There are just over 100 major air carriers flying those passengers into our country. We have an arrangement with 95 of those air carriers to voluntarily provide the United States Customs Service with advance passenger lists of who is coming to visit our country. The Customs Service runs that list against a list the FBI has, the Customs Service has, and 21 different agencies of law enforcement, to evaluate which of these passengers, if any, should not be allowed into our country, which of them are on the suspect list, and which are on the list of known or suspected terrorists.

We have the majority of the airline carriers and the majority of the names of passengers being given to our law enforcement authorities in the form of an advance electronic passenger list. It is called the Advance Passenger Information System. It is a voluntary, not mandatory, system covering 85 percent of the international air passengers that are not already pre-cleared by Customs. It works fine except we have a number of carriers from countries that do not participate.

Let me list a few: Saudi Arabia, Egypt, Jordan, and Pakistan, just to name a few.

One would ask whether we should be getting advanced passenger information from these countries. The answer is yes. In fact, the Senate said yes last week. The Senate was prepared to adopt this amendment last week as part of the counter-terrorism bill, which is where it should have been. In conference it was knocked out. It went to conference with the U.S. House. Some were worried more about committee jurisdiction than they were about security. So they knocked it out.

The result was, when the President signed that counter-terrorism bill, it did not have this provision that makes mandatory the Advanced Passenger Information System.

What does that mean? It means that today about 219,000 international air passengers arrived in the United States—today, Tuesday. About 34,000 are pre-cleared by U.S. Customs agents stationed abroad who run an APIS-type check as part of the clearing process, 156,000 are pre-screened through APIS while they are in flight, leaving approximately 29,000 whose names are not provided to the Customs Service until they arrive because their carriers do not participate in the Advanced Passenger Information System. Why? Because the Congress last week decided not to include that requirement in a conference report.

The President wants this requirement. The Customs Service wants the requirement. All the Federal law enforcement authorities want the requirement. We get it on 85 percent of international air passengers. And the ones we don't get it from are Pakistan, Kuwait, Saudi Arabia, Egypt, and Jordan, just to name a few.

I ask the question: Does it promote this country's security to require those air carriers to provide the same information that virtually every other air carrier in the world provides to us? The answer is clearly yes.

We are less secure today than we should be because the Congress knocked out my provision in that conference committee. That provision was not in the counter-terrorism bill when the President signed it, despite the fact that the Senate supported it. The Senate said yes. But it was knocked out in conference.

I intend to offer this to any vehicle I have the opportunity to offer it to. I know that it doesn't necessarily belong on an appropriations bill. But it belongs in law in this country. It belongs there now. It should be there now. It should be providing security for this country now with respect to the 29,000 people who entered this country today whose names were not provided under the Advanced Passenger Information List. It makes no sense to me to be in this situation.

Some would say, well, this really inconveniences and mandates the air carriers to do this. No, it does not. Most of the air carriers do it voluntarily, and they have a good relationship with our country. But some air carriers decided that they will not do it. The Customs Commissioner and others indicate that we ought to make it mandatory. I agree with that.

Since September 11, things have changed. It is not profiling. It is not profiling in any way to ask for an advanced list of passengers who are going to visit our country as guests in our country. But we are trying to profile those who are terrorists and suspected terrorists. Let's admit to that.

One of the goals that we have in all of our efforts with respect to increasing security at our borders is to determine who the people are who associate with terrorists and known terrorists or suspected terrorists, and try to keep them out of our country. Unfair? I don't think so, not in the circumstance where thousands of Americans have been killed— cold-blooded murder by terrorists who decided to use an airplane as a weapon of destruction; not at a time when terrorists sent anthrax-laced letters around this country through the mail system and people die.

I ask that we include this amendment in this appropriations bill. I hope those who are talking about their committee jurisdiction will understand that this isn't about jurisdiction. It is about security. This isn't about trying to protect your little area. It is about common sense to try to protect this country's borders. The Advanced Passenger Information System works. It has worked for a long while. It provides this country names that are important to secure our borders, except that it doesn't do it in all instances. In the instances where it fails, it is critically important to give this country critically important information in order to give this country some assurance and some comfort.

I understand that we will probably deal with this amendment tomorrow. I wanted to offer it this evening.

