Thanks to some fine print in the 1994 North American Free Trade Agreement, the case of Loewen Group vs. U.S. is just one of two dozen wending their way through a little-known and highly secretive process.

Let me read that sentence one more time. That is the reason we opposed fast track. We will have a time agreement, 2 hours a side, or 4 hours, or debate it this afternoon. You never get the obscure addendum and other things agreed to. They don't tell you about them.

Thanks to some fine print in the 1994 North American Free Trade Agreement, the case of Loewen Group vs. U.S. is just one of two dozen winding their way through a little-known highly secretive process. The panels, using arbitration procedures established by the World Bank, were supposed to ensure the governments in the U.S., Mexico, and Canada would pay compensation to any foreign investor whose property they might seize. U.S. business groups originally demanded the investor-protection mechanism, noting that the Mexican government had a history of nationalizing its oil, electricity, and banking industries, including many U.S. assets.

But even some of NAFTA's strongest supporters say the clever and creative lawyers in all 3 countries are rapidly expanding the anti-expropriation clause in unanticipated ways. ''The question in a lot of these pending cases is, will the panels produce a pattern of decisions that the negotiators never envisioned?'' says Charles E. Roh Jr, deputy chief U.S. negotiator for NAFTA, now a partner at Weil, Gotshal & Manges, LLC. Some of the early indications, he says, ''are troubling.''

But there are some examples here. There is not only the particular funeral home case, but:

UPS claims that the Canadian post, the state-owned postal system, uses its monopoly on letter mail to gain unfair advantages in parcel deliveries.

In the matter of the Canadian manufacturer, Methanex, versus the United States:

The Canadian manufacturer of a gasoline additive sued after California found the health-threatening chemical had contaminated water, and banned its use.

So after the California authorities have the hearings and everything else, they find out it is contaminative. As a result, they ban the use. No, you take that up to the secret panel of NAFTA judges, who meet in secret, decide in secret, and if you can get a fix—like you can get the fix of the vote around here—what happens is the California proceeding, totally in the open, is overturned. The legal process is totally frustrated.

I will read one more example. Those who are interested can follow the particular article, Metalclad v. Mexico:

U.S. company sued after it obtains permits from the Mexican federal government for a waste disposal site. Then localities denied a permit to operate.

They said that was taking away their particular business. You can go on and on, but it is a two-way street. Lawyers on both sides of the border are using this particular secretive measure.

Although many of the current cases raise questions, business groups insist that NAFTA-like panels are needed in all trade deals because so many developing nations have poor judicial systems. But they allow that the process may still need some tweaking. ''Of course, if I look at the filed cases so far, I could write a pretty scary story,'' says Scott Miller, a Washington lobbyist for Procter & Gamble Co. and Eric Biehl, a former top Commerce Dept. official, wonders ''how does some mechanism on a trade agreement that no one ever thought much about suddenly get used to open up a whole new appellate process around the U.S. judicial system?'' That's a question a lot more people may soon be asking.

The distinguished Senator from North Dakota asked the question. That is what this amendment does. It goes to the heart of that secretive process, trying to get transparency. I think there should be a greater enforcement provision in this particular amendment. Maybe we can have the amendment itself amended.

Be that as it may, this ought to receive 100 bipartisan votes in the Senate against the secret process of the NAFTA panels that no one ever heard of. ''The Highest Court You've Never Heard Of,'' says Business Week.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. SPECTER. Madam President, I ask unanimous consent the order for the quorum call be dispensed with.

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

(The remarks of Mr. SPECTER pertaining to the introduction of S. 2439 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

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

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

Mr. BIDEN. Madam President, I ask unanimous consent to be able to proceed as if in morning business for up to 15 minutes.

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

THE JENIN INVESTIGATION

Mr. BIDEN. Madam President, for the past few weeks we have been hearing sensationalist claims of a massacre in the Jenin refugee camp. In recent days, hundreds of reporters and international relief workers have descended on the camp, and not one has verified these claims.

In fact, the Washington Times today quotes the senior official in Yasser Arafat's Fatah movement in Jenin as saying that the death toll stands at fifty six. Other reports place the number around fifty one.

Even one death is one too many, and there is still considerable excavation work to do in the camp. But it seems apparent that there was no massacre in Jenin.

Let me say that again. It seems apparent that there was no massacre in Jenin.

