

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 President, I ask unanimous consent that the order for the quorum call be rescinded.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

We also met with human rights activists, including Ronald Ochaeta, Director of the Archbishop's Human Rights Office; Helen Mack, sister of the slain Myrna Mack; and Karen Fisher de Carpio, the daughter-in-law of the slain two-time Presidential candidate and newspaper publisher Jorge Carpio. Jorge Carpio was a cousin of the President deLeon Carpio. They requested that the United States government reveal all the intelligence about Guatemalan military people who may have been involved in human rights crimes. They also expressed the fear that, after the Guatemalan army returns Captain Contreras to justice in Guatemala, that the United States Government and human rights pressure will diminish; and absent that pressure, the Guatemalan Army will no longer even remotely respond to human rights concerns. They termed the Guatemalan justice system as being dysfunctional. Within the Army, they felt that there is brotherhood in which only some individual members are involved in a variety of illegal activities: human rights violations; stealing of cars; and drug trafficking, etc. They expressed the view that while most members of the army may not have been involved in these activities, all have taken "a blood pact" not to disclose any details on their fellow military comrades.

I agree with the human rights activists and monitors that only with the pressure of the U.S. Government and the international community will cause the Army to improve its human rights performance in the future and to shed light and sanctions on past crimes.

Our next stop took us to Colombia where we met with President Ernesto Samper, his Foreign Affairs Minister, Rodrigo Pardo, and his Defense Minister, Fernando Botero. We met the leaders of this country in Cartagena. Our discussions centered on narcotics trafficking and terrorism. While the United States has been riveted for years over the taking of hostages in the Middle East, scant attention has been paid to hostage taking in South America, particularly in Colombia where presently seven Americans are being held by the terrorist group known as FARC. I raised these issues with our Ambassador Myles Frechette and with President Samper. The view of both of them is this hostage taking is different in the sense that it is financially motivated. Terrorists have been taking Americans and other foreign nationals captive for ransom purposes. In meetings with President Samper, Senator DEWINE and I pressed for more action to prevent the taking of these hostages and greater efforts to release them. In my view, not enough has been done in this area.

Of paramount importance were our discussions regarding narcotics trafficking. The conditional certification of Colombia by the President on February 28, 1995 has clearly had an impact on the government on Colombia.

Prior to February 1995, there had been sporadic support by some quarters of the Colombian political establishment in preventing significant damage to the Colombian drug syndicates. For example, in 1994 the government of Colombia took no legislative steps to reverse its 1993 criminal procedures code which made it very difficult to bring mid-level and senior syndicate heads to justice. As a result, following the trend set in 1993, there were no arrests, incarcerations, or fines imposed on such traffickers. In addition, a number of frequently convicted traffickers were able to benefit in significant reductions to their sentences pursuant to Colombia's woefully inadequate sentencing laws.

In 1994, total drug seizures through interdiction efforts were above those of 1993 but didn't reach the levels accomplished in 1991 as the U.S. Government has recommended. Performance on eradications has supposedly improved; but results have not met expectations. In 1994 there were no senior government officials indicted for corruption. The Colombian Congress did not pass bills introduced by the Samper administration to counter money laundering activities. There was insufficient progress to detect and remove corrupt officials. There continues to be a problem with drug syndicate control of foreign soil such as San Andreas Island.

The conditional certification by the Administration on March 1, 1995 of Colombia's counter-narcotics effort appears to have changed Colombia's attitude. Since that date, Colombia has conducted over 170 operations against the Cali cartel by attempting the capture of drug king pins and by the efforts to disrupt their operations.

Nonetheless, it appears that only the surface has been scratched. The Cali cartel is well financed and sophisticated. A captured warehouse disclosed a great amount of electronic equipment ranging from computers to direction finders. In addition, the cartel is controlling the phone companies and conducting telephone taps to uncover counter-narcotics directed against it.

The bottom line is that Colombia still is the largest supplier of cocaine into the United States. Much more needs to be done to counter this trafficking. For one, legal cooperation between the United States and Colombia needs to be reinvigorated. We have been forced to shut down evidence sharing because Colombia has been misusing what we have provided to date; and, as a result, families of witnesses have been killed.

We raised directly with President Samper, the need for extradition and reform of Colombia's legal system. While Colombian law now prohibits extradition, we urged President Samper to revisit this issue. If extradition is not re-instated, Colombia should consider seriously the proposal to allow drug traffickers to be tried in the United States and then serve their sentence in Colombia. This would serve to

preserve evidence and remove the case from the inadequate Colombian code of criminal law. A longer range alternative is for Colombia to transfer proceedings to an international criminal court which could be established.

President Samper acknowledged that drugs are a major problem not only in Colombia, but also internationally. He said that he intends to make every effort to stop the Cali cartel. It is not enough to destroy the fields, labs and aircraft used in trafficking, but also to have effective interdiction and to counter money laundering.

When I raised the need for reinstating extradition, he noted the past ramifications: drug traffickers countered by killing four Presidential candidates and 63 magistrates in a reign of terror. In his view, extradition would come at a high cost. He was frank in stating he supported the Constitutional amendment to stop extradition to the U.S. If his judicial reform does not work in the next 2 to 3 years, he stated that he would consider other alternatives such as extradition. He was also confident that he will dismantle the Cali cartel within 2 years.

He also found the idea of an international criminal court worth considering.

On Monday, May 29, 1995 we met with Ambassador William Swing in Haiti along with Maj. Gen. Joe Kinzer. General Kinzer is Commander of the United Nations mission in Haiti as well as senior commander of U.S. forces there.

To gain some perspective on Haiti, it is instructive to note the volatility of this country over its last 190 years. It has had 21 constitutions, 41 heads of state, 7 of whom have served more than 10 years, 9 of whom have declared themselves heads of state for life, and 29 of whom were assassinated or overthrown.

It has been a country of great political and economic instability, overpopulated, possessing limited resources and having the worst environmental degradation in the hemisphere. It is the poorest nation in the western hemisphere.

Prior to the return of President Aristide, the country had 3 years of illegal, military de facto government, 8 years of chronic instability and some 30 years of Duvalier family dictatorship. Since the 1991 coup, the country has suffered a 30 percent loss of its gross domestic product and its treasury has been emptied. It has the highest birth rate in the western hemisphere. Between September 30, 1991 and the return of Aristide in October 1994, imposed severe sanctions and the toughest embargo ever in the western hemisphere. The human rights violations by the Cedras regime escalated. This resulted in many Haitians attempting to escape the politically oppressive climate. On July 4, 1994 over three thousand Haitians fled in one day.

On September 19, 1994 over 21,000 U.S. troops were deployed there without

any loss of life. Paramilitary forces of Haiti were disbanded and its leaders were arrested. General Cedras departed in exile on October 13, 1994. President Aristide returned on October 15, 1994.

General Kinzer noted that he is operating under Presidential Decision Directive 25, U.N. Security Council Resolution 940 and Chapter 6 of the U.N.'s charter which technically limits him to observing, reporting, and verifying. It does not give him full authority for peacekeeping. Nonetheless, General Kinzer has set up rules of engagement which, in essence, give him the ability to carry out peacekeeping. General Kinzer did point out the importance of intelligence support to the U.S. forces there and also to the United Nations forces. While such intelligence was not as critical as in Somalia, he warned that any efforts to restrict the flow of intelligence of U.N. forces would not be in the best interests of U.S. forces who are participating.

Ambassador Swing emphasized the serious challenges which lie ahead. First, there is a need to create a credible security force by February 1996 when the mandate for U.N. forces ends. There is a need to stimulate badly needed economic development in the country. Third, the electoral process must be fair for the parliamentary elections in June, and the Presidential elections in December. Finally, there needs to be improvement in Haiti's justice system.

We met with President Aristide who pointed out the need for security forces in the number of about 7,000, which he expects to have ready by February 1996. Given the rate of training timetable, it is dubious that this can be achieved. President Aristide represented that the machinery is in place for a fair and democratic process for the forthcoming elections.

There are some rumors that President Aristide may not comply with the Haitian Constitution and step down when his term ends. We questioned him on this. When asked if there were any circumstances under which he would stay on as President, his response was "no". He stated that the Constitution requires him to leave no matter what the majority of Haitians might say. In response to what more he would want from the United States, he responded by saying he would be ashamed to ask for more money. What is needed, in his view, is more economic development, more job opportunities, and a need for a free market.

Mr. President, in the absence of any further proceedings on the pending legislation, I thought this might be a good time to make a brief report on a trip which Senator MICHAEL DEWINE and I made on behalf of the Senate Intelligence Committee to Guatemala, Colombia, and Haiti over a 4-day period, May 26 through May 29, with the principal focus in Guatemala being to determine the civil rights abuses on the murder of an American innkeeper, Mr. Michael DeVine, and a Guatemalan soldier, Commander Bamaca.

These deaths had been the subject of an Intelligence Committee hearing where there were very, very substantial questions of violations of human rights.

At that Intelligence Committee hearing in April, Mrs. Carol DeVine testified about the brutality with respect to her husband, Michael DeVine, and the perpetrators have not yet been brought to justice. Ms. Jennifer Harbury, the wife of Commander Bamaca, testified as to the difficulties in determining what had happened to her husband and even to finding his body.

On our trip, we talked about the matter with President deLeon of Guatemala and also with the Minister of Defense and urged that every effort be made by the Guatemalan Government to find out exactly what had happened to the American citizen, Michael DeVine, and Commander Bamaca.

President deLeon pledged the full efforts of the Guatemalan Government as to the murder of Mr. DeVine but had a difference of opinion with respect to Commander Bamaca, which he classified as a military incident. We urged in the strongest possible terms President deLeon proceed to vindicate human rights and make a thorough investigation as to both of their matters.

In Colombia, we had extensive discussion with ranking Colombian officials, including President Samper, principally on the issues of terrorism and narcotics trade.

I must say, Mr. President, that there is insufficient evidence being taken by the Colombian Government on the very serious problems of narcotics traffic which comes to the United States. Since efforts had been undertaken with some success in the mid to late 1980's, those efforts have materially decreased with Colombia now refusing to have extradition. It is my judgment that our efforts in interdiction and the funds which we are expending in that direction could much more usefully be placed on the so-called demand side in the United States on education and on rehabilitation. It seems that the more acreage or hectares of ground taken away from the growth of cocaine or drugs in Latin America, in Colombia, illustratively, or Ecuador or Peru, the more replacement drug growth occurs in those States. Although we are spending a tremendous sum of money, there has been no significant lessening of the source of supply. We have to maintain a very active and vigorous law enforcement program in the United States to combat supply. But our efforts of international interdiction have been largely unsuccessful, and I think the Government of Colombia is doing much less than ought to be done.