Mr. HARKIN. Madam President, I believe this amendment which I am pledged to cosponsor should become law. It is very reasonable for the United States to require that airlines provide information about their international travelers coming to the United States so customs can be able to check if any of the passengers are of special concern.

We are going to considerable lengths to improve the safety of our aviation system and to improve our ability to better protect our borders. Requiring that international airlines provide some basic information about their passengers and their cargo is very reasonable.

I understand some airlines are concerned about the small costs involved. Some airlines might have other reasons to not comply. But with 85 percent compliance with the voluntary requirements, clearly the burden is well within reason. There is no question, given the realities of our world, this should be required information for any international flight coming to the United States.

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

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

MORNING BUSINESS

Mr. REID. Madam President, I ask unanimous consent that there now be a period of morning business, with Senators allowed to speak therein for a period not to exceed 5 minutes each.

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

TERRORISM

Mr. SPECTER. Madam President, the terrorist attacks carried out by Osama bin Laden and al-Qaida on September 11 require a reevaluation of our national policy on what the government should be doing on its primary responsibilities: the security of the people.

The United States was stunned by that diabolical attack. It was thought impossible to make the country, with special emphasis on the Congress, more ''fighting mad''; but that was done with the anthrax attacks. As a nation, we are determined to respond thoughtfully and forcefully to win the war against terrorism. This floor statement briefly reviews some of the responses by the U.S. to terrorism for the past two decades to learn from our mistakes of the past and to guide us on what to do in the future.

The United States has been slow to assert extraterritorial jurisdiction to

bring to justice terrorists who attack U.S. citizens around the world. Ordinarily, jurisdiction resides in the locale where the crime occurred; however, a nation may assert extraterritorial jurisdiction where its citizens are victimized on foreign soil which provides the nexus for jurisdiction beyond its boundaries.

It was not until 1984 that the United States asserted extraterritorial jurisdiction to try terrorists who kidnaped or hijacked Americans abroad. Those provisions were contained in the Omnibus Crime Control Act of 1984 which was added onto the appropriations bill for the Department of Justice. The Senate and House Judiciary Committees, led by feuding chairmen, could not agree on legislation, so an appropriation subcommittee took up the issues in an unusual way. The bill was passed in the middle of an all-night session, in which I participated along with Senator Warren Rudman on the Senate subcommittee, and Congressman Bill Hughes on the House subcommittee.

That legislation still left a void on terrorism other than kidnaping or hijacking. On July 11, 1985, I introduced the Terrorist Prosecution Act of 1985, to establish extraterritorial jurisdiction for any attacks on any U.S. citizen anywhere in the world. Several months later, the need for such legislation became urgent when on December 27, 1985, 16 people, including five Americans, were killed by random terrorist strafings at the Rome and Vienna airports, and many others were wounded. This provided the impetus to pass the Terrorist Prosecution Act which became law on August 27, 1986, providing the basis for the indictments against Osama bin Laden for conspiring to murder 18 Americans in Mogadishu, Somalia, in 1993, and 12 Americans at the Nairobi, Kenya, and Dar es Salam, Tanzania, Embassies in 1998.

Although there were solid precedents for the United States to act against indicted terrorists, who were harbored in foreign countries, the United States declined to pursue an aggressive policy to enforce outstanding warrants of arrest. In 1886, in the case of *Ker* v. *Illinois*. 119 U.S. 436 (1886), the Supreme Court of the United States held that a prosecution could be validly pursued even where the defendant was abducted in a foreign country and brought back to the U.S. for trial. Ker, under indictment for fraud in Illinois, had fled to Peru. Illinois authorities pursued him to Peru and brought him back to Illinois for trial and conviction. The Supreme Court of the United States said:

> There are authorities of the highest respectability which hold that such forcible abduction is no sufficient reason why the party should not answer when brought within the jurisdiction of the Court which has the right to try him for such an offense, and presents no valid objection to his trial in such court. (*Ker,* 119 U.S. at 444.)

That principle was upheld by the Supreme Court of the United States in *Frisbie* v. *Collins,* 342 U.S. 519, 522 [1953], in an opinion by Justice Black, a noted civil libertarian.

Based on my experience as district attorney of Philadelphia in pursuing indicted criminals, I thought some of those techniques could be applied to international terrorists. Those ideas were expanded after chairing the Intelligence Committee and Judiciary Subcommittee on Terrorism.

