendment.

Mr. HATCH. Mr. President, how much time remains on both sides?

The PRESIDING OFFICER. The Senator from Utah has 10 minutes; the Senator from Connecticut has 1 minute and 6 seconds.

Mr. HATCH. Mr. President, initially I opposed the President's version of this amendment. It is a fundamental tenet that the right of the people to be secure in their persons, house, papers, and effects against unreasonable searches and seizures limit the permissibility in Government interception of electronic communications.

In other words, the Government cannot listen to our private telephone conversations whenever it feels like it.

Indeed, because wiretaps are so intrusive in conducting in secret and under circumstances in which the subject generally has a reasonable expectation of privacy, the courts and Congress have required that Federal law enforcement officers meet a heightened burden of necessity before using a wiretap.

At the same time, we have to recognize that no one has a right to engage in illegal activity. Criminals consistently adapt the latest technology to further the aim of completing their illegal acts without detection.

As the criminal use of technology has evolved so, too, must we, enhancing the capabilities of law enforcement who, after all, must protect our citizens from these types of crimes.

The balance between a person's right to be free from unreasonable searches and his or her expectation to live free from crime is a delicate one. We have to consider seriously any proposal with the potential to upset the balance.

Now, I believe that the President's language could very well have done that. Briefly, the President's original proposal would have provided law enforcement with an expanded authority

to tap phones in a narrow subset of cases in which the target would be subject to a normal wiretap, but changes phones so quickly it is difficult to get a separate wiretap order for each phone.

These are the so-called roving wiretaps. Essentially, this enables the Government to follow a person around and listen to that person's telephone conversation regardless of what phone the person is using.

I think this is problematic. So, our staff has worked with Senator BIDEN and his staff to narrow the provision considerably.

Now, under this provision, the Government can receive a court-ordered wiretap if the suspect knows he is under surveillance and intentionally thwarts that surveillance. That is country law.

The proposed amendment, which is substantially different from the President's language, permits law enforcement to get a multipoint wiretap only if the suspect intends to thwart surveillance, or if by the course of his conduct he effectively thwarts surveillance.

I think this is a reasonable compromise. It is important that we give law enforcement the critical tools it needs to combat terrorism and protect our free society, but because we are a free society we must be leery of expanding the surveillance powers of law enforcement intemperately. We must not, even in the aftermath of tragedy such as Oklahoma City, trade off our constitutional protections for a generic promise of increased security.

I, personally, am confident that the proposed amendment by my friend and colleague from Connecticut satisfies civil liberty concerns and meets the needs of law enforcement at the same time.

I intend to vote for this amendment. I know there are others who feel deeply that they do not want to vote for it. As manager of the bill on our side, I intend to vote for it. I would encourage others to do so, as well.

I am prepared to yield back the balance of my time and to stack the vote at some later time at the decision of the majority leader.

Mr. LIEBERMAN. Mr. President, first let me thank my friend from Utah for his support of the amendment. I appreciate the terms at which the support was given, that this is a balanced amendment.

It gives extra authority to law enforcement to protect the rest of us, but does so in a way that gives proper regard to the liberties that we all cherish.

Again, this extra wiretap authority cannot be used unless such judge has concluded there is probable cause to believe that the individual who will be the target of this multipoint tap is, in fact, committing a criminal act.

Mr. President, I would be happy to yield back the time that I have remaining.

Mr. HATCH. I yield back the balance, and I ask unanimous consent that the vote on or in relation to the pending Lieberman amendment occur later this evening at a time to be determined by the two leaders.

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

Mr. HATCH. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

AMENDMENT NO. 1210, AS MODIFIED

Mr. COVERDELL. Mr. President, I ask unanimous consent to modify my amendment No. 1210. I send the modification to the desk.

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

The amendment (No. 1210), as modified, is as follows:

At the appropriate place in the amendment, insert the following new section:

SEC. . PROOF OF CITIZENSHIP.

PROHIBITION OF VOTER REGISTRATION AS PROOF OF CITIZENSHIP.—Notwithstanding any other provision of law, a Federal, State, or local government agency may not use a voter registration card (or other related document) that evidences registration for an election for Federal office, as evidence to prove United States citizenship.

Mr. COVERDELL. Mr. President, I ask for its immediate consideration.

Mr. HATCH. Mr. President, on this side, we find this a good amendment. We are prepared to accept it. I understand the other side is acceptable to that, as well.

Mr. BIDEN. Mr. President, after consulting with Senator FORD and others, we are prepared to accept the modification. We thank the Senator from Georgia for so modifying. We accept the amendment as sent to the desk.

The PRESIDING OFFICER. If there is no further debate, the question is on agreeing to the amendment of the Senator from Georgia, as modified.

The amendment (No. 1210), as modified, was agreed to.