Senator DEWINE and I finished our short trip with a one-day stay in Haiti, where we had an opportunity to visit with President Aristide and visit with General Kinzer. There a real effort has been made by the U.N. forces to establish order, and U.N. forces are scheduled to leave in February of next year.

There will have to be significant accomplishments by the Haitian Government to have a local police force to handle the issue.

Rumors had come to our attention that there might be a question as to whether President Aristide would step aside after a new President is elected late this year when his term is set to expire in February. Senator DEWINE and I were very direct and blunt in asking the question as to whether he did intend to step down, and he was unequivocal in stating that he would do so. We noted that a real sign of progress in Haiti would be whether there would be an orderly transition of government from one elected President to his successor. In light of what has happened in Haiti historically, that would really be a remarkable achievement.

Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

#### AMENDMENT NO. 1250

(Purpose: To ensure due process in deportation proceedings)

Mr. SPECTER. Mr. President, we have now completed the drafting of the amendment which had been discussed earlier. I now send this to the desk on behalf of myself, Mr. SIMON, and Mr. KENNEDY.

This amendment provides that under circumstances where the Department of Justice is unwilling to present a witness or witnesses to establish that an alien is a terrorist, that there will be an unclassified summary presented, sufficient to enable the alien to prepare a defense.

It has provisions which protect the government in a number of directions, and ultimately in the situation where there is a threat that the alien's continued presence in the United States would likely cause serious or irreparable harm to the national security, or death or serious bodily injury to any person, and the provision of either classified information or classified summary that meets a higher standard would cause, again, irreparable harm or the possibility of death or serious injury, then there may be an unclassified summary prepared by the Justice Department sufficient to allow the alien to prepare a defense.

There is a provision here for an interlocutory appeal. It would be my hope this might be acceptable on both sides, or if not, that it would receive an affirmative vote by the Senate. I send this amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Pennsylvania [Mr. SPECTER], for himself, Mr. SIMON, and Mr. KENNEDY, proposes an amendment numbered 1250.

Mr. SPECTER. Mr. President, I ask unanimous consent further reading be dispensed with.

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

The amendment is as follows:

Strike page 36, line 13, through page 38, line 20, and insert the following in lieu thereof:

“(B) The judge shall approve the summary within 15 days of submission if the judge finds that it is sufficient to inform the alien of the nature of the evidence that such person is an alien as described in section 241(a), and to provide the alien with substantially the same ability to make his defense as would disclosure of the classified information.

“(C) The Attorney General shall cause to be delivered to the alien a copy of the unclassified summary approved under subparagraph (B).

“(D) If the written unclassified summary is not approved by the court pursuant to subparagraph (B), the Department of Justice shall be afforded 15 days to correct the deficiencies identified by the court and submit a revised unclassified summary.

“(E) If the revised unclassified summary is not approved by the court within 15 days of its submission pursuant to subparagraph (B), the special removal hearing shall be terminated unless the court, within that time, after reviewing the classified information in camera and ex parte, issues written findings that—

“(i) the alien's continued presence in the United States would likely cause

“(I) serious and irreparable harm to the national security; or

“(II) death or serious bodily injury to any person; and

“(ii) provision of either the classified information or an unclassified summary that meets the standard set forth in subparagraph (B) would likely cause

“(I) serious and irreparable harm to the national security; or

“(II) death or serious bodily injury to any person; and

“(iii) the unclassified summary prepared by the Justice Department is adequate to allow the alien to prepare a defense.

“(F) If the court issues such findings, the special removal proceeding shall continue, and the Attorney General shall cause to be delivered to the alien within 15 days of the issuance of such findings a copy of the unclassified summary together with a statement that it meets the standard set forth in subparagraph (E)(iii).

“(G)(i) Within 10 days of filing of the appealable order the Department of Justice may take an interlocutory appeal to the United States Court of Appeals for the District of Columbia Circuit of—

“(I) any determination made by the judge concerning the requirements set forth in subparagraph (B).

“(II) any determination made by the judge concerning the requirements set forth in subparagraph (E).

“(ii) In an interlocutory appeal taken under this paragraph, the entire record, including any proposed order of the judge or summary of evidence, shall be transmitted to the Court of Appeals under seal, and the matter shall be heard ex parte. The Court of

Appeals shall consider the appeal as expeditiously as possible, but no later than 30 days after filing of the appeal.

#### AMENDMENT NOS. 1218 AND 1225, EN BLOC

Mr. BIDEN. Mr. President, it is my understanding that the chairman of the Judiciary Committees, Senator HATCH, is prepared to accept Kennedy amendment 1218 and the Feinstein amendment 1225 en bloc.

I send the two amendments to the desk and ask unanimous consent that they be considered en bloc.

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

The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Delaware [Mr. BIDEN] for Mr. KENNEDY, proposes an amendment numbered 1218, and for Mrs. FEINSTEIN, proposes an amendment numbered 1225.

Mr. BIDEN. Mr. President, I ask unanimous consent further reading be dispensed with.

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

The amendments en bloc are as follows:

(Purpose: To require the same procedures for the use of secret evidence in normal deportation proceedings as are accorded to suspected alien terrorists)

#### AMENDMENT No. 1218

On page 48, line 12, before the period insert the following: “, except that any proceeding conducted under this section which involves the use of classified evidence shall be conducted in accordance with the procedures of section 501.”

#### AMENDMENT No. 1225

At the appropriate place, insert the following:

#### SEC. . PROHIBITION ON ASSISTANCE UNDER ARMS EXPORT CONTROL ACT FOR COUNTRIES NOT COOPERATING FULLY WITH UNITED STATES ANTITERRORISM EFFORTS.

Chapter 3 of the Arms Export Control Act (22 U.S.C. 2771 et seq.) is amended by adding at the end the following:

#### “SEC. 40A. TRANSACTIONS WITH COUNTRIES NOT FULLY COOPERATING WITH UNITED STATES ANTITERRORISM EFFORTS.

“(a) PROHIBITED TRANSACTIONS.—No defense article or defense service may be sold or licensed for export under this Act to a foreign country in a fiscal year unless the President determines and certifies to Congress at the beginning of that fiscal year, or at any other time in that fiscal year before such sale or license, that the country is cooperating fully with United States antiterrorism efforts.

“(b) WAIVER.—The President may waive the prohibition set forth in subsection (a) with respect to a specific transaction if the President determines that the transaction is essential to the national security interests of the United States.”

#### AMENDMENT No. 1218

Mr. KENNEDY. Mr. President, the bill before the Senate contains a procedure to permit the use of secret evidence in deportation proceedings for suspected terrorists. Many Members have reservations about this procedure, and I believe the sponsors have made a genuine attempt to strike a balance between our concerns about terrorism and the fundamental requirements of due process.

However, another section of the bill, section 303, contains no such balance. It permits the use of secret evidence in any deportation case, without any due process safeguards at all. The amendment I am offering would extend the same minimal due process safeguards to these proceedings that are available in terrorist cases, in the rare situations in which classified evidence must be protected.

The terrorist deportation procedure in section 301 acknowledges the sensitive issues surrounding the use of classified evidence. It requires a special designation by the Chief Justice of five Federal judges to keep the evidence secure and ensure due process.

However, section 303 allows secret evidence to be used in normal deportation cases before any of scores of low-level immigration judges in the Justice Department, with no protection for either the classified evidence or the immigrant.

While this provision exempts permanent residents from its broad reach, there are others who reside in the United States under legal immigration status who also deserve such protection, including the new spouses of American citizens. If we are to take the extraordinary step of permitting the use of secret evidence in general deportation proceedings, I believe the evidence and the immigrant should be afforded at least the same protections that we give to terrorists.

This can be done without unduly burdening the courts. The number of cases which rise to the level of requiring secret evidence to justify deportation is extremely small.

The kinds of cases which could be subject to this procedure would have substantial equities. The use of secret evidence should not be taken lightly.

Under this procedure, the immigrant spouses of American citizens could be deported with secret evidence. By law, these spouses are “conditional residents,” not permanent residents, during their first 2 years of marriage.

The same sort of equities apply to refugees. A Vietnamese refugee who fought on our side in Vietnam, who experienced years of re-education in Communist concentration camps, and who has now lived here for many years, but does not have permanent residence, would be subject to secret deportation with illegally obtained evidence. His only offense could be that he rescued a fellow soldier from Vietnam by allowing him to pose as a relative.

There are also 14,000 Chinese students in this country, many of whom were activists in the democracy movement in China. They qualify for permanent residence, but they have not yet received their green cards. They could be subjected to this procedure.

There are 85,000 individuals whom the Immigration Service has allowed to remain in the United States because of special circumstances surrounding their cases. They may have American citizen children with disabilities requiring special attention that cannot

be offered in their parents' home country. These families have not been given permanent residence, but the courts have declared them "permanent residents under color of law."

Some may argue that these are unlikely victims of this procedure. But there is nothing in this language that prevents immigrants and refugees with substantial ties to this country from being deported using secret evidence. Under this procedure, they may never know why they were deported.

A long line of judicial decisions requires the protection of immigrants under the fifth amendment from due process violations in the deportation process.

The fifth amendment states that no person shall be "deprived of life, liberty or property, without due process of law." The Supreme Court has consistently ruled that this protection means what it says, it extends to all persons within the United States, not just citizens.

As the Supreme Court stated in the *Japanese Immigrant* case in 1903,

This court has never held, nor must we be understood as holding, that administrative officers, when executing the provisions of a statute involving the liberty of persons, may disregard the fundamental principles that inhere in "due process of law" as understood at the time of the adoption of the Constitution.

In 1915, in *Whitfield versus Hanges*, the Court outlined the requirements of a fair deportation hearing, including the right to be notified of charges, to cross-examine witnesses, and to see the evidence and have a fair opportunity to rebut it.