After studying ''Ker'' and ''Frisbie,'' I urged U.S. executive branch officials to consider abduction, if necessary, to bring back to the United States indicted terrorists. In hearings before the Judiciary Committee and the Appropriations Subcommittee on Foreign Operations, I questioned Secretary of State George Schultz, Attorney General Edwin Meese, FBI Director William Webster and State Department Counsel Abraham Sofaer on that subject. In testimony before the Judiciary Subcommittee on Terrorism on July 30, 1985, Judge Sofaer raised a series of objections to such forceful action, saying:

> I would say that seizure by U.S. officials of terrorist suspects abroad might constitute a serious breach of the territorial sovereignty of a foreign state, and could violate local kidnapping laws—that is, the people who do the seizing could be, in fact, criminals under local law. Such acts might also be viewed by foreign states as violations of international law incompatible with the foreign extradition treaties that we have in force with those nations.

It may be that those hearings, urging the application of ''Ker'' and ''Frisbie,'' led to action by U.S. law enforcement officials against Fawaz Yunis, although his case did not involve abduction in a foreign country, but the principle was close. In June 1985, Yunis and other terrorists hijacked a Jordanian airliner with two U.S. citizens in Beirut, Lebanon. In September 1987, a joint operation of the FBI, CIA, and U.S. Military led to the capture of Yunis, who was lured onto a yacht off the coast of Cyprus with ''promises of a drug deal.'' Once the yacht entered international waters, Yunis was arrested and returned to the U.S. for trial where he was convicted of conspiracy, aircraft piracy, and hostage-taking, and then sentenced to 30 years in prison.

The hearings on ''Ker'' and ''Frisbie'' may have also led the DEA—the Drug Enforcement Administration—to abduct from Mexico Dr. Alvarez-Machain who was implicated in the kidnaping and murder of a DEA agent in Mexico in 1985. After the DEA unsuccessfully negotiated with Mexican authorities for Alvarez-Machain's surrender, DEA officials offered a reward to a group of Mexican citizens for delivering Alvarez-Machain to them in the United States, which was done in April 1990. The trial court dismissed the case because the DEA agents had violated the extradition treaty with Mexico, and the Circuit Court of Appeals affirmed. When the case reached the Supreme Court of the United States, the Court reversed the lower courts and stated this principle of law:

> The power of a court to try a person for a crime [exists even if] he had been brought within the court's jurisdiction by reason of a forcible abduction. (*United States* v. *Alvarez-Machain,* 504 U.S. 655, 661 (1992).)

And now onto Osama bin Laden's longstanding record on terrorism against the United States.

The cases of Ker, Frisbie, and Alvarez-Machain provided ample precedent for the United States to have acted against Osama bin Laden prior to September 11, 2001. For a decade, Osama bin Laden had been prosecuting a war of terrorism against the United States. In 1992, he issued a religious declaration, known as a fatwah, urging that United States troops be driven out of Saudi Arabia, and the fatwah was extended in 1993 to demand expelling U.S. troops from Somalia. The terrorists convicted for bombing the World Trade Center in 1993 were trained in al-Qaida camps in Afghanistan. In 1996, al-Qaida called for a jihad against the United States.

In February 1998, bin Laden and al-Qaida issued another fatwah, calling for the murder of U.S. citizens wherever they were found in the world. In May 1998, bin Laden announced the need to possess a nuclear weapon against ''Jews and Crusaders.'' In indictments returned in November 1998, Osama bin Laden was charged with conspiring to murder U.S. troops in Saudi Arabia and Somalia and for being directly involved with the bombings of the U.S. embassies in Kenya and Tanzania in August 1998. In June 1999, bin Laden called for the killing of all American males. And then bin Laden was involved with al-Qaida in the terrorist attack on the USS *Cole*.

Notwithstanding demands by the United States and the United Nations, the Taliban refused to turn bin Laden over to U.S. authorities. In harboring bin Laden, the Taliban, the de factor government of Afghanistan, was an accessory after the fact. In his September 20, 2001 speech to a Joint Session of Congress, President Bush equated those who harbor terrorists with the terrorists themselves.