Mr. HATCH. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 1230 TO AMENDMENT NO. 1199 AND AMENDMENT NO. 1241, EN BLOC

Mr. BIDEN. Mr. President, we are prepared to accept Shelby amendment No. 1230, the fertilizer research study, and I understand that the Republican side is willing to accept the Heflin amendment numbered 1241 related to sarin gas.

I ask unanimous consent that both of them be called up, and then at the appropriate time, I am willing to accept them both en bloc.

Mr. HATCH. We are prepared to accept both of those amendments.

The PRESIDING OFFICER. Without objection, the amendments will now be considered en bloc.

The clerk will report.

The bill clerk read as follows:

The Senator from Delaware [Mr. BIDEN], for Mr. HEFLIN for himself, and Mr. SHELBY, proposes an amendment numbered 1230 to amendment No. 1199, and for Mr. HEFLIN, proposes an amendment numbered 1241, en bloc.

The amendments are as follows:

AMENDMENT NO. 1230

At the appropriate place, insert the following: ''In conducting any portion of the study relating to the regulation and use of fertilizer as a pre-explosive material, the Secretary of the Treasury shall consult with and receive input from non-profit fertilizer research centers and include their opinions and findings in the report required under subsection (c).''.

AMENDMENT NO. 1241

At the end of the bill, add the following:

SEC. . LISTING OF NERVE GASES SARIN AND VX AS A HAZARDOUS WASTE.

(a) IN GENERAL.—Section 3001(e) of the Solid Waste Disposal Act (42 U.S.C. 6921(e)) is amended by adding at the end the following:

''(3) NERVE GASES.—

''(A) LISTING.—The Administrator shall list under subsection (b)(1) the nerve gases sarin and VX.

''(B) APPLICATION OF REGULATORY REQUIREMENTS.—Standards and permit requirements under this Act and regulations issued under this Act relating to the nerve gases sarin and VX shall not apply to—

''(i) any sarin or VX production facility of the Department of Defense that is in existence on the date of enactment of this paragraph; or

''(ii) the storage of sarin or VX at any Department of Defense designated chemical weapons stockpile in existence prior to the date of enactment of this Act.''.

(b) IMMEDIATE ACTION.—The listing of the nerve gases sarin and VX required by the amendment made by subsection (a) shall be deemed to be made immediately on enactment of this Act, and the Administrator of the Environmental Protection Agency shall in fact make the listing as soon as practicable after enactment of this Act.

(c) NO STUDIES OR PROCEEDINGS.—Notwithstanding any other law, it shall not be necessary for the Administrator of the Environmental Protection Agency to make any studies, engage in any rulemaking or other proceedings, or meet any other requirement under the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.) or any other law in support of the directive made by subsection (b).

(d) CRIMINAL PENALTY FOR MERE POSSESSION.—Section 3008(d)(2) of the Solid Waste Disposal Act (42 U.S.C. 6928(d)(2)) is amended by inserting ''or knowingly possesses the nerve gas sarin or the nerve gas VX'' after ''subtitle''.

Mr. BIDEN. Mr. President, while I have strong reservations about the amendment offered by Senators HEFLIN and SHELBY, I have also been informed that the amendment has been cleared by all other Senators—including Senators, from both sides, representing the committee of jurisdiction, the Committee on Environment and Public Works.

For these reasons, I will not object to the amendment offered by Senators HEFLIN and SHELBY and require a roll

call vote. But, I would simply note my opposition for the RECORD.

Mr. HATCH. Mr. President, I urge adoption of the amendments.

Mr. BIDEN. We urge the adoption of both amendments.

The PRESIDING OFFICER. If there is no further debate, the question is on agreeing to the amendments.

The amendments (Nos. 1230 and 1241) were agreed to.

Mr. HATCH. Mr. President, I move to reconsider the vote by which the amendments were agreed to.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 1240

Mr. BIDEN. Mr. President, on behalf of Senators MCCAIN and LEAHY, I call up an amendment numbered 1240 and ask for its immediate consideration.

Mr. HATCH. Has that amendment been accepted?

The PRESIDING OFFICER. The Senator is advised that it has not been agreed to.

The question is on agreeing to the amendment.

The amendment (No. 1240) was agreed to.

Mr. HATCH. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

Mr. BIDEN. Mr. President, I understand that the distinguished chairman of the Judiciary Committee is working on the possibility of accepting or working out an agreement on the Nunn-Biden amendment on posse comitatus. Is that correct?

Mr. HATCH. That is correct. There is some language difficulty. We are trying to work it out. We hope that we can.

Mr. BIDEN. I say to the Senator from Michigan that I would like to accept his amendment No. 1228. We are attempting to find out whether that can be cleared. If we can clear that amendment, it will take another few minutes to determine that.