To underscore the gravity of deportation, the Supreme Court in 1921, in *Ng Fung Ho versus White*, observed that not only does deportation deprive a person of liberty, but "[it] may result also in loss of both property and life; or of all that makes life worth living." Again in 1948, in *Tan versus Phelan*, the Court characterized deportation as "a drastic measure" and "the equivalent of banishment or exile."

In 1976, *Mathews versus Diaz*, the Court noted, "There are literally millions of aliens within the jurisdiction of the United States. The fifth amendment, as well as the 14th amendment, protects every one of these persons from deprivations of life, liberty, or property without due process of law."

In *Landon versus Plasencia* in 1982, the Court stated that the interest of an immigrant facing expulsion from the United States "is, without question, a weighty one. She stands to lose the right to stay and live and work in this land of freedom. Further, she may lose the right to rejoin her immediate family, a right that ranks high among the interests of the individual."

We are all concerned about addressing terrorism and expediting legitimate deportation cases.

The bill before us contains a procedure in section 301 which permits our courts to handle classified evidence to decide the deportability of aliens suspected of terrorism.

At a minimum, other deportees should be given the same protections as terrorists when it comes to using secret evidence against them. For this reason, my amendment says that the use of evidence in other deportation settings must follow what is being proposed for suspected terrorists. This means the evidence must be handled by designated Federal judges. And before the deportation proceeding is allowed to continue on the basis of the secret evidence, the judges must weigh the threat which the presence of the person poses against the likely consequences of revealing the classified information.

I urge my colleagues to support this amendment.

#### AMENDMENT NO. 1225

Mrs. FEINSTEIN. Mr. President, today I offer an amendment that establishes a clear standard of behavior other countries must meet in order to be eligible to purchase military equipment from the United States.

It amends the Arms Export Control Act by adding a section which states that no defense article or defense service may be sold or licensed for export to a country unless the President has certified to Congress that the country is cooperating fully with the United States, or taking adequate steps on its own, to help achieve U.S. antiterrorism objectives.

This amendment does recognize that certain transactions of military equipment do have a direct bearing on our national security, so it allows the President to waive the prohibition with respect to specific transactions if he determines that they are essential to the national security interests of the United States.

The United States is the leading exporter of military equipment in the world. In fiscal year 1994, the United States sold some \$12.86 billion worth of defense equipment and services around the world. By and large, these exports serve the interests of the United States by helping to build up the security of our allies. Improving our allies' abilities to defend themselves is one of the most effective ways we can advance and protect our own interests abroad.

It is not unreasonable to expect a certain level of cooperation from countries to whom we sell military equipment. Obviously cooperation in defense matters is taken into consideration, as it should be, because of the clear benefit it brings to United States security interests.

But our security these days is affected by other, less conventional problems. Today, terrorism poses a major threat to U.S. security interests, and to our way of life. Because of that, we must demand and expect cooperation from our allies to help us achieve our antiterrorism objectives. When we share our most advanced military technology with our allies, we should be able to expect full cooperation in these crucial areas.

For the most part, the commitment to combat terrorism is strong among

our allies who purchase U.S. military equipment. Many of them know firsthand the scourge of terrorism, and have been deeply affected by it. Indeed, the State Department's 1994 Patterns of Global Terrorism report describes some 321 international terrorist attacks in 1994, in Africa, Asia, Europe, Latin America, and the Middle East. Occasionally, however, we have been disappointed by the cooperation we have received in our antiterrorism efforts.

This amendment is designed to add an additional incentive for those states to cooperate with U.S. antiterrorism efforts. We need their full cooperation in: Apprehending, prosecuting, and extraditing suspected terrorists; sharing intelligence to deter terrorist attacks; pressuring state sponsors of terrorism to change their behavior; curbing private fundraising efforts for terrorist organizations within their country; and, taking actions to prevent or deter terrorist attacks. Where we have signed agreements and treaties, they should be fulfilled in both letter and spirit. Where we do not have such agreements, our allies should work with us to put them in place as quickly as practicable.

The threat of international terrorism demands that the civilized nations of the world band together to defend against those who would use violence for political ends. This amendment will help ensure that the United States gets the cooperation it needs from our allies to fight this threat.

Mr. BIDEN. For the sake of clarification, I would ask the Senator from California if the certification requirement in her amendment means that a separate certification of a country's cooperation with U.S. antiterrorism objectives must accompany every notification of an arms sale sent to Congress under section 36(b) of the Arms Export Control Act.

Mrs. FEINSTEIN. No, the certification procedure is designed to require one certification annually for each country that purchases defense articles or defense services, or has them licensed for export, from the United States in a given fiscal year. Most certifications will probably be provided at the beginning of the fiscal year, but a country that is not certified at that time may, if eligible, be certified at any time prior to the first sale or export license to it in the fiscal year.

The PRESIDING OFFICER. The question is on agreeing to the amendments en bloc.

The amendments (Nos. 1218 and 1225) were agreed to.

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

Mr. HATCH. Mr. President, 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 perilously close to finishing all but the habeas amendments. The Nunn-Biden

amendment on posse comitatus is either going to be debated very shortly or accepted very shortly.

That leaves, I think, after the vote on the Specter-Simon amendment, we will know then on the outcome of that vote, whether or not the Abraham amendment is still relevant. If Specter-Simon prevails, as I hope it does, then the Abraham amendment would be dropped.

The only amendment I am aware of on the Republican side which we do not have any agreement on at this point—we thought we did—was the Brown amendment. If Senator BROWN is available, we are ready to enter into a very short time agreement and debate that amendment tonight.

Mr. DOLE. Have the yeas and nays been ordered?

Mr. SPECTER. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. BIDEN. Mr. President, again I think we are going to know in a moment whether we will need to debate the Nunn-Biden posse comitatus amendment, but in the meantime while that is being ironed out, I ask my friend from Utah whether or not Senator BROWN is available to introduce his amendment. I think that is the only thing we have left.

Mr. DOLE. Mr. President, I ask for the yeas and nays on the Lieberman amendment numbered 1215.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. HATCH. I understand that Senator BROWN is on his way over, and I will chat with him.

Mr. BIDEN. Mr. President, I say to the majority leader that I think when we dispose of the Brown amendment and we dispose of the Nunn-Biden amendment, that other than habeas amendments, there is nothing left.

It is my understanding that the leader, at an appropriate time this evening, if we complete action on Nunn-Biden and Brown, would move to vitiate the cloture vote tomorrow.

I would assure the Senator, as well, we would withdraw all 5 amendments relating to firearms or ammunition. They would not be considered on this bill.

Mr. DOLE. I have not discussed that with the Democrat leader. That would be my intention. They would be germane, in any event. No need to have a cloture vote.

So, if we can complete action on all except habeas corpus, we would like to start fairly early in the morning on the habeas corpus amendments.

So is there anybody who has amendments? I guess Senator BROWN is the only one on this side?

Mr. BIDEN. Senator BROWN is the only one who has a nonhabeas amendment on the Republican side and the

only one we have left on the Democratic side, as I understand it, is Nunn-Biden.

Mr. HATCH. You have Abraham as well.

Mr. BIDEN. The Senator points out the Abraham amendment is still on the Republican side, and I have discussed this with Senator Abraham and he points out to me that if Specter-Simon passes, then his amendment is redundant, is no longer necessary. It is only if Specter-Simon fails would we go to the Abraham amendment, in which case we could accept the Abraham amendment.

Mr. DOLE. So we are waiting on Senator BROWN.

Mr. BIDEN. And waiting on a decision by our Republican colleagues whether or not they can accept the Nunn-Biden posse comitatus amendment.

The PRESIDING OFFICER. The Senator from Utah.

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. 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. 1229 WITHDRAWN

Mr. HATCH. Mr. President, I am very grateful to our distinguished Senator from Colorado, Senator BROWN. Because, as much as he likes his amendment regarding terrorist countries, it has hit a snag where it has had an objection from both sides of the aisle.

In the interests of moving this bill forward he has authorized me to withdraw that amendment at this time.

I ask unanimous consent the Brown amendment be withdrawn.

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

The amendment (No. 1229) was withdrawn.

Mr. BIDEN. Mr. President, let me say I know he has decided not to run again, and this will probably hurt his reputation, but it is a pleasure to work with the Senator from Colorado. He is always reasonable. I thank him very much.

As Senator Eastland once said to me, "I will come and campaign for you or against you, whichever will help the most." Maybe if I said something negative it would help more but I really mean it. I thank him for his cooperation. This is the second time he has moved this legislation along. I truly appreciate it.

I want to correct something I said earlier. I referred to the posse comitatus amendment as the Nunn-Biden amendment. That is not accurate. This is not a minor point. It is the Nunn-Thurmond-Biden amendment. Senator THURMOND has been a leader in this issue and I did not mean in any way to leave him out. It is the Nunn-Thur-

mond-Biden amendment. I yield the floor.

The PRESIDING OFFICER. The Senator from Georgia.

AMENDMENT NO. 1213 TO AMENDMENT NO. 1199  
(Purpose: To authorize the Attorney General to request, and the Secretary of Defense to provide, Department of Defense assistance for the Attorney General in emergency situations involving biological or chemical weapons of mass destruction)

Mr. NUNN. Mr. President, I am going to start with the explanation of the amendment which I hope we will be voting on this evening. If the majority leader would like to interrupt at any point in time, I know there will be other things that will be coming up, I will be glad to yield and I invite that.

I am pleased to propose on behalf of myself, Senator THURMOND, Senator BIDEN, and Senator WARNER, an amendment to address a significant gap in the law regarding the use of chemical and biological weapons of mass destruction in criminal terrorist activities.

The Armed Forces have special capabilities to counter nuclear, biological, and chemical weapons. They are trained and equipped to detect, suppress, and contain these dangerous materials in hostile situations.

Most of our law enforcement officials do not have anything like the capability that our military does in these unique circumstances. At the present time the statutory authority to use the Armed Forces in situations involving the criminal use of these weapons of mass destruction extends only to nuclear materials. In my opinion, chemical and biological attacks on the United States, terrorist attacks, are much more likely than nuclear, although all would be horrible. Section 831 of title 18, United States Code, permits the Armed Forces to assist in dealing with crimes involving nuclear materials when the Attorney General and the Secretary of Defense jointly determine that there is an emergency situation requiring military assistance. There is no similar authority to use the special expertise of the Armed Forces in circumstances involving the use of chemical and biological weapons of mass destruction.