From all that, it was readily apparent that bin Laden and al-Qaida were at war with the United States even prior to September 11. Then, on September 11, in addition to murdering 7,000 Americans, bin Laden and al-Qaida sought to destroy our symbol of economic achievement by leveling the twin towers of the World Trade Center and to decimate the White House and U.S. Capitol with planes which crashed into the Pentagon and in a Pennsylvania field.

In a Senate floor statement the following day, September 12, I said—and it is worth repeating now:

> [T]here have been many declarations that what occurred yesterday with the Trade Towers and the Pentagon were acts of war. And there is no doubt about that. Similarly, what bin Laden did in Mogadishu in 1993 and in the Embassies in 1998 were acts of war. At this time, while the Congress should never act precipitously, I do suggest that consideration be given to a declaration of war

against the political entity which harbors and has given aid and assistance to bin Laden's terrorist organization and bin Laden and his co-conspirators, based on the indictments which already have been handed down . . .

It was my view on September 12 that even though we could not prove at that time that bin Laden was responsible for the terrorism of September 11, that a basis already existed for declaring war on Afghanistan and the Taliban for harboring bin Laden based upon the indictments which had already been returned establishing probable cause for acts of war which bin Laden and al-Qaida had committed against the United States.

On September 13, when the President met with Members of Congress from New York, Virginia, and Pennsylvania, which were the impacted States, I urged President Bush to consider a declaration of war against Afghanistan and the Taliban on the basis of the outstanding indictments against bin Laden and the Taliban's refusal to turn him over. The President made no response at that meeting to my suggestion.

President Bush declined to ask for a declaration of war, but he did request a resolution authorizing the use of force which was passed unanimously in the Senate and 420–1 in the House.

Presidential executive orders have provided that: ''No person employed by or acting on behalf of the U.S. Government shall engage in, or conspire to engage in, assassination.'' But in April 1986, President Reagan ordered the bombing of Tripoli, Libya, and Muammar Qadhafi after intelligence intercepts implicated Libyan intelligence operatives in the bombing of a disco in Berlin, resulting in the death of two American soldiers.

Similarly, President Clinton ordered a missile attack on Osama bin Laden in Afghanistan in August 1998 after the Embassy bombings. In an interview with Tom Brokaw on NBC News on September 18, 2001, former President Clinton said:

We had quite good intelligence that he [bin Laden] and his top lieutenants would be in his training camp. So I ordered the cruise missile attacks, and we didn't tell anybody, including the Pakistanis, whose airspace we had to travel over, until the last minute, and unfortunately we missed them, apparently not by very long. We killed a number of terrorists, destroyed the camp, but we didn't get him or his top lieutenants. And I made it clear that we should take all necessary action to try to apprehend him and get him. We never had another chance where the intelligence was as reliable to justify military action. He's very elusive. He spends the night in different places, often stays in—in caves. There were times when he tried to hide among a lot of women and children. It's a tough . . . nut to crack. But the world is changed now, and . . . the pressure that President Bush and the administration is putting on the Taliban and also on the Pakistanis, and the statements the Pakistanis have made, and the unity we've got around the world—we finally got other countries as concerned about this as we are. . .

Now to a discussion of Israel's response to terrorism. It is worth noting what Israel has done in its war against terrorism. Israel has adopted a policy on what could be called ''executions'' after its own determination of terrorists' guilt. After the massacre of the 11 Israeli Olympic athletes in Munich in 1972, it is reported that Prime Minister Golda Meir and Defense Minister Moshe Dayan authorized the executions of 9 of the terrorists whom they identified as being responsible for the Munich murders. One person, killed in Norway, was reported misidentified as a terrorist. Such executions have also been carried out by Israel against terrorists who were principals of the PLO, Islamic Jihad, Hezbollah and Hamas whom the Israelis found involved in murders of Israeli civilians.

The terrorism of September 11 should make us more understanding of the perils faced by Israel for five decades. Since the second Intifada began in September 2000, Israel has sustained 165 deaths from the killings. On a proportionate basis to our population, that would translate into over 7,000 Americans, a virtual equivalency to the mass murders on September 11. Should Israel be expected to respond differently from the way we responded to September 11? Just as the United States must find a way to stop terrorist attacks on U.S. citizens, a way must be found to stop the violence which has killed 714 Palestinians as well as 165 Israelis.