I suggest, with the majority leader here, that while we are clearing some of these additional amendments, if there is anyone who has an amendment that we cannot clear who is ready to go with their amendment, I would encourage them to move on their amendments.

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

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

Mr. HATCH. Parliamentary inquiry: Is the LEAHY amendment No. 1238 at the desk?

The PRESIDING OFFICER. That amendment is pending.

AMENDMENT NO. 1238

Mr. HATCH. Mr. President, I believe both sides are in a position to accept that. Our side will accept it if the distinguished Senator from Delaware will.

Mr. BIDEN. Mr. President, we are prepared to accept it as well.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 1238) was agreed to.

Mr. HATCH. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 1206, AS MODIFIED, TO AMENDMENT NO. 1199

(Purpose: To authorize assistance to foreign nations to procure explosives detection equipment)

Mr. BIDEN. Mr. President, the Senator from Pennsylvania is here. He has an amendment, No. 1206, relating to foreign assistance. We have been discussing this with him. We think it is a good amendment. We have suggested a few minor changes relative to the amount of distribution under the amendment.

I understand the Senator from Pennsylvania is prepared to send his amended amendment to the desk, and we are prepared to accept it.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, the referenced amendment would provide U.S. assistance to other countries to procure explosives detection devices and other counterterrorism technology. At the request of the State Department, it has been broadened to include support for joint counterterrorism research and development with allied countries.

This amendment would be very effective for counterterrorism internationally by providing up to $3 million in assistance to foreign governments to work on counterterrorism technologies. Obviously, when you talk about counterterrorism and explosives-detection devices at airports, U.S. citizens, for that matter citizens and residents all over the world, will be affected by the availability of the sort of counterterrorism technology that will be supported under this amendment.

It has very broad support. I am pleased that the distinguished chairman of the committee and the distinguished ranking member are prepared to accept it.

The amendment has been modified to limit the amount of support to $3 million annually because the total authorization under the program is $15 million. I urge the adoption of the amendment.

Mr. BIDEN. Mr. President, does the Senator need to send that amendment to the desk?

Mr. SPECTER. I send the modification to the desk, Mr. President.

The PRESIDING OFFICER. Without objection, the amendment is so modified.

Without objection, the amendment is agreed to.

The amendment (No. 1206), as modified, was agreed to, as follows:

On page 22, between lines 18 and 19, insert the following:

''(b)(1) ASSISTANCE TO FOREIGN COUNTRIES TO PROCURE EXPLOSIVES DETECTION DEVICES AND OTHER COUNTERTERRORISM TECHNOLOGY.—Subject to section 575(b), up to $3,000,000 in any fiscal year may be made available—

''(A) to procure explosives detection devices and other counterterrorism technology; and

''(B) for joint counterterrorism research and development projects on such technology conducted with NATO and major non-NATO allies under the auspices of the Technical Support Working Group of the Department of State.

''(2) As used in this subsection, the term 'major non-NATO allies' means those countries designated as major non-NATO allies for purposes of section 2350a(i)(3) of title 10, United States Code.

On page 22, line 19, strike ''(b)'' and insert ''(c)''.

Mr. HATCH. Parliamentary inquiry: Has the amendment been adopted, because we still have a problem on this side, I have been informed. I ask unanimous consent that the amendment still be considered pending.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. HATCH. The amendment is cleared. I urge adoption.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

So the amendment (No. 1206), as modified, was agreed to.

Mr. HATCH. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

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

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

Mr. HARKIN. I am one Senator who is wondering what is going on here. I do not know if there are going to be votes or not. We have been here all day. What is happening? Can I go home and have dinner with my kids? That is what I wanted to know. Are we really going to stay and vote, or are we going to stack them?

Mr. DOLE. We are going to vote tonight. We worked out about a dozen amendments. We have made a lot of progress in the last 2 or 3 hours. We

hope to dispose of all of the amendments, with the exception of the habeas corpus amendment, which we will do tomorrow morning. We will vitiate the cloture vote and do habeas. We need to complete action tonight. I think it may be another hour before the votes begin. If you ate fast, you might make it.

Mr. HARKIN. Well, I ask the distinguished majority leader, if we are going to have votes, why not stack them in the morning.

Mr. DOLE. We do that every day around here and we never finish anything. I would like to do the voting tonight on all but habeas and vitiate the cloture and finish habeas and start on telecommunications sometime tomorrow morning.

We have some momentum now that we do not want to lose. A lot of people may not be willing to do this in the morning.

Mr. HARKIN. If this is momentum, I would hate to see this place really move.

I just wanted to know if we could stack them in the morning.

Mr. DOLE. You could try to go home, but you probably would not be able to eat much.

Mr. BIDEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. We started off about 4 hours ago with 60-some amendments. We are down to—not counting the habeas—about four or five. So we really have been working in his absence. I wanted to assure him of that.