In the wake of the devastating bombing of the Federal building in Oklahoma City, with its tragic loss of life and disruption of governmental functions, I think it is appropriate to reexamine Federal counterterrorism capabilities, including the role of the Armed Forces. I would also add that the Tokyo chemical attack in the subway is the kind of situation that very well could happen, also, in this country.

For more than 100 years, military participation in civilian law enforcement activities has been governed by the Posse Comitatus Act. The Act precludes military participation in the execution of laws except as expressly authorized by Congress. That landmark legislation was the result of congressional concern about increasing use of



the military for law enforcement purposes in post-Civil War era, particularly terms of enforcing the Reconstruction laws in the South in and suppressing labor activities in the North.

There are about a dozen express statutory exceptions to the Posse Comitatus Act, which permit military participation in arrests, searches, and seizures. Some of the exceptions, such as the permissible use of the armed forces to protect the discoverer of guano islands, reflect historical anachronisms. Others, such as the authority to suppress domestic disorders when civilian officials cannot do so, have continuing relevance—as shown most recently in the 1992 Los Angeles riots.

It is important to remember that the Act does not bar all military assistance to civilian law enforcement officials, even in the absence of a statutory exception. The Act has long been interpreted as not restricting use of the armed forces to prevent loss of life or wanton destruction of property in the event of sudden and unexpected circumstances. In addition, the Act has been interpreted to apply only to direct participation in civilian law enforcement activities—that is, arrest, search, and seizure. Indirect activities, such as the loan of equipment, have been viewed as not within the prohibition against using the armed forces to execute the law.

Over the years, the administrative and judicial interpretation of the Act, however, created a number of gray areas, including issues involving the provision of export advice during investigations and the use of military equipment and facilities during ongoing law enforcement operations.

During the late 1970's and early 1980's, I became concerned that the lack of clarity was inhibiting useful indirect assistance, particularly in counterdrug operations. I initiated legislation, which was enacted in 1981 as chapter 18 of title 10, United States Code, to clarify the rules governing military support to civilian law enforcement agencies.

We not have, as a matter of fact, and have had since 1981 military ships in the Caribbean—and other places for that matter where we have heavy drug traffic—where the military, the Navy, has the right to intercept vessels, but the power of arrest is reserved for Coast Guard personnel that are on the Navy ships for that purpose. So we have been very careful about how we approach this matter.

The administration has requested legislation that would permit direct military participation in specific law enforcement activities related to chemical and biological weapons of mass destruction, similar to the exception under current law that permits direct military participation in the enforcement of the laws concerning improper use of nuclear materials.

We had a hearing under the auspices of Senator HATCH and Senator BIDEN. During that hearing it came to the at-

tention of the committee—and the Armed Forces Committee was also invited to participate in that hearing, and I was there—that, although the overall direction that the President was laying out seemed to me to make sense, I thought the statute that had been submitted was not properly drawn. It used the words “technical assistance” without defining that term properly; used the term “disabling and disarming” but precluded the power of arrest.

In effect, I reached the conclusion that the military would be in a position where they were basically able to disable and disarm, which would include the use of force, and perhaps even the use of fatal force, but not have the power of arrest, which did not make sense.

I think the ultimate depriving of civil liberties is when you kill someone. If you can kill them without arresting them you are not really protecting someone's civil liberties. So we decided to carefully reconstruct that statute to try to deal with chemical and biological weapons, and we worked diligently to do that, and are continuing to work on possible amendments in good faith with colleagues on both sides. Senator HATCH has participated in that. Senator THURMOND and I have worked hard on it. Senator BIDEN has participated, and others. Senator DOLE and others have been involved in trying to make sure we know exactly what we are doing. I hope we can work it out this evening. But, if not, we will certainly have to vote on the matter at some point.

In my judgment, Mr. President, the question of whether we should create a further exception for chemical and biological weapons should be addressed in light of the two enduring themes reflected in the history and practice of the Posse Comitatus Act and related statutes:

First, the strong and traditional reluctance of the American people to permit any military intrusion into civilian affairs.

Second, the concept that any exceptions to the Posse Comitatus Act should be narrowly drawn to meet specific needs that cannot be addressed by civilian law enforcement authorities and that pose a grave danger to the American people.

As I previously mentioned, these issues were examined at a hearing before the Judiciary Committee on May 10, led by the chairman of the Committee, Senator HATCH, and the ranking minority member, Senator BIDEN. At their invitation, I participated in the hearing, and I am grateful for the courtesies extended to me.

At the hearing, we heard from former Secretary of Defense Caspar Weinberger, and from current representatives of the Departments of Justice and Defense. During the hearing, five major themes emerged:

First, we should be very cautious about establishing exceptions to the

Posse Comitatus Act, which reflects enduring principles concerning historic separation between civilian and military functions in our democratic society.

Second, exceptions to the Posse Comitatus Act should not be created for the purpose of using the armed forces to routinely supplement civilian law enforcement capabilities with respect to ongoing, continuous law enforcement problems.

Third, exceptions may be appropriate when law enforcement officials do not possess the special capabilities of the Armed Forces in specific circumstances, such as the capability to counter chemical and biological weapons of mass destruction in a hostile situation.

Fourth, any statute which authorizes military assistance should be narrowly drawn to address with specific criteria to ensure that the authority will be used only when senior officials, such as the Secretary of Defense and the Attorney General, determine that there is an emergency situation which can be effectively addressed only with the assistance of military forces.

Fifth, any assistance which authorizes military assistance should not place artificial constraints on the actions military officials may take that might compromise their safety or the success of the operation.

In other words, Mr. President, as a result of that hearing, I came to the conclusion that in this area we ought to set a very high threshold for participation by the military and define those terms very carefully. Once the military is involved and, for example, they have on chemical gear, they are in a very difficult situation. Law enforcement may not even be able to be on the scene because of the heavy presence of chemical or biological agents. Once that happens, we do not want to put our 19, 20-, 22-, 23-, 24- or 25-year-olds out there without having enough authority to go ahead and do the job.

So we have tried to draft this authority with a very high threshold for any involvement of this military and to make that authority very limited, very carefully drawn. Once they are involved, then we want to give the military personnel authority to protect themselves and to take action as required by the circumstances, the very emergency type of circumstances we are describing.

The amendment that Senator THURMOND, Senator BIDEN and I are sponsoring has been drafted to reflect the traditional purposes of the Posse Comitatus Act and the limited nature of the exceptions to the Act.

Under the amendment, the Attorney General may request DoD assistance to enforce the prohibitions concerning biological and chemical weapons of mass destruction in an emergency situation.

The Secretary of Defense may provide assistance if there is a joint determination by the Secretary of Defense and the Attorney General that there is

an emergency situation, and the Secretary of Defense determines that the provision of such assistance will not adversely affect military preparedness.

Military assistance could be provided under the amendment only if the Attorney General and the Secretary of Defense jointly determine that each of the following five conditions is present:

First, that the situation involves a biological or chemical weapon of mass destruction.

Second, that the situation poses a serious threat to the interests of the United States.

Third, that civilian law enforcement expertise is not readily available to counter the threat posed by the biological or chemical weapon of mass destruction involved.

Fourth, that Department of Defense special capabilities and expertise are needed to counter the threat posed by the biological or chemical weapon of mass destruction involved.

Fifth, that enforcement of the law would be seriously impaired if the DoD assistance were not provided.

The types of assistance that could be provided during an emergency situation would involve operation of equipment to monitor, detect, contain, disable, or dispose of a biological or chemical weapon of mass destruction or elements of such a weapon. This includes the authority to search for and seize the weapons or elements of the weapons.

This authority must be given. I do not know of any way to avoid that because what you have to do is stop the possibility or the probability in some cases of massive death of American people.

The Attorney General and the Secretary of Defense would issue joint regulations defining the types of assistance that could be provided.

The regulations would also describe the actions that Department of Defense personnel may take in circumstances incidental to the provision of assistance under this section, including the collection of evidence. This would not include the power of arrest except in exigent circumstances or as otherwise authorized by law.

Now, that word "exigent" is one we are now considering, whether there are other words that would more precisely define the kind of circumstances we are talking about. The word "exigent" though is used in criminal statutes and has been used over and over again, and that word is well known in law enforcement circumstances.

Also, this provision is designed to address two important concerns. First is the general principle that types of assistance provided by the Department of Defense should consist primarily of operating equipment designed to deal with the chemical and biological agents involved and that the primary responsibility for arrest should reside in all circumstances with civilian officials where that is possible. As a law enforcement situation unfolds, how-

ever, military personnel must be able to deal with circumstances in which they may confront hostile opposition.

I repeat, Mr. President, there can very well be circumstances, a subway, for instance, involving chemical agents, just like the situation in Tokyo, or a situation similar to that where chemical agents are present, where law enforcement people are not even able to go into the area, where the only people who can go into the area are the military personnel.

In that situation, we do not want to put handcuffs on the military and say you are going into this dangerous situation but you cannot take steps necessary to protect not only your lives but the lives of the people who are in the area.

In such circumstances, the safety of the military personnel involved, and the safety of others, and the law enforcement mission cannot be compromised by precluding the military from exercising the power they need, including the use of force.

The amendment requires the Department of Defense to be reimbursed for assistance provided under this section in accordance with section 377 of title 10, the general statute governing reimbursement of the Department of Defense for law enforcement assistance. This means that if DOD does not get a training or operational benefit substantially equivalent to DOD training, the DOD must be reimbursed.

Under the amendment, the functions of the Attorney General and the Secretary of Defense may be exercised, respectively, by the Deputy Attorney General and the Deputy Secretary of Defense, each of whom serves as the alter ego to the head of the Department concerned. These functions may be delegated to another official only if that official has been designated to exercise the general powers of the head of the agency. This would include, for example, an Under Secretary of Defense who has been designated to act for the Secretary in the absence of the Secretary and the Deputy.

Mr. President, I will not go into more detail at this time, but the limitations set forth in this amendment are designed to address the appropriate allocation of resources and functions within the Federal Government and are designed to avoid providing a basis for excluding evidence or challenging an indictment.

Current law contains offenses involving the unlawful use of nuclear and biological weapons. The amendment sets forth the administration's proposal for a similar offense concerning the unlawful use of chemical weapons which is not now on the books.