In seeking to organize a coalition against bin Laden and al-Qaida, the United States has urged, even pressured, Israel to temper its responses against Palestinian terrorists. In so doing, the United States should consider whether it is applying a double standard between what we are doing and what we ask Israel to do. What is the difference between the United States demand on the Taliban to turn over Osama bin Laden contrasted with Israel's demand on Chairman Arafat to turn over the assassin of the Israeli tourism Minister Rehavam Zeevi.

The usually perceptive Thomas L. Friedman in his October 23 New York Times column applied such a double standard. Asking Israel to pull its punches against Palestinian terrorism to stop ''. . . inflam[ing] the Arab-Muslim world in order to avoid . . . seriously undermining our [the United States] coalition against bin Laden,'' Friedman calls for Israel to subordinate its security interests to those of the United States. Friedman then asks Prime Minister Sharon whether ''. . . you (know) how serious this war is for America''? Is the war against Palestinian terrorism any less serious for Israel?

In seeking the assistance of Arab countries in the coalition, the United States has been careful not to ask for more than can reasonably be expected. Similar consideration must be extended to Israel. During the gulf war in 1991. Prime Minister Itzhak Shamir and Israel cooperated with the United States by taping their windows, wearing gas masks, and not responding to Iraqi Scud missile attacks. Israel has made serious, good-faith efforts to negotiate with Arafat notwithstanding the Intifada violence. Prime Minister Barak made the Palestinian authority a very generous offer in January 2001. Foreign Minister Shimon Peres has engaged in extensive negotiations until those talks were interrupted by outbursts of Palestinian terrorism.

There was a real question as to how much control Chairman Arafat can exert over Palestinian terrorism. Last April 16, I met Chairman Yasser Arafat in Cairo near midnight at the precise time Israel was responding to Palestinian mortar attacks. As we talked, aides brought Arafat communiques describing the fighting. I asked Chairman Arafat why he had not accepted then Prime Minister Barak's generous offer earlier in the year. Chairman Arafat responded that he had, but he was obviously oblivious to the fact that he imposed so many conditions it was, in fact, not an acceptance.

I then called on Chairman Arafat to make a clear statement calling for an end to Palestinian terrorists attacks. He said he had done that at the Arab summit on March 29, 2001. The transcript of his speech refuted his statement. That speech was another example of his longstanding tactic of sending contradictory messages. Chairman Arafat is famous for saying one thing in English to one audience and the reverse in Arabic to another audience.

In assessing Chairman Arafat's ability to reign in Palestinian terrorism, we must take into account that today he is not the man he was when he shook the hands of Prime Minister Rabin and Peres on the White House South Lawn on September 13, 1993, in the presence of President Clinton. Shortly thereafter, I met Chairman Arafat in Cairo in January 1994 traveling with a congressional delegation. At that time Arafat was healthy, robust, and forceful.

Seven years later, when I again met him in Cairo, he was shaky, hesitant, and spoke mostly through his aides. The recent challenges to his authority by Hamas, resulting in Chairman Arafat's firing on and killing Palestinians in early October, shows his diminished authority and raises serious questions as to whether he can be effective in ending the Palestinian violence even if he wants to.

This April, Secretary of State Colin Powell criticized Israel's response to Palestinian terrorism saying Israel's military action was ''excessive and disproportionate.'' In hearings before the Appropriations Subcommittee on Foreign Operations on May 15, 2001, I challenged Secretary Powell's characterization and said:

While Israel did respond very, very forcefully, Israel could have responded much more forcefully and is facing a situation where everybody is sort of at wit's end. And I believe that the calculation is made that if they hit them hard enough within reason that they will—that the Palestinians perhaps will stop the terrorism although that is

very complicated with Hamas and Islam Jihad and the others.

Then Secretary Powell sought to justify his comment by saying that we tried to be ''even-handed''. He then referred to ''the cycle of violence.'' The comment on ''cycle of violence'' suggests some sort of parity or moral equivalency between the purpose and level of force between Palestinian terrorists and Israel's reaction in self-defense.

There is, realistically viewed, no moral equivalency.

Terrorism, the killing of innocent victims, is totally reprehensible, repugnant, and morally unjustifiable. Self-defense in response to such terrorism is morally justifiable and is authorized under international and natural law.