Mr. HARKIN. I appreciate that.

Mr. DORGAN. Mr. President, I understand that, and I think the progress is commendable. I think the Senator from Iowa and others would appreciate knowing if we are going to stack votes. Do we have any notion of when the votes might be stacked?

Mr. DOLE. We hope that by 9 o'clock we will start voting. There will probably be three or four votes.

Mr. DORGAN. But that is not locked in at this point?

Mr. DOLE. One vote has been ordered.

Mr. BIDEN. Yes. No time is set. It was tonight. I believe we are going to have several more votes. We are waiting for a couple Senators to come and offer their amendments. There are very tight time constraints on each of the amendments. If they get here —quite frankly, what happened is we have come over here and people have started to offer amendments and they have ended up being accepted. So that seems to work as a catalyst to get them accepted, too.

There is one vote ordered for tonight without a time certain on it. There are probably going to be two or three additional votes.

Mr. DOLE. If the Senator will yield. If the managers continue to work as they have, and we only had one vote left, I would put that off until tomorrow. But I am not certain when we are going to be able to tell people that. If we have two, three, or four, I would like to complete the votes tonight. That will save us a couple of hours in the morning. I think if the managers will continue to be flexible on these amendments, and we will avoid a lot of votes.

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

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

Mr. SPECTER. Mr. President, I have expressed in the past concern about the provisions of the pending legislation which authorize secret proceedings in certain instances. It had been my hope that we might have been able to deal with the problem of suspected terrorists without being involved in secret proceedings.

I had been working on an amendment which would have dealt with people who were in the United States illegally, who could be proceeded against and deported because of their illegal status without the need for the government to rely on secret evidence.

I have very grave concerns about the constitutionality of any deportation proceeding in which secret evidence is used and there is not a right of confrontation. Technically, deportation proceedings are civil in nature and therefore do not require the full scope of confrontation rights which are available in criminal cases.

Notwithstanding the fact that deportation proceedings are civil in nature, the courts have held that due process does attach to a deportation proceeding. It may well be when the case reaches the Supreme Court of the United States that this due process requirement will be found to pick up the right of confrontation under the sixth amendment.

Certainly, the due process clause of the 14th amendment, which is applied to the States, does pick up the confrontation provision of the sixth amendment. By analogy, it may well pick up confrontation rights as it is applies to deportation proceedings, as well.

But in reviewing the existing deportation laws, there would be a much broader change necessary to deport those who are here simply illegally without getting into the question of evidence as to terrorism.

There is obviously a grave concern about disclosure of confidential information involving terrorism, because sources and methods could be compromised. I understand the Senator from Illinois, Senator SIMON, is going to offer an amendment which will require a summary of the classified information being relied on by the government in the deportation proceeding. Frankly, that does not go as far as I would like to see the protections go, but that may be all that can be accomplished under the current bill.

We will subsequently be taking up the immigration laws generally and it may be that at that time we can craft procedures which will protect the public interest of getting out of the country people who are known terrorists, where there is substantial evidence to that effect, even though that evidence cannot be produced in a context of confrontation, which someone would be entitled to under a criminal proceeding.

I am also concerned about the reliance on classified evidence in cases involving the Secretary of the Treasury's designation of foreign organizations as terrorist organizations. The substitute represents a substantial improvement to the bill as introduced. Under the procedures in the substitute, there is de novo review by the courts of the Secretary's designation. That means a court will take a fresh look to see if the designation by the Secretary of the Treasury of an organization as a terrorist organization is, in fact, well founded.

Under the provisions which have been added to the substitute, a summary of the classified evidence presented to the judge will be provided to the organization, and in such cases there will be a requirement that the evidence be clear and convincing that the organization is, in fact, a terrorist organization. The summary will have to be sufficient to allow the organization an opportunity to defend.

I think that these provisions have gone about as far as is possible with the practicalities at hand, and that they would really be risking very sensitive information and sources and methods if full confrontation was possible where someone is to be deported, and where the witnesses would have to be produced where there is a designation by the Secretary of the Treasury of an organization as being engaged in or supporting terrorist activities.

I think, Mr. President, we really are dealing as much as we can under the present legislation. A good bit of this bill will have to be tested in court, and I do express these concerns about the constitutionality of some of these provisions.

I yield the floor.

AMENDMENT NO. 1203 WITHDRAWN

Mr. HATCH. Mr. President, I would like to resolve one of the issues that I think is resolvable, on the Smith amendment.

What the Senator is concerned about is he wanted a floor on the amount of damage, so that incidental damage by citizens who are engaged in peaceful or nonviolent demonstrations or protests would not trigger the antiterrorism language of this bill.