Mr. President, this is a prudent and narrowly drafted amendment. It is consistent with the traditional separation of civilian and military functions and the exceptions for unusual and unique circumstances which require the special expertise of the Armed Forces to address serious threats to the national interest.

I might add there is an amendment that is incorporated in this amendment as it now stands, or it will stand when it is sent to the desk, proposed by the Senator from Maine [Mr. COHEN], basically saying that the Government should take every step possible to get the law enforcement community in a position where we can in the future reduce the need for using military personnel.

So we are not saying this is going to be here for all time. We are saying we need it now, and as the months go by and the years go by there would be the goal in this amendment to reduce the need to rely as much on the military as we must necessarily rely on them now in the chemical and biological area where they do have extensive training and equipment and are virtually the only ones who are able to deal with certain circumstances that could be enormously dangerous to the American people.

Mr. President, I will be glad to yield the floor. I know the Senator from South Carolina, the cosponsor of this amendment, would like to be heard.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. THURMOND. Mr. President, as chairman of the Armed Services Committee of the Senate, I was pleased to work with Senator NUNN, the ranking member of the Armed Services Committee, along with Senators HATCH, DOLE, BIDEN, and CRAIG to draft this amendment.

The purpose of this amendment is to have military assistance available to help Federal law enforcement in emergency situations that involve chemical and biological weapons of mass destruction.

In 1982, the Congress passed and then President Reagan signed into law a bill to authorize military assistance in instances involving nuclear devices. I supported that legislation in 1982 and believe it is now appropriate to extend that law to cover chemical and biological weapons of mass destruction.

We have been careful to limit military assistance to circumstances that pose a serious threat to the interests of the United States and where civilian expertise is not readily available to provide the required assistance to counter the threat posed by the chemical and biological weapons of mass destruction.

Mr. President, I believe this amendment will provide valuable assistance to law enforcement to protect the American people should we face terrorists with chemical and biological weapons. We have been careful to include safeguards to ensure that the military is not involved in routine law enforcement.

I would encourage my colleagues to support this amendment.

Mr. BIDEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. Mr. President, the amendment that the Senator from



Georgia [Senator NUNN], and I have proposed would create a narrow exception to the Posse Comitatus Act in order to permit the use of the military to assist law enforcement in emergency situations involving chemical and biological weapons.

Before describing the amendment in detail, let me briefly review the origins of the Posse Comitatus Act and the existing exceptions to it.

The term "posse comitatus" means literally the "power of the county."

Its roots trace back to English common law, where the sheriff, obligated to defend the county against any of the king's enemies, was empowered to summon every person above 15 years old for this purpose.

The first Congress provided similar power to Federal marshals in 1789—authorizing the marshals to command all necessary assistance in the execution of their duty.

Three years later, Congress explicitly authorized marshals to use the militia in assisting their posse.

In the first half of the nineteenth century, the practice of using both the militia and regular military to assist law enforcement became commonplace—

Although whenever military personnel were called into service as a part of a posse, they were subordinated to civilian authority.

Following the Civil War, Federal troops were often used extensively in the South, as well as to quell labor unrest in the North.

Dissatisfaction with this practice led to pressure from Congress for explicit restrictions on the use of the military in law enforcement operations.

The result was the Posse Comitatus Act, enacted in 1878.

The Act is brief and straightforward:

Whoever, except in cases and under circumstances expressly authorized by the constitution or act of Congress, willfully uses any part of the army or the air force as a Posse Comitatus or otherwise to execute the laws shall be fined not more than \$250,000 or imprisoned not more than two years, or both.

Over the past century, Congress has enacted numerous exceptions to this general principle.

Many of these exceptions are for emergency circumstances, or where the need for use of the military is obvious.

For example, the law permits use of the military: to suppress insurrections; to protect foreign officials and official guests; to enforce the neutrality laws and customs laws; and to assist in investigations of murderers of Members of Congress or the Cabinet.

Congress has also provided some less compelling exceptions to the Posse Comitatus Act.

For instance, the President is empowered to use the military: to protect certain Federal parks and timber on Federal lands in Florida; to assist States in enforcing quarantines and health laws; and to remove any unlawful inclosures on public lands.

Most relevant to our present inquiry is an exception which permits the use of the military to assist law enforcement in countering the illegal possession or use of nuclear materials.

This provision, enacted in 1982, gives the military broad authority to assist in the enforcement of the law. The provision explicitly provides that the armed forces may be used to arrest persons and conduct searches and seizures.

The military has unique expertise concerning nuclear materials, which in my view justifies an exception.

Should this Nation ever be faced with terrorists armed with nuclear materials—of whatever grade—I believe the Department of Justice and FBI should be able to draw on this expertise.

I hold a similar view of the President's request for analogous authority with regard to chemical and biological weapons.

The military's expertise with chemical and biological weapons give it special knowledge which would be impractical and expensive to duplicate in civilian law enforcement.

The provision we have introduced is not—is not—the proposal sent to us by the administration.

Both Senator NUNN and I believed that, as drafted, the administration bill would have presented many practical problems.

Instead, we have drafted a new version which does the following:

#### DESCRIPTION OF THE AMENDMENT

It permits the use of the military to assist law enforcement to respond to emergency situations involving biological or chemical weapons.

This assistance can only be provided if certain conditions are met: (1) civilian expertise is not readily available; (2) defense department assistance is needed; and (3) enforcement of the law would be seriously impaired if the Department of Defense assistance were not provided.

Finally, the amendment requires the Attorney General and the Secretary of Defense to joint issue regulations concerning the types of assistance that may be provided.

The provision permits the regulations to authorize arrest or search and seizure only in instances for the immediate protection of human life.

We share the concern of many of our colleagues about using the military to enforce the law.

And we do not want the military to have carte blanche to arrest suspects or engage in search or seizure.

But once called in to assist law enforcement, we do not want to create the ludicrous circumstance where a soldier called in to assist law enforcement stands immobile where his safety—or the safety of others—is at risk.

Mr. President, the issue comes down to this: Do we want to authorize the limited use of the military to combat chemical and biological weapons terrorism, or do we want to spend scarce resources to duplicate this capability in law enforcement?

Mr. President, I am under the impression that our distinguished Repub-

lican colleague is likely to accept this amendment. I hope that is the case.

Mr. CRAIG addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, let me thank Senator THURMOND and Senator NUNN for their cooperation in resolving some concerns in the posse comitatus amendment and the effort that they took in a most serious and appropriate way to cause the military to be involved in the areas of biological and chemical warfare and weaponry of mass destruction when it might be applied against civilian populations in this country.

Many of us expressed some very real concern because of what has been debated here tonight, the very important separation of the military and civilian population which is rooted in our history and that we have cautiously and appropriately guarded throughout our country's existence with few exceptions.

And so it was with that background we watched this amendment most closely, and I must say that in the end I can now support it because of some changes that have been made which I think we can all be very comfortable with, and that is to narrow this to not allow arrests, to prohibit those but to allow action where there is the exception for the immediate protection of human life. We think that narrows it and properly defines it, clarifies it so it is not ambiguous and so that it can be interpreted in the appropriate way by the Attorney General and the Secretary of Defense in their joint responsibility in the issue of regulations concerning the implementation of the statute.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I compliment the distinguished Senator from Georgia and the distinguished Senator from South Carolina for the extra efforts they have put into trying to resolve the problems on this posse comitatus issue.

Everybody knows I was not very enthusiastic about changing the emergency powers of the President or by changing the current posse comitatus law. But after having worked with these two great Senators, and seeing the compromises that have been worked out to try to resolve the problems with this issue that have existed in the minds of a number of Senators on the Senate floor, I am happy to say I believe we are in a position to accept the amendment, and if the distinguished Senator from Delaware is also in the same position, I think we can urge passage of this amendment at this time.

Mr. BIDEN. I would so urge, Mr. President. If I could have the attention of the Senator from Georgia, if he would send the amendment to the desk, I guess we can agree on it.

Mr. NUNN. I say to my friend from Delaware I have just taken the amendment to the desk, and it reflects all those changes that we worked out, and I would ask that the previous amendment not be called up but the one I just brought to the desk be called up.

The PRESIDING OFFICER. Without objection, the pending Specter amendment is set aside for consideration of the amendment of the Senator from Georgia. The clerk will report.

The assistant legislative clerk read as follows.

The Senator from Georgia [Mr. NUNN], for himself, Mr. THURMOND, Mr. BIDEN, and Mr. WARNER, proposes an amendment numbered 1213.

Mr. BIDEN. 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 160, between lines 11 and 12, insert the following:

**SEC. 901. AUTHORITY TO REQUEST MILITARY ASSISTANCE WITH RESPECT TO OFFENSES INVOLVING BIOLOGICAL AND CHEMICAL WEAPONS.**

(a) BIOLOGICAL WEAPONS OF MASS DESTRUCTION.—Section 175 of title 18, United States Code, is amended by adding at the end the following:

“(c)(1) MILITARY ASSISTANCE.—The Attorney General may request that the Secretary of Defense provide assistance in support of Department of Justice activities relating to the enforcement of this section in an emergency situation involving biological weapons of mass destruction. Department of Defense resources, including personnel of the Department of Defense, may be used to provide such assistance if—

“(A) the Secretary of Defense and the Attorney General determine that an emergency situation involving biological weapons of mass destruction exists; and

“(B) the Secretary of Defense determines that the provision of such assistance will not adversely affect the military preparedness of the United States.

“(2) As used in this section, ‘emergency situation involving biological weapons of mass destruction’ means a circumstance involving a biological weapon of mass destruction—

“(A) that poses a serious threat to the interests of the United States; and

“(B) in which—

“(i) civilian expertise is not readily available to provide the required assistance to counter the threat posed by the biological weapon of mass destruction involved; and

“(ii) Department of Defense special capabilities and expertise are needed to counter the threat posed by the biological weapon of mass destruction involved; and

“(iii) enforcement of the law would be seriously impaired if the Department of Defense assistance were not provided.

“(3) The assistance referred to in paragraph (1) includes the operation of equipment (including equipment made available under section 372 of title 10) to monitor, contain, disable, or dispose of a biological weapon of mass destruction or elements of the weapon.