When United States pressure on Israel increased, Prime Minister Sharon bluntly told the Bush Administration ''do not try to appease the Arabs at our expense'' and analogized the situation to the allies sacrificing Czechoslovakia in the Munich Pact of 1938. The Bush administration replied in kind calling Sharon's comment ''unacceptable.''

In limiting the freezing of terrorist assets to individuals and groups connected to the al-Qaida organization and the Irish Republican Army, President Bush did not extend United States efforts to ''every terrorist group of global reach,'' as articulated in his September 20th speech. Perhaps he left out Hamas, Hezbollah, the Palestine Liberation Organization and other Arab terrorist organizations to maximize the chances to get Syria and other Arab countries into our coalition.

Israel's battle against Palestinian terrorism would have benefited by our freezing the bank accounts, of Hamas, Hezbollah and the PLO, just as we did with terrorist organizations connected to Osama bin Laden; but United States national interests at the moment may have differed—just as Israel's national interest may differ.

Israel cannot be blamed for the September 11 terrorism. Senator JOHN MCCAIN was right when he said on NBC's ''Meet the Press'' on October 21:

> So if Israel were taken off the face of the Earth tomorrow, we would still be facing the same terrorist problems we have today.

Osama bin Laden's hatred against the United States, is rooted in events which preceded Israeli's existence. His videotaped statement broadcast on October 7 cited, ''what America is facing today is something very little of what we have tasted for decades. Our nation, since nearly 80 years is tasting this humility.'' He raged against the United States for our military action against Iraq and Japan. The two references to Israel were minor compared to his diatribe against America as the ''head of international infidels.''

His disregard for human life was palpable in minimizing ''a few more than 10 were killed in Nairobi and Dar es Salaam.'' The intensity of hostility was demonstrated by a statement by Ayman al Zawahir, one of his close associates, on the same videotape:

> American people, can you ask yourselves why there is so much hatred against America?

The New York Times on October 7 characterized bin Laden's anti-American attitude:

> Mr. bin Laden, born in Saudi Arabia, has typically focused his anti-American statements on the presence of American troops in Saudi Arabia, declaring it a violation of Islamic holy places. Now, in keeping with the rest of the Arab world, he shifted focus to the Palestinian uprising that began in September 2000, as officials believe.

A minister of the United Arab Emirates is reported to have warned the United States that if Israel continued killing Palestinians, ''most of us will certainly have to reconsider our role in the coalition''. The United States was obviously seeking to assuage Arab objections when Secretary of Defense Rumsfeld skipped Israel in his recent mid-East trip and Secretary of State Powell emphasized that Israel would not be part of any military coalition. Hezbollah and Hamas are now reportedly accelerating their terrorism on the expectation that Israel may be reluctant to respond out of concern for Arab participation in the coalition. That is a prelude to the most important part of this somewhat lengthy statement, and that is a focus on dealing with terrorism in the future.

The conduct of Osama bin Laden and al-Qaida prior to September 11 should have put the United States on notice that we were facing a ruthless, powerful enemy engaged in a religious war with the capacity to inflict enormous damage. By 20/20 hindsight, the United States should have taken whatever action was necessary to, as President Bush later put it, either bring bin Laden and al-Qaida to justice, or to bring justice to them. The point is not to attach blame for what happened in the past; but to learn from this bitter experience how tough and determined we must be from this day forward in fighting terrorism. After September 11, it is obvious that the civilized world faces decisions on how to deal with terrorism which threatens our survival. Self defense, acknowledged as a person's most primordial motivation, is recognized as a fundamental principle in international law.

Congress, in conjunction with the President, has the responsibility to conduct hearings, deliberate, and establish our national policy on how to deal with terrorism. As a starting point, Congress should conduct oversight hearings to determine whether our intelligence agencies were at fault in failing to provide warnings of the September 11 attacks. If so, Congress must act to cure such deficiencies and to do whatever is necessary at whatever cost to reorganize our intelligence agencies and provide the resources to be as sure as possible that we will not be again caught by surprise. The oversight hearings on the adequacy of our intelligence should be deferred until next year so as not to distract the intelligence community from using its full resources to detect current threats.