I ask my colleague from Delaware if he would agree that a definition of ''terrorist'' in this legislation is not intended to apply to American citizens

engaged in a nonviolent or peaceful demonstration, or demonstrations or protests where incidental damage to property may occur.

Mr. BIDEN. Mr. President, I agree with the Senator from Utah that that is not the intention.

Mr. HATCH. I think the real thing the Senator has been worried about is whether if pro-choice and right-to-life people are picketing and exercising their rights of free speech, and some incidental damage occurs—just to choose two organizations in society—that if there is no intention to commit terrorist actions, and if the demonstrations are intended to be peaceful and nonviolent, that somehow or another this law would not be triggered.

Mr. BIDEN. Mr. President, I say to my friend, this is not intended to capture incidental damage. Say someone in a peaceful protest trips over a hedge or tromps on a flowerbed. That is not the intention here. The key here is ''incidental damage'' that is not intended. That would not be captured by this legislation, as I read the legislation.

Mr. SMITH. Will the Senator yield?

Mr. HATCH. I am happy to yield to the distinguished Senator.

Mr. SMITH. I thank the Senator from Utah and the Senator from Delaware. They have alleviated my concerns. We talked about this quite some period of time, and I very much appreciate it. We have gone now to the spirit and intent of what we mean by a ''terrorist,'' and I am satisfied and more than delighted to withdraw the amendment.

I thank my colleagues.

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

The amendment (No. 1203) was withdrawn.

Mr. HATCH. I thank the distinguished Senator from New Hampshire for working on this. We are making a great deal of headway here. If we can just continue for a short while, we might be able to finish this phase of the bill within a relatively short period of time.

Mr. BIDEN. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 1243 TO AMENDMENT NO. 1199

(Purpose: To amend the penalty provisions for the use of explosives or arson crimes)

Mr. HATCH. Mr. President, it is my understanding that both sides are willing to clear the Levin amendment No. 1243. So, on behalf of the Senator from Michigan, I call up that amendment, No. 1243, at this time.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Utah [Mr. HATCH], for Mr. LEVIN, proposes an amendment numbered 1243.

Mr. HATCH. Mr. 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:

On page 15, strike lines 1 through 25 and insert the following:

''(f)(1) Whoever maliciously damages or destroys, or attempts to damage or destroy, by means of fire or an explosive, any building, vehicle, or other personal or real property in whole or in part owned or possessed by, or leased to, the United States, or any department or agency thereof, shall be imprisoned for not less than 5 years and not more than 20 years. The court may order a fine of not more than the greater of $100,000 or the cost of repairing or replacing any property that is damaged or destroyed.

''(2) Whoever engages in conduct prohibited by this subsection, and as a result of such conduct directly or proximately causes personal injury to any person, including any public safety officer performing duties, shall be imprisoned not less than 7 years and not more than 40 years. The court may order a fine of not more than the greater of $200,000 or the cost of repairing or replacing any property that is damaged or destroyed.

''(3) Whoever engages in conduct prohibited by this subsection, and as a result of such conduct directly or proximately causes the death of any person, including any public safety officer performing duties, shall be imprisoned for a term of years or for life, or sentenced to death. The court may order a fine of not more than the greater of $200,000 or the cost of repairing or replacing any property that is damaged or destroyed.''.

Mr. LEVIN. Mr. President, I thank the Senator from Utah. The amendment I am offering would amend an important penalty provision in this bill. Section 107 of the bill amends title 18, section 844 of the United States Code, which establishes penalties for anyone who damages or destroys or attempts to damage or destroy by fire or explosive any building, vehicle or real or personal property of the U.S. Government. The current law establishes a penalty of imprisonment up to 20 years or a fine or both. And if death results, a sentence of life imprisonment or death can be imposed.

The Hatch substitute does two things. It establishes a minimum amount for the fine that can be imposed and it establishes a minimum number of years for a prison sentence, 5 years in a case involving only the loss of property and 7 years in a case involving injury to a person. It returns the current penalty for cases in which death results.

The concern here is that the amendment seems to provide that a court could impose a fine without the minimum prison sentence that the bill provides. What this amendment does is make it clear that the minimum prison sentence, which is provided for in the bill, must be provided and if a fine is imposed it is not and cannot be in lieu of a prison sentence but must be on top of a prison sentence.

I think that is the way it should be when we do have minimum prison sentences, that we should not in the same provision allow for there to be a fine in lieu thereof, but it must be in addition to such a minimum sentence.

I understand this has been cleared on both sides.

The PRESIDING OFFICER. If there be no further debate, the question is on agreeing to the amendment.

The amendment (No. 1243) was agreed to.

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

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Illinois.

AMENDMENT NO. 1250

Mr. SIMON. Mr. President, I have an amendment. I am working with Senator SPECTER on his version. I think we will have a Specter-Simon amendment very shortly.