“(4) The Attorney General and the Secretary of Defense shall jointly issue regulations concerning the types of assistance that may be provided under this subsection. Such regulations shall also describe the actions that Department of Defense personnel may take in circumstances incident to the provi-

sion of assistance under this subsection. Such regulations shall not authorize arrest or any assistance in conducting searches and seizures that seek evidence related to violations of this section, except for the immediate protection of human life.

“(5) The Secretary of Defense shall require reimbursement as a condition for providing assistance under this subsection in accordance with section 377 of title 10.

“(6)(A) Except to the extent otherwise provided by the Attorney General, the Deputy Attorney General may exercise the authority of the Attorney General under this subsection. The Attorney General may delegate the Attorney General’s authority under this subsection only to the Associate Attorney General or an Assistant Attorney General and only if the Associate Attorney General or Assistant Attorney General to whom delegated has been designated by the Attorney General to act for, and to exercise the general powers of, the Attorney General.

“(B) Except to the extent otherwise provided by the Secretary of Defense, the Deputy Secretary of Defense may exercise the authority of the Secretary of Defense under this subsection. The Secretary of Defense may delegate the Secretary’s authority under this subsection only to an Under Secretary of Defense or an Assistant Secretary of Defense and only if the Under Secretary or Assistant Secretary to whom delegated has been designated by the Secretary to act for, and to exercise the general powers of, the Secretary.”

(b) CHEMICAL WEAPONS OF MASS DESTRUCTION.—The chapter 113B of title 18, United States Code, that relates to terrorism, is amended by inserting after section 2332a the following:

**“§ 2332b. Use of chemical weapons**

“(a) OFFENSE.—A person who without lawful authority uses, or attempts or conspires to use, a chemical weapon—

“(1) against a national of the United States while such national is outside of the United States;

“(2) against any person within the United States; or

“(3) against any property that is owned, leased or used by the United States or by any department or agency of the United States, whether the property is within or outside of the United States,

shall be imprisoned for any term of years or for life, and if death results, shall be punished by death or imprisoned for any term of years or for life.

“(b) DEFINITIONS.—For purposes of this section—

“(1) the term “national of the United States” has the meaning given in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)); and

“(2) the term “chemical weapon” means any weapon that is designed to cause widespread death or serious bodily injury through the release, dissemination, or impact of toxic or poisonous chemicals or their precursors.

“(c)(1) MILITARY ASSISTANCE.—The Attorney General may request that the Secretary of Defense provide assistance in support of Department of Justice activities relating to the enforcement of this section in an emergency situation involving chemical weapons of mass destruction. Department of Defense resources, including personnel of the Department of Defense, may be used to provide such assistance if—

“(A) the Secretary of Defense and the Attorney General determine that an emergency situation involving chemical weapons of mass destruction exists; and

“(B) the Secretary of Defense determines that the provision of such assistance will not

adversely affect the military preparedness of the United States.

“(2) As used in this section, ‘emergency situation involving chemical weapons of mass destruction’ means a circumstance involving a chemical weapon of mass destruction—

“(A) that poses a serious threat to the interests of the United States; and

“(B) in which—

“(i) civilian expertise is not readily available to provide the required assistance to counter the threat posed by the chemical weapon of mass destruction involved; and

“(ii) Department of Defense special capabilities and expertise are needed to counter the threat posed by the biological weapon of mass destruction involved; and

“(iii) enforcement of the law would be seriously impaired if the Department of Defense assistance were not provided.

“(3) The assistance referred to in paragraph (1) includes the operation of equipment (including equipment made available under section 372 of title 10) to monitor, contain, disable, or dispose of a chemical weapon of mass destruction or elements of the weapon.

“(4) The Attorney General and the Secretary of Defense shall jointly issue regulations concerning the types of assistance that may be provided under this subsection. Such regulations shall also describe the actions that Department of Defense personnel may take in circumstances incident to the provision of assistance under this subsection. Such regulations shall not authorize arrest or any assistance in conducting searches and seizures that seek evidence related to violations of this section, except for the immediate protection of human life.

“(5) The Secretary of Defense shall require reimbursement as a condition for providing assistance under this subsection in accordance with section 377 of title 10.

“(6)(A) Except to the extent otherwise provided by the Attorney General, the Deputy Attorney General may exercise the authority of the Attorney General under this subsection. The Attorney General may delegate the Attorney General’s authority under this subsection only to the Associate Attorney General or an Assistant Attorney General and only if the Associate Attorney General or Assistant Attorney General to whom delegated has been designated by the Attorney General to act for, and to exercise the general powers of, the Attorney General.

“(B) Except to the extent otherwise provided by the Secretary of Defense, the Deputy Secretary of Defense may exercise the authority of the Secretary of Defense under this subsection. The Secretary of Defense may delegate the Secretary’s authority under this subsection only to an Under Secretary of Defense or an Assistant Secretary of Defense and only if the Under Secretary or Assistant Secretary to whom delegated has been designated by the Secretary to act for, and to exercise the general powers of, the Secretary.”

(c)(1) CIVILIAN EXPERTISE.—The President shall take reasonable measures to reduce civilian law enforcement officials’ reliance on Department of Defense resources to counter the threat posed by the use of potential use biological and chemical weapons of mass destruction within the United States, including:

(A) increasing civilian law enforcement expertise to counter such threat;

(B) improving coordination between civilian law enforcement officials and other civilian sources of expertise, both within and outside the Federal Government, to counter such threat;

(2) REPORT REQUIREMENT.—The President shall submit to the Congress—

(A) ninety days after the date of enactment of this Act, a report describing the respective policy functions and operational roles of Federal agencies in countering the threat posed by the use or potential use of biological and chemical weapons of mass destruction within United States;

(B) one year after the date of enactment of this Act, a report describing the actions planned to be taken and the attendant cost pertaining to paragraph (1); and

(C) three years after the date of enactment of this Act, a report updating the information provided in the reports submitted pursuant to subparagraphs (A) and (B), including measures taken pursuant to paragraph (1).

(d) CLERICAL AMENDMENT.—The chapter analysis for chapter 113B of title 18, United States Code, is amended by inserting after the item relating to section 2332a the following:

“2332b. Use of chemical weapons.”.

(e) USE OF WEAPONS OF MASS DESTRUCTION.—Section 2332a(a) of title 18, United States Code, is amended by inserting “without lawful authority” after “A person who”.

Mr. BIDEN. Mr. President, I urge acceptance of the amendment.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment.

So the amendment (No. 1213) was agreed to.

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

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, it appears to me that we are down to the votes on Senator LIEBERMAN's amendment and the Specter-Simon amendment. We are prepared to vote.

Mr. BIDEN. Mr. President, that is my understanding. I have been informed by staff of the Democratic leadership it would be helpful if we did not start the vote for about 5 minutes, so we give people enough notice that we are about to start the vote.

Mr. HATCH. Why not start the vote and add 5 minutes to it. Start it at 9:45.

Mr. BIDEN. Parliamentary inquiry, Mr. President. Have the yeas and nays been ordered on both amendments?

The PRESIDING OFFICER. The Specter amendment and the Lieberman amendment.

Mr. BIDEN. And the first amendment will be?

The PRESIDING OFFICER. The Specter amendment.

Mr. BIDEN. The second one is LIEBERMAN, and the vote on the Specter amendment will start at 9:45? I ask unanimous consent that the vote on the SPECTER amendment begin at 9:45.

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

Mr. HATCH. Mr. President, I ask unanimous consent that the vote on the Lieberman amendment be immediately following that amendment.

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

Mr. BIDEN. 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.

#### VOTE ON AMENDMENT NO. 1250

The PRESIDING OFFICER. Under the previous order, the question occurs on agreeing to amendment No. 1250 offered by the Senator from Pennsylvania, Mr. SPECTER. The yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. LOTT. I announce that the Senator from New Mexico [Mr. DOMENICI], and the Senator from Texas [Mr. GRAMM] are necessarily absent.

Mr. FORD. I announce that the Senator from North Dakota [Mr. CONRAD], and the Senator from Arkansas [Mr. PRYOR] are necessarily absent.

The result was announced—yeas 81, nays 15, as follows:

[Rollcall Vote No. 235 Leg.]

#### YEAS—81

Abraham	Feinstein	Lott
Akaka	Ford	Lugar
Ashcroft	Frist	McConnell
Baucus	Glenn	Mikulski
Bennett	Graham	Moseley-Braun
Biden	Grams	Moynihan
Bingaman	Grassley	Murkowski
Bond	Gregg	Murray
Boxer	Harkin	Nunn
Bradley	Hatch	Packwood
Breaux	Hatfield	Pell
Bryan	Heflin	Pressler
Bumpers	Helms	Reid
Burns	Hollings	Robb
Chafee	Hutchison	Rockefeller
Coverdell	Inhofe	Santorum
Craig	Inouye	Sarbanes
D'Amato	Jeffords	Shelby
Daschle	Johnston	Simon
DeWine	Kempthorne	Simpson
Dodd	Kennedy	Snowe
Dorgan	Kerrey	Specter
Exon	Kerry	Stevens
Faircloth	Kohl	Thomas
Feingold	Lautenberg	Thurmond
	Leahy	Warner
	Levin	Wellstone

#### NAYS—15

Brown	Gorton	McCain
Byrd	Kassebaum	Nickles
Campbell	Kyl	Roth
Coverdell	Lieberman	Smith
Dole	Mack	Thompson

#### NOT VOTING—4

Conrad	Gramm
Domenici	Pryor

So the amendment (No. 1250) was agreed to.

#### VOTE ON AMENDMENT NO. 1215

The PRESIDING OFFICER. Under the previous order, the question is on agreeing to amendment numbered 1215, offered by the Senator from Connecticut [Mr. LIEBERMAN]. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. LOTT. I announce that the Senator from New Mexico [Mr. DOMENICI] and the Senator from Texas [Mr. GRAMM], are necessarily absent.

Mr. FORD. I announce that the Senator from North Dakota [Mr. CONRAD] and the Senator from Arkansas [Mr. PAYOR], are necessarily absent.

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

The result was announced—yeas 77, nays 19, as follows:

[Rollcall Vote No. 236 Leg.]