Congress, in conjunction with the President, should consider the public policy behind the Executive Order banning ''Assassinations.'' As a starting point, we should consider whether the pejorative term ''assassinations'' is accurate or whether we are really dealing with ''executions,'' even if they are based on a non-judicial determination of guilt. It is one thing to prohibit the CIA from involvement in the killing of a leader of a foreign political faction or from the killing of a foreign leader contrasted with the CIA implementing a Presidential finding to take bin Laden into custody or kill him if there is no alternative.

The use of force in war or against terrorism does not require the same level of proof to convict in a U.S. court of law. Without prejudging Israel's nonjudicial determinations of guilt and the following ''executions,'' Congress must decide what quality of proof and what level of force is necessary to assure our Nation's survival.

It was concluded that the Executive Order banning assassinations did not preclude President Reagan's order to bomb Libya and Qaddafi or President Clinton's order for a missile attack against bin Laden and al-Qaida in Afghanistan in August of 1998. In 1976, the Church Committee on Intelligence Operations concluded:

> . . . short of war, assassination is incompatible with American principles, international order, and morality. It should be rejected as a tool of foreign policy.

The Church committee's interdiction against assassination, ''short of war,'' raises the obvious question as to when war begins or whether terrorism isn't in fact, war. When it becomes a matter of survival, I suggest the pristine rules of the Church committee may have to be superseded, again depending on the circumstances.

Judicial determinations of guilt are not required as a basis for the use of deadly force in war and should not be the basis for action against terrorists. Israel has long considered itself in a war for survival facing being vastly outnumbered and surrounded by hostile armies in wars in 1949, 1956, 1967 and 1973, and some of those nations still have a state of war technically against Israel. In moving against the Munich murderers and Palestinian terrorists, Israel has adopted an activist policy of execution after a nonjudicial determination of guilt. All of that I suggest is worth studying.

In President Bush's speech to the Joint Session of Congress on September 20, he said:

> The war on terrorism . . . will not end until every terrorist group of global reach has been found, stopped and defeated.

Congress, in conjunction with the executive branch, must also decide what

action should be taken against every nation which sponsors, supports, or harbors terrorists in order to meet President Bush's goal. We must determine what national security and survival require in evaluating a policy on abducting or executing terrorists in foreign countries and taking tough action against these who harbor them.

Consideration should also be given to the detention of individuals where there is reason to believe they are part of al-Qaida or some other group which is actively planning terrorism against the United States. Under existing law, membership or an affiliation with such a group without more is not a basis for arrest or detention. The standard for detention should not require the level or probable cause necessary for a warrant of arrest or a search warrant but it should be more than mere surmise. It is obviously a difficult line to draw.

A case was reported after September 11 where a suspected terrorist was detained when he tried to gain entry to the United States from Canada, but was released when there was not sufficient evidence to arrest him. He was reportedly later identified as one of the pilots on a September 11 hijacking, which illustrates the point that if we let them go when we have reason to detain them, they may come back to kill us.

Twenty-first century terrorists do not wear uniforms. Study must be undertaken to determine an appropriate standard for detention on the analogy of detaining prisoners of war. The issue of detention of aliens received considerable attention during the debate on the terrorism legislation which was signed into law by President Bush on October 26. That legislation answers part of the problem but not all of it.

Poignant scenes from ''Saving Private Ryan'' illustrate the problem.

In the movie, U.S. forces captured a German soldier behind enemy lines as they were making their way on their mission to save Private Ryan. The German soldier pleaded for his life. The American soldiers did not have the capacity to take him with them as a prisoner, so they had the alternative of killing him or letting him go.

When he promised to move to U.S.-held territory and surrender himself, the American soldiers relented and released him.

In a later scene, that German soldier confronts the same American soldiers and kills several of them. That sequence illustrates American generosity and our natural instincts to be merciful. It is a lesson worth noting that we, as a nation, must reevaluate our level of ''toughness'' if we are to survive.

In this Senate floor statement, I have sought to raise issues which must be decided after congressional hearings and deliberations rather than to provide definitive answers.

Now, Mr. President, I come to the crux of what I have had to say.

In summary, these are the issues to be decided by Congress in conjunction with the President, after hearings, deliberation, and consultation. These are some of the issues which have to be considered. I do not say they are all inclusive, but these are the ones on my mind now.

First, should the United States revise its policy against assassinations to acknowledge that war and terrorism warrant executions under some circumstances?