What it does is it changes the provision if an alien is to be deported. Under the present bill, if there is classified information that alien is not informed of anything. That is a clear violation of due process and I think the courts would toss it out.

What we have suggested, and we are working on the precise language now, but what we are suggesting is that the Attorney General would provide an unclassified synopsis and the court would have access to the classified information to make sure the unclassified synopsis is accurate. And then that would be given to the person who is charged with being deported. That gives some reasonable access. We provide for review and appeal procedures. We are still working on some details.

Senator SPECTER may want to comment on this. We may offer the amendment tomorrow or later tonight, I am not sure, but I think we are very close to an accord.

I might add the accord is in line with the original draft of the legislation that is before us. But I think the legislation, if it is not amended, frankly, the courts would toss it out as violating due process.

My colleague from Pennsylvania may want to comment on that.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, in comments a few moments ago before the distinguished Senator from Illinois came to the floor, I had referred to my concerns about deportation with secret evidence. I had referred at that time to an amendment which Senator SIMON was considering. We have since conferred and are really joining forces in the amendment which I had filed with the amendment which Senator SIMON has just referred to.

I believe this amendment goes a substantial distance in protecting the rights of someone who is subject to deportation. As I had said earlier this evening, I have great concerns about the fairness of the procedure where

there was not confrontation, that is where the evidence is alleged to be present that the person is a terrorist but that evidence is not presented because it would disclose a source very injurious to the Government. So what we are trying to do here is to find an accommodation.

If this were a criminal proceeding, there is no doubt that there would be a requirement of confrontation under the U.S. Constitution. But deportation proceedings are classified as civil proceedings. But notwithstanding the classification of deportation proceedings as civil, the courts have also said that there has to be due process even in a civil proceeding. It is entirely possible when this provision is reviewed in court that it may be determined that due process will require confrontation just as the due process clause of the 14th amendment is applicable. The States picks up the requirement of confrontation applicable to the Federal Government in a criminal proceeding. But I think that the amendment which Senator SIMON and I will be offering will go a long way to raising the standard of fairness.

The one item which we are still wrestling with on the drafting is whether there will be a requirement that the evidence be clear and convincing in order to deport someone without confrontation on the evidence which is presented as to terrorism. But however we work out that last detail, we are in the process of having the drafting finalized now.

We are doing this because Senator SIMON and I have just put these two amendments together trying to work them out. Perhaps it might be even be acceptable to the managers. But that remains to be seen. But that is the sense of what we are doing at this moment.

Mr. SIMON. Mr. President, my hope is that it would be acceptable to the managers. I think this is in the line of the spirit of what is being offered. It is in line with the original draft. It certainly is in line with the sentiments over the years that I have worked with Senator BIDEN, and I also believe Senator HATCH also would find this acceptable.

Mr. BIDEN. Mr. President, I would like to speak very briefly to the point.

First of all, I would like to thank both Senators for moving such an important amendment in this hour, and at a time in which I do not think people fully understand how significant this amendment is. Our adversarial system of justice requires that defendants be given evidence to be used against them so that they can prepare a defense. It is kind of a basic element of our entire system. At trial that is what cross-examination is all about, to test the reliability and the basis of information given by a witness. The right to see and confront the evidence against oneself is I think a fundamental premise of the due process clause of the Constitution. Unseen and unheard evidence simply cannot be defended against. How does one defend themselves? The courts have recognized that fact time and again.

The Supreme Court has said that secrecy is not congenial to truth seeking. No better instrument has been devised for arriving at the truth than to give a person in jeopardy every serious notice of the case against him and an opportunity to meet him. That was in the Joint Anti-Fascist Refugee Committee versus McGrath, 1951.

The court also said:

> Certain principles have remained relatively immutable in our jurisprudence. One of these is that where the Government action seriously injures an individual and the reasonableness of the action depends on fact-finding, the evidence used to prove the Government's case must be disclosed to the individual so that he has an opportunity to show that it is untrue.

That was in Green versus McGlory, 1959.

So to sum it up all, the dangers posed by secret evidence are neither hypothetical nor are they imagined. Shortly after World War II an American soldier sought to bring his German bride back to the United States. She was excluded at the border on the grounds that she was a security risk. The Supreme Court concluded secret evidence could be used against her since persons first entering the United States do not have the same right. However, the public outrage forced the Government to give her a hearing. And the supplier of the secret evidence turned out to be a jilted lover and she was admitted.

Secret evidence runs counter to all the principles underlying due process of law and our judicial system, and it cheapens our system by placing in doubt the accuracy of its decision.

So I urge my colleagues to reject the secret evidence and to vote to return this provision to the form in which Senators DOLE and HATCH first introduced it.