#### YEAS—77

Abraham	Frist	Lugar
Akaka	Glenn	McCain
Ashcroft	Gorton	McConnell
Baucus	Graham	Mikulski
Bennett	Grams	Moseley-Braun
Biden	Grassley	Moynihan
Bingaman	Harkin	Murkowski
Bond	Hatch	Murray
Boxer	Heflin	Nickles
Bradley	Helms	Nunn
Breaux	Hollings	Pell
Brown	Hutchison	Reid
Bumpers	Inouye	Robb
Byrd	Jeffords	Rockefeller
Campbell	Johnston	Roth
Coats	Kassebaum	Santorum
Cochran	Kennedy	Sarbanes
Cohen	Kerrey	Shelby
D'Amato	Kerry	Simon
Daschle	Kohl	Simpson
DeWine	Kyl	Snowe
Dodd	Lautenberg	Stevens
Dole	Leahy	Thompson
Exon	Levin	Thurmond
Feinstein	Lieberman	Warner
Ford	Lott	

#### NAYS—19

Bryan	Feingold	Pressler
Burns	Gregg	Smith
Chafee	Hatfield	Specter
Coverdell	Inhofe	Thomas
Craig	Kempthorne	Wellstone
Dorgan	Mack	
Faircloth	Packwood	

#### NOT VOTING—4

Conrad	Gramm
Domenici	Pryor

So the amendment (No. 1215) was agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. KOHL. Mr. President, I rise today in support of anti-terrorism legislation. After all, one of the principal purposes of any government is to ensure the safety of its citizens. And the destruction of the Oklahoma City Federal building and the bombing of the World Trade Center indicate that we need to do a better job in this area.

But I continue to have concerns about some provisions of S. 735, just as I did about the President's proposal. In addition, I am concerned that the bill under consideration may divide the Senate at a time when all public officials should be unified in the fight against violence and terror. So while I am inclined to support this measure, I am also inclined to support amendments that would improve it.

For many years, we have watched with growing concern as terrorist violence has escalated—and reached closer to home. We can no longer ignore the fact that post-cold-war violence knows no borders, and respects no distinction between soldiers and innocents.

Mr. President, fundraising for international terrorism now has roots in America—and it has even reached the

Midwest. In fact, in 1993 a group of Palestinian immigrants, linked to the infamous Abu Nidal terrorist organization, actively raised money here for terrorism abroad. Surprisingly, this terrorist cell extended from St. Louis, MO, to Dayton, OH, to Racine, WI.

After their arrest, three of the men were accused of plotting to blow up the Israeli Embassy in Washington. They admitted to smuggling money and information, buying weapons, and planning terrorist activities. In July 1994 they pleaded guilty to Federal Racketeering charges.

Given these growing threats to American lives, both at home and abroad, it makes sense for Congress to create a comprehensive Federal criminal statute to be used against domestic and international terrorists, and to choke off fundraising by terrorist organizations. Such legislation is not a panacea but, by clarifying and elaborating on our current laws it could provide law enforcement with more effective tools in their fight to protect us.

Unfortunately, while S. 735 accomplishes some of these laudable goals, it moves far beyond areas directly affecting terrorism and into issues—such as habeas corpus reform—that have frayed the consensus that Americans expect from us when their safety is at risk. Now, let us be clear: Many criminal appeals are frivolous, and the often convoluted habeas process is in need of reform. However, this divisive issue should be thoroughly debated on its own—not as a last minute attachment to a 160-page terrorism proposal.

Moreover, attaching habeas reform to this bill opens the door to other issues that should be considered elsewhere. For example, others seem encouraged to offer amendments relating to arms sales, perjury, identification cards, and immigration. If these amendments are attached, this bill will become a christmas tree. And if these proposals are accepted, then I will consider offering my amendment to address the Supreme Court's concerns regarding gun free school zones. After all, this is one bill that will certainly be signed into law quickly.

Beyond these concerns regarding habeas corpus reform, I also have some substantive concerns regarding the core antiterrorism provisions of this bill, just as I had with the Clinton bill. Specifically, I believe that S. 735 has not adequately addressed the constitutional objections that Members from both sides of the aisle have raised over the preceding months. While the substitute does address some of these concerns, it often creates more problems than it solves.

For example, the current bill entirely deletes the licensing provisions of the President's fundraising proposal. While the original provision was already flawed, the Republican cure is worse than the disease. While we need to stop the flow of money to terrorist organizations, we also need to be sure that our final product allows groups to raise

funds for nonviolent, legitimate political purposes. An overly broad ban—with no safety valve—may infringe upon the first amendment rights of donors to provide financial support to legitimate organizations of their choice.

Similarly, the alien deportation provisions of S. 735 may undermine the due process rights of legal resident aliens. Specifically, these aliens should have some right to review—and challenge—evidence that the Government has marshalled against them. After all, none of us would want to be caught up in a kafkaesque procedure that takes place entirely behind closed doors. In the words of Benjamin Franklin, "They that give up essential liberty to obtain a little temporary safety deserve neither liberty nor safety."

In closing, Mr. President, we should not use this antiterrorism bill as a vehicle for moving a partisan agenda forward, destroying a rare consensus in the process. Moreover, in fighting terrorists, we must not be frightened into weakening the Constitution that we have sworn to uphold. Therefore, I hope we agree to several amendments to address these problems, so that we may present the American people with legislation that strengthens our defenses against terrorism, without weakening our commitment to the Constitution.

Mr. KYL. Mr. President, I rise in support of S. 735, the Dole-Hatch Terrorism Prevention Act of 1995. I thank Senator DOLE and Senator HATCH for including in the bill my provision, which strengthens the protection of Federal computers against terrorism.

Mr. President, the Internet is a worldwide system of computers and computer networks that enables users to communicate and share information. The system is comparable to the worldwide telephone network. According to a Time magazine article, the Internet connects over 4.8 million host systems, including educational institutions, Government facilities, military bases, and commercial businesses. Millions of private individuals are connected to the Internet through their personal computers and modems.

Computer criminals have quickly recognized the Internet as a haven for criminal possibilities. During the 1980's, the development and broad-based appeal of the personal computer sparked a period of dramatic technological growth. This has raised the stakes in the battle over control of the Internet and all computer systems.

Computer criminals know all the ways to exploit the Internet's easy access, open nature, and global scope. From the safety of a telephone in a discrete location, the computer criminal can anonymously access personal, business, and Government files. And because these criminals can easily gain access without disclosing their identities, it is extremely difficult to apprehend and successfully prosecute them.

Prosecution of computer criminals is complicated further by continually changing technology, lack of prece-

dence, and weak or nonexistent State and Federal laws. And the costs are passed on to service providers, the judicial system, and most importantly—the victims. Mr. President, section 527 will deter this type of crime.

This section requires the U.S. Sentencing Commission to review existing sentencing guidelines as they apply to sections 1030(a)(4) and 1030(a)(5) of title 18 of the United States Code—the Computer Fraud and Abuse Act. The Commission must also establish guidelines to ensure that criminals convicted under these sections receive mandatory minimum sentences for not less than 6 months. Currently, judges are given great discretion in sentencing under the Computer Fraud and Abuse Act. In many cases, the sentences don't match the crimes, and criminals receive light sentences for serious crimes. Mandatory minimum sentences will deter computer "hacking" crimes, and protect the infrastructure of Federal computer systems.

Everybody recognizes that it is wrong for an intruder to enter a home and wander around; it doesn't make sense to view a criminal who breaks into a computer system differently. We have a national anti-stalking law to protect citizens on the street, but it doesn't cover stalking on the communications network. We should not treat these criminals differently simply because they possess new weapons.

These new technologies, which so many Americans enjoy, were developed over many years. I understand that policy can't catch up with technology overnight, but we can start filling in the gaps created by these tremendous advancements. We cannot allow complicated technology to paralyze us into inactivity. It is vital that we protect the information and infrastructure of this country.

Because computers are the nerve centers of the world's information and communication system, there are catastrophic possibilities. Imagine an international terrorist penetrating the Federal Reserve System and bringing to a halt every Federal financial transaction. Or worse yet, imagine a terrorist who gains access to the Department of Defense, and gains control over NORAD.

The best known case of computer intrusion is detailed in the book, "The Cuckoo's Egg." In March 1989, West German authorities arrested computer hackers and charged them with a series of intrusions into United States computer systems through the University of California at Berkeley. Eastern block intelligence agencies had sponsored the activities of the hackers beginning in May 1986. The only punishment the hackers were given was probation.

An example of the pending threat is illustrated in the Wednesday, May 10, headline from the Hill entitled "Hired Hackers Crack House Computers." Auditors from Price Waterhouse managed to break into House Members'

computer systems. According to the article, the auditors' report stated that they could have changed documents, passwords, and other sensitive information in those systems. What is to stop international terrorists from gaining similar access, and obtaining secret information relating to our national security?

Mandatory minimum sentences will make the criminals think twice before illegally accessing computer files. In a September 1994 Los Angeles Times article about computer intrusion, Scott Charney, chief of the computer crime unit for the U.S. Department of Justice, stated "the threat is an increasing threat," and "[i]t could be a 16-year-old kid out for fun or it could be someone who is actively working to get information from the United States."

He added, there is a "growing new breed of digital outlaws who threaten national security and public safety." For example, the Los Angeles Times article reported that, in Los Angeles alone, there are at least four outlaw computer hackers who, in recent years, have demonstrated they can seize control of telephones and break into Government computers.

The article also mentioned that Government reports further reveal that foreign intelligence agencies and mercenary computer hackers have been breaking into military computers. For example, a hacker is now awaiting trial in San Francisco on espionage charges for cracking an Army computer system and gaining access to FBI files on former Philippine president Ferdinand Marcos. According to the 1993 Department of Defense report, such a threat is very real: "The nature of this changing motivation makes computer intruders' skills high-interest targets for criminal elements and hostile adversaries."

Mr. President, the September 1993 Department of Defense report added that, if hired by terrorists, these hackers could cripple the Nation's telephone system, "create significant public health and safety problems, and cause serious economic shocks." The hackers could bring an entire city to a standstill. The report states that, as the world becomes wired for computer networks, there is a greater threat the networks will be used for spying and terrorism. In a 1992 report, the President's National Security Telecommunications Advisory Committee warned, "known individuals in the hacker community have ties with adversary organizations. Hackers frequently have international ties."

Mr. President, section 527 of this bill will deter terrorist activity and enhance our national security.

Mr. DODD. Mr. President, the brutal and vicious bombing of the Federal building in Oklahoma City continues to tear at the Nation's soul. We are still mourning the loss of so many innocent lives, and asking ourselves how anyone could act with such savagery.