Second, should such executions be authorized based on a nonjudicial determination of guilt, recognizing that responses to war and terrorism have traditionally not required the level of proof to indict or convict in a U.S. court of law?

Third, what level of our national leadership should be invested with the power to make such nonjudicial determinations of guilt?

Fourth, what are the standards for the quality and quantity of proof to make such a nonjudicial determination of guilt?

Fifth, should the United States be deterred from going into another sovereign nation to abduct or take forceful action against a terrorist when the host nation fails or refuses to turn over such terrorists?

Sixth, to what extent should the United States act against foreign nations or their officials who harbor terrorists?

And seventh, should individuals be detained where there is some basis to believe that they are non-uniformed members of al-Qaida or another terrorist organization on the analogy of incarcerating prisoners of war? If so, what should be the standard for such detention, and who should make the determination?

My sense is that America will maintain its resolve in carrying on the war against terrorism regardless of how long it takes. The steadfastness and durability of the coalition is another question. In my opinion historically, ''Remember Pearl Harbor'' will be a mild declaration or exhortation to ''Remember September 11th!!''

That concludes my statement. I thank my colleague, the Senator from Alaska, for his patience, and in fact he was patient. He came in at the latter part of my statement, and I have taken considerable time until Senator STEVENS arrived, and there is no other Senator who sought recognition. I appreciate the opportunity to make the statement which has been the product of considerable work on my part.

I yield the floor.

IN RECOGNITION OF THE BAYER CORPORATION

Mr. SPECTER. Madam President, I have sought recognition to recognize and acknowledge the activities of one of my own very good corporate neighbors and constituents, the Bayer Corporation of Pittsburgh. Last week, on October 24, Bayer Corporation's president and chief executive officer, Mr. Helge H. Wehmeier, and U.S. Postmaster General John E. Potter announced Bayer's donation of 2 million doses of their antibiotic Cipro, one of the FDA's drugs of choice for the treatment and cure of anthrax disease.

This medication was donated to the Federal Government and is intended for use by Federal employees who may need it. The medication will be administered by U.S. Federal health care agencies, including the Department of Health and Human Services and its Centers for Disease Control and Prevention, as well as local and State health care officials in the Washington, DC, area.

There has been a claim, and justifiably so, for the heroism of our firemen, our police, and our health care workers who responded to the attacks on September 11. Now with the problems with anthrax, we appropriately add to that honor roll the U.S. postal workers. Mr. Helge H. Wehmeier had noted that the unsung heroes, less celebrated perhaps, but no less brave in their readiness to perform their duties, were the postal workers. Regrettably, we have seen problems with anthrax there. The contribution by Bayer should be of substantial help.

I also call my colleagues' attention to the comments of Department of Health and Human Services Secretary Tommy Thompson last week with respect to the negotiations with Bayer and Mr. Wehmeier. I ask unanimous consent, following these brief remarks, there be printed in the RECORD a copy of the press release which was issued following the meeting with Secretary Thompson and Mr. Wehmeier, president and CEO of the Bayer Corporation.

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

HHS, BAYER AGREE TO CIPRO PURCHASE

WASHINGTON, Oct. 24.—HHS Secretary Tommy G. Thompson and Mr. Helge H. Wehmeier, President and CEO of Bayer Corporation, today announced agreement for a significant new federal purchase of the antibiotic ciprofloxacin (trademarked Cipro) at a substantially lowered price. The antibiotic is expected to be available by year end. Supplementing existing emergency stockpiles, it would be available for use in the event of a bioterror event.

Under the terms of the agreement valued at $95 million, HHS will pay 95 cents per tablet for a total initial order of 100 million tablets. This compares with a previously discounted price of $1.77 per tablet paid by the federal government. Bayer said it will rotate the government's inventory, as part of this agreement, to assure the American public a continuously fresh supply of Cipro. This inventory rotation adds an additional value of 30 percent for the government, which is included in the agreement.

Funds for the purchase are included in the $1.6 billion emergency proposal made by President Bush Oct. 17, which awaits Congressional action. HHS is also carrying out substantial new purchases of other antibiotics that are effective against anthrax, especially doxycycline. The purchases will fulfill Secretary Thompson's proposal to quickly increase the nation's emergency reserve of