I urge my colleagues to support the Specter-Simon amendment.

I yield the floor.

Mr. DOLE. Mr. President, as I understand it, on the Democratic side there are four nonhabeas corpus amendments remaining including the one that is pending. So that would be three. On Senator KENNEDY's amendment there is an effort to try to reconcile that. Also, Senator LIEBERMAN is to be voted on. SIMON, immigration; KENNEDY, immigration; LIEBERMAN; and the others are all habeas.

On the Republican side, how many amendments? Senator ABRAHAM; Senator BROWN; Senator KYL; Senator SMITH has been resolved; and two Specter amendments. But I understand that one of those may have been drafted and is the pending amendment, and the other one may not be offered.

Mr. BIDEN. Mr. President, that is my understanding. I ask my friend from Pennsylvania. But amendment No. 1237, secret proceedings, has been folded into the Specter-Simon amendment.

Is that correct?

Mr. SPECTER. That is correct.

Mr. BIDEN. So the only one is the terrorist organization amendment of the Senator from Pennsylvania, No. 1239. Is that correct?

Mr. SPECTER. Mr. President, as I had commented earlier, I am satisfied now that the revision of the bill is about as far as we can go in providing the addition of the de novo hearing by the court, that the classifications of terrorist organizations is well-founded factually, and there again that the evidence which is not subject to confrontation meets a similar standard with respect to Specter-Simon.

Mr. BIDEN. Mr. President, I understand the Senator will not move his terrorist organization amendment because he is now satisfied.

Mr. SPECTER. That is correct.

Mr. BIDEN. If I could respond to the leader, on the disposition of this amendment, in all probability we are prepared to accept the Abraham amendment, and I would urge Senator BROWN to come and offer his amendment on Ireland now.

Senator NUNN has just come in the Chamber. Hopefully, he can work out with the Republicans their concerns, and if not I hope we would be prepared to move that.

So as I look down the Republican list, the only nonhabeas amendments left—because we have accepted most of them—are the Abraham amendment, which I believe we can accept, and the Brown amendment, which I hope Senator BROWN will come and offer. There are no other nonhabeas amendments on that side.

On the Democratic side, the Kennedy immigration deportation proceeding, I hope we will be able to accept, and hopefully the Nunn provision will be accepted. And they are the only two nonhabeas amendments that we have left after we vote on Specter-Simon and Lieberman. I guess that is it. They are the only two we have—and Brown. If we can get Senator BROWN to come and offer his amendment, it will be very helpful.

Mr. DOLE. Let me indicate to Senator BROWN, wherever he may be, that we would very much appreciate his coming to the floor and offering his amendment.

Senator NUNN is here so maybe we can negotiate, if he is willing to negotiate that amendment, or if not have a debate on that amendment.

I understand Senator SPECTER and Senator SIMON will be ready momentarily to offer their amendment.

Mr. BIDEN. Mr. President, again to review the bidding, the only amendment that Senator SPECTER has remaining is the one that he and Senator SIMON just debated. The Simon amendment listed as S. 1234 also drops because that has been merged. So Senator SIMON has no other amendment, other than the pending amendment, left. And that would leave, as I said, again only for debate Brown and possibly Nunn, Biden, and possibly Kennedy, but I hope we can accept the

Kennedy amendment. I believe we will be able to accept the Abraham amendment in a moment.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. SPECTER. Mr. President, I ask unanimous consent that I may be permitted to proceed for 5 minutes as in morning business.

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

TRIP TO GUATEMALA, COLOMBIA, HAITI

Mr. SPECTER. Mr. President, during the period of May 26–29, 1995, my colleague on the Senate Intelligence Committee, MICHAEL DEWINE, and I traveled to Guatemala, Colombia, and Haiti for a firsthand view on matters of concern to the Intelligence Committee and to the Senate. The following represents my own personal impressions of the facts learned and my own judgments.

Our first stop was Guatemala. On April 5, 1995 the Senate Intelligence committee held an open hearing on the role of the CIA in two human rights cases. In one case, the committee learned that a Guatemalan, Col. Roberto Alpirez, might be implicated in the murder of American farmer and innkeeper Michael DeVine on June 8, 1990. During the open hearing, Acting Director of Central Intelligence, Adm. Bill Studeman acknowledged that the CIA received information in October 1991 that shed light on the possible presence of Colonel Alpirez in the interrogation of Mr. DeVine. Admiral Studeman also acknowledged that the CIA failed to inform the intelligence committees of the House and the Senate regarding this information which should have been done.

In the second human rights case, Ms. Jennifer Harbury, the widow of a Guatemalan guerrilla Commander, Efraim Bamaca, repeatedly sought to learn the fate of her husband. Both Jennifer Harbury and Carole DeVine, the widow of Michael DeVine, were eloquent and dynamic hearing witnesses. They pleaded for our assistance to learn the facts of their husband's deaths, and, in the case of Ms. Harbury, the location of his remains. We were also interested to learn what happened in the cases of Nicholas Blake, Sister Diana Ortiz and Helen Mack.