The toll from this terrible tragedy would have been even worse, if so many

rescue workers and volunteers had not acted so heroically. Their courageous and tireless efforts inspired the Nation. We should all take a minute to commend these heroes.

The many law enforcement officials who have worked so hard on this case should also be commended. Their efficient apprehension of suspects and witnesses has impressed everyone. We can all be proud of their efforts.

As we continue to deal with this terrible tragedy—the deadliest terrorist attack on American soil—we must find ways to prevent such acts in the future. While no one will argue that we can end terrorism, we can take steps to deter terrorists, make it more difficult for them to kill and injure, and ensure that they are brought swiftly to justice.

The President deserves commendation for moving forcefully in that direction with a comprehensive proposal to crack down on terrorists. That proposal, which he submitted to the Congress shortly after the Oklahoma bombing, establishes new Federal offenses to ensure that terrorists do not escape through the gaps in current law. FBI director Louis Freeh explained the importance of closing these gaps in recent testimony before the Judiciary Committee.

The President's proposal also provides additional investigative tools for Federal law enforcement officials. These include access to financial reports, telephone bills and other records in foreign counterintelligence investigations. Because these investigations are not always based on criminal offenses, it can be difficult for law enforcement to proceed in certain cases.

Overall, the President's proposal will help the Nation prevent terrorism and help bring terrorists to justice. The bombing in Oklahoma made clear just how vulnerable we all are to terrorism, and we ought to move this proposal forward in an efficient, bipartisan way.

To their credit, Senators DOLE and HATCH have incorporated most of the President's proposal into the bill we are considering today. I commend them for negotiating with the democratic leadership and attempting to narrow differences.

However, there are a few important Presidential proposals that are not in the Republican bill. The President sought to provide the Attorney General with the authority to order emergency wiretaps in foreign and domestic terrorism cases. When I met with Federal law enforcement officials last week in Connecticut, they stressed the importance of this proposal. Regrettably, my Republican colleagues fought this amendment and it was defeated.

Another critical Presidential proposal fared better. Bipartisan cooperation resulted in a unanimous vote in favor of Senator FEINSTEIN's amendment, which authorizes the Treasury Department to promulgate regulations requiring tracing agents in explosives. This authority should help law enforce-

ment officials track bomb builders and other criminals. Because this technology is relatively new, we will need to monitor the effectiveness of the department's regulations.

There are other important differences between the Republican bill and the President's proposal. One critical difference is the Republican approach to habeas corpus reform. This has been a contentious issue for a number of years. No one in this body wants to see prisoners abuse the legal process, and delay justice for victims, by filing meritless appeals. But most of my colleagues also want to ensure that those people who have been unfairly convicted have some recourse.

We have all struggled to strike the right balance on habeas corpus reform, and it is not an easy task. In this time of healing, we should not let a divisive political issue delay the counterterrorism measures that the Nation demands. I hope that we can reach some sort of compromise on this issue.

There are other aspects of this bill that need to be worked out. Some of my colleagues have raised some important concerns about the effect of this legislation in civil rights. Clearly, no one in this body wants to act hastily and undermine the Constitution. We must not sacrifice the principles of freedom, fairness and privacy on the altar of fear. That would give the ultimate victory to the terrorists.

So let us work together, resolve our differences, and rejoin the battle to strengthen the Nation against terrorist attack.

#### AMENDMENT NO. 1233

Mr. PRESSLER. Mr. President, I would note the pending amendment concerns a matter, airline security, that is within the jurisdiction of the Senate Committee on Commerce, Science, and Transportation. I see the distinguished chairman of the Committee on the Judiciary is on the floor. Would the chairman be willing to enter into a short colloquy on this issue?

Mr. HATCH. I would be pleased to discuss the matter with my friend.

Mr. PRESSLER. I thank my colleague. Although I support the proposed amendment requiring a uniform security standard for passenger airlines, as chairman of the Commerce Committee I want the record to be clear on the point that the Committee on Commerce, Science, and Transportation retains jurisdiction over matters concerning airline safety and security.

Further, I want the record to be clear that simply by not objecting to this amendment on jurisdictional grounds, the Committee on Commerce, Science, and Transportation will not be deemed to have waived its jurisdiction over the very important issue of air carrier security programs.

I would ask whether the chairman agrees with my assessment of the jurisdictional situation and whether he would be willing to stipulate as much for the record?

Mr. HATCH. I understand and appreciate that the chairman of the Senate Committee on Commerce, Science, and Transportation has always provided strong leadership on air passenger safety and security issues. Let me make it clear that my friend from South Dakota is absolutely correct. Aviation security is within the jurisdiction of the Senate Committee on Commerce, Science, and Transportation. It is not my intention that this amendment will affect in any way that committee's jurisdiction over airline security matters in the future.

Mr. PRESSLER. I thank my friend from Utah for clarifying this point. Having put my jurisdictional concern to rest, I join in supporting the amendment and urge my colleagues to support it. American citizens traveling on foreign carriers should have the same level of protection they have when traveling on U.S. passenger carriers. Moreover, U.S. passenger carriers should not be put at a competitive disadvantage vis-a-vis foreign competitors whose relaxed security standards are less expensive.

Mr. HATCH. I thank the chairman. I very much appreciate his support for this amendment and thank him for agreeing to proceed to its consideration.

Mrs. FEINSTEIN. Mr. President, yesterday the Senate voted 90 to 0 to approve an amendment I authored to the counterterrorism legislation. Because of the importance of this amendment, I want to clarify its intent and language.

This amendment will make it easier for law enforcement officials to trace the origins of bombs used for violent or criminal purposes. The legislation specifically requires the Secretary of the Treasury to conduct a study within 12 months on the use of taggants in all explosive materials, including black or smokeless powder. Once that study is completed, the Treasury Department must enforce the use of taggants in explosive materials within 6 months, depending on the study's findings and other factors. In addition, this amendment instructs the Treasury Department to also study ways of making common chemicals, such as fertilizer, inert and unusable as an explosive.

This amendment exempts putting taggants in black or smokeless gun powder when that powder is used for small arms ammunition, or bullets—an exemption that already exists under current law. In addition, black or smokeless powder used in antique firearms for recreational purposes is also exempted from this amendment. The amendment does allow for the use of taggants in black or smokeless powder produced for sale in large quantities or for other uses.

I want to clarify that this amendment extends the existing exemption

under current law. Under sections 845 (a)(4) and (5) of Title 18, United States Code, small arms ammunition and antique weapons used for recreational purposes are exempt from all explosive regulations, except for a few specific circumstances. This amendment simply reiterates current law.

Mr. HATCH. 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. 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, it is my understanding, after visiting with the managers, that the only amendments left are habeas corpus amendments.

I want to thank the managers on both sides of the aisle for their hard work and cooperation for the last 6 hours, and also the Democratic leader, Senator DASCHLE, for his cooperation.

So we are down now to the habeas corpus amendments. We disposed of virtually everything, 80, 90 amendments. We are down to about six, five on the Democratic side and one on the Republican side.

I think we have agreed that we come in at 9:30, have 15 minutes of morning business, and at 9:45 we are on the bill. And Senator BIDEN will bring up the habeas corpus Federal prisoners, No. 1217, with 30 minutes of debate equally divided.

Then there would be a vote at 10:15 which would accommodate two Senators who are going to the Base Closure Commission, and one Senator who has someone in the hospital. Then we would try to reach time agreements on the remaining amendments, and if possible stack all of those votes so we can complete action probably sometime like 1 o'clock. We would have votes on those, plus final passage, unless there is a motion to reconsider a vote, or something like that.

I think that is satisfactory. I wish to check with Senators.

So we will proceed on that basis.

#### ORDERS FOR WEDNESDAY, JUNE 7, 1995

Mr. DOLE. I would ask unanimous consent that when the Senate convenes tomorrow, it convene at the hour of 9:30 a.m., with 15 minutes of morning business, 10 minutes to the Senator from Louisiana, Senator BREAUX; that at 9:45 we return to the consideration of S. 735, and that the amendment No. 1217, habeas corpus Federal prisons, be in order, 30 minutes equally, controlled by the managers on each side.

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

Mr. DOLE. And then we will try to work out the order and times on the following amendments. I think we will pretty much stick to the times we have pointed out here.

I would also ask, since we have completed action on every amendment that has been affected by cloture, that the cloture motion filed yesterday be vitiated.

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

Mr. DOLE. As I indicated earlier, there is no reason for a cloture vote because we have taken care of all the amendments that might have been affected by invoking cloture with the exception of five so-called gun or gun-related amendments which have been or will be withdrawn.

Mr. BIDEN. Mr. President, if the leader will yield, each of the authors of the gun amendments has agreed to withdraw their amendments, and I am authorized to do that and I would do that at this moment if that is appropriate.

There are five amendments: Bradley, Lautenberg, Kohl, Levin, and Kerry of Massachusetts. Each had amendments. And there was a Boxer amendment which we never intended on bringing up on guns, and a second Lautenberg amendment. We were not going to do those anyway.

To put it another way, Mr. President, we commit there will be no gun amendments offered from the Democratic side. The only amendments that would be in order are the habeas corpus amendments that have been referenced by the leader already.

Mr. DOLE. Right. That would be Biden No. 1224, Biden No. 1216, Biden No. 1217, Levin No. 1245, Gaham of Florida No. 1242, Kyl No. 1211, and then there is the managers' amendment.

Mr. BIDEN. Yes. And that would not be a gun amendment.

Mr. President, that is correct. They would be the only amendments that would be in order. So there is no intention to raise any gun issue.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

#### AMENDMENT NO. 1228 WITHDRAWN

Mr. HATCH. It is my understanding that the distinguished Senator from Michigan has been very cooperative and has permitted us to withdraw his amendment. I believe both the distinguished Senator from Delaware and I are very grateful that he has been so considerate of all of us.

The PRESIDING OFFICER. Without objection, amendment 1228 is withdrawn.

Mr. DOLE. I assume under the previous agreement that only second-degree amendments would be in order after a failed motion to table.

Mr. BIDEN. That is my understanding.

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

Mr. DOLE. Again, let me thank the managers and the Democratic leader, Senator BIDEN and Senator HATCH, Senator DASCHLE, and also thank the President and Pat Griffin at the White House, who has been helpful throughout the day.