While the committee's staff is analyzing many documents pertaining to these cases, we traveled to Guatemala to learn more about these matters and to determine the willingness of the Guatemalan government to prosecute anyone legally responsible for these deaths. Our visit also sought to convince the Guatemalan Government that human rights are a top United States Government priority.

Our first meeting was with Guatemala's President Ramirez deLeon Carpio, where we focussed on the Guatemala peace process and pressed hard on human rights, particularly the DeVine and Bamaca cases. President deLeon is the former human rights ombudsman in Guatemala.

We expressed the U.S.'s wish to assist the peace process and our strong interest in resolving the DeVine and Bamaca cases. President deLeon responded by noting the serious challenges his government has had to face since he took power. He also stated he had confronted serious corruption in the Congress and the Courts by changing them through legal means. Finally he noted that he had succeeded in achieving a 5 percent economic growth and had to persevere in a confrontation with powerful interests in the private sector to achieve major fiscal reform which he characterized as being tougher than dealing with the Army, the guerrillas, and corrupt politicians combined.

When we pressed on the DeVine and Bamaca cases, President deLeon said that both represented part of the general problem of impunity in Guatemala. He noted a difference between the cases. He characterized the DeVine case as a common crime. Six soldiers and a Captain Contreras had been convicted. It is widely believed that Captain Contreras was the leader of the group that murdered Michael DeVine, but after his sentencing to 20 years in jail, he escaped, perhaps with the complicity of the Guatemalan Army which had him in custody. Therefore, to cast this as strictly a common case of crime appears inaccurate in that the involvement of the Guatemalan military points to more than a common crime. In my view, not enough has been done to apprehend him in spite of the fact that the government of Guatemala had placed a $17,000 reward for the Captain's recapture.

President deLeon stated that he would be calling Venezuelan President Caldera about the possibility that the Captain is a fugitive in that country and that the FBI and Interpol have been asked to join in the search for him abroad. The President added that he expected to send a special commission to Venezuela to pursue this and thought that President Caldera would be willing to cooperate.

Later we met with Defense Minister General Mario Enriquez. The DeVine and Bamaca murders figured preeminently in our discussions. We underscored several times the importance of the cases to bilateral relations. General Enriquez stated investigations into both killings were going forward, but he drew a distinction between Bamaca and DeVine.

General Enriquez also reported to us that he was hopeful that Captain Contreras had been captured just prior to our meeting. The next day, May 27, the newspapers were filled with front page stories of the capture of Captain Contreras. But a check with our Embassy in Venezuela did not shed any more light in the veracity of this reporting.

The capture of Captain Contreras would be a critical element in the resolution of this crime. It might shed light on why and whether other military officers were involved. President deLeon noted that he had suspended Colonels Catalan and Alpirez pending investigation of their involvement in a crime, a step basically unprecedented in Guatemala. We also learned of the rumored existence of a tape reportedly held by Colonel Alpirez which allegedly recorded instructions to him to cover up the DeVine case.

President deLeon asserted that he would go as far as necessary in pursuing the DeVine case which he added would benefit the army as an institution in Guatemala.

In regard to Guatemalan guerrilla commander, Efraim Bamaca, President deLeon made the same distinction between this case and the DeVine matter as did General Enriquez. In President deLeon's view Bamaca was a product of war and to push prosecution of that case would de-stabilize the army. He felt the Bamaca case should be referred to the Historical Clarification Commission, otherwise known as the ''truth commission,'' established by agreement between the government of Guatemala and the URNG guerrillas to deal with the many abuses committed during the war once it was over.

Nonetheless, we continued to press hard. We asked the President to make an example of the Bamaca case as a human rights violation. It was important to the relations between the government of the United States and the government of Guatemala. I noted that this is a special case and added that if the body of Efraim Bamaca were found, it would represent a big step forward.

I noted how the testimony of both Jennifer Harbury and Carole DeVine to the Intelligence Committee on April 5th had been very moving and, how Colonel Alpirez was linked to both cases. President deLeon acknowledged as a former human rights ombudsman he knew that there was no excuse for torture even in war. Many priests had also been murdered. He stated he wished to strengthen the bi-lateral relations with the U.S. and improve Guatemala's image. However to pursue the Bamaca case would threaten the peace process and the stability of the government. In his words, it would put a ''sword of Damocles'' over the head of all 2,500 Guatemalan military officers who had seen hundreds of their comrades die in the 34 years of the conflict. What was needed, he added, was a peace agreement and genuine reconciliation, not recriminations.