There are not 500 civilian dead, as the Palestinians initially claimed. What happened in Jenin was an intense battle fought at close quarters in which 23 Israeli soldiers also lost their lives in Jenin. And the leader of Fatah said today, trying to make the case that they ''won'' the battle, that ''although we lost 56, they lost 23.''

The relatively high number of Israeli casualties is in itself an indicator of what went on in the camp. Had the Israelis chosen, they could have easily sat back and pummeled the camp from afar, and starved the terrorists. Instead, they chose to do things the hard way. They went house to house to house, from booby-trapped house to booby-trapped house to booby-trapped house. In doing so to avoid civilian casualties, they inflicted casualties upon themselves. That is why they went house to house—not to inflict civilian casualties.

Were there civilian casualties? Almost certainly there were. But there is a world of difference between the deliberate targeting of civilians and the unintentional and inevitable casualties that were bound to occur in a place such as Jenin where terrorists deliberately hid themselves among civilians.

Remember we got a dose of that ourselves during the gulf war. As you recall, Saddam Hussein hid himself and others in the midst of civilian populations in civilian centers. That is the picture I believe will emerge as the facts are examined in the cold light of day—that there was no massacre, and that, although there were civilians killed, the number was relatively small, more in line with the number of Israelis killed—that is, proportionately. And I think the world should understand that.

There has been considerable discussion in recent days about a United Nations' factfinding panel assembled by Secretary General Kofi Annan. As of a couple of hours ago, the U.N. officially decided not to send the factfinding mission. But the impression we have heard in the world is that the reason the factfinding mission was not sent is because of Israeli intransigence.

U.N. leadership, I believe under Kofi Annan, had the best intentions. But Israel has voiced what I believe to be legitimate concerns about the composition, the procedures, and terms of reference this team was supposed to operate under. Reports indicate that the team is now disbanding.

Unfortunately, in my view, the United Nations should have met the legitimate concerns and proceeded with the mission. It is hard to blame Israel for having doubts about the objectivity of a factfinding team.

Israel has also voiced concerns over the lack of adequate representation on

the U.N. team of counterterrorism and military experts. It argues, in my view, with justification that the events in Jenin must be seen in their proper context.

Israel did not invade Jenin on a whim; it did so to destroy the terrorist infrastructure, and only after the Palestinian Authority—this is an important point—only after the Palestinian Authority, whom the Israelis and the rest of the world equipped with weapons to keep peace and order—only after the Palestinian Authority refused to carry out its obligations to destroy this terrorist infrastructure.

According to the Israeli Government, 23 suicide bombers came from Jenin. These 23 were responsible for the deaths of 57 Israelis, and the injury of 1,000 more.

Is it fair—and I think it is fair—to ask the U.N. what its officials were saying to the Palestinian Authority about the use of a U.N.-run camp as a launching pad for terrorism? To many Israelis, it appears as if the U.N. turned a blind eye to Palestinian terrorism, while it seems intent on smearing Israel for its legitimate response to that terror.

I would suggest a fairer thing to do would be for the U.N. to hold an internal review and ask internally what the U.N. team in Jenin, responsible for Jenin, knew or did not know about the role the Palestinian Authority was playing. What did they know? I am not saying they were complicitous. What did they know?

With such a breakdown, wouldn't we be looking if it occurred here? If there was a group in charge of overseeing a particular dilemma within the United States, and something terrible happened, wouldn't we ask ourselves, What did we know about what was going on?

Nonetheless, not withstanding this, the Israelis have not rejected the U.N. team. Foreign Minister Peres of Israel, in a letter to Secretary of State Powell, has said the team should "examine the Palestinian terrorist infrastructure and activity in the camp and emanating from it which necessitated Israel's military actions. In doing so, the team will bear in mind the relevant elements of international law, including the right of self-defense and the obligation to prevent terrorism."

He goes on to say:

> [I]n accordance with the fact-finding nature of the team, its work should be submitted as facts only, and not observations. This is a vital concern for Israel in order to avoid abuse and misuse of the work of the Team for political purposes.

Peres then goes on to add:

> Israel understands that requests for interviews with public servants, past or present, or documents, will be made through the government of Israel. While Israel will carefully consider these requests, Israel will have the right to make final determinations regarding availability to the Team. This sovereign discretion is mandated by Israeli law.

Madam President, I ask unanimous consent that the entire text of the letter to Secretary of State Powell be printed in the RECORD.

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

DEPUTY PRIME MINISTER,
AND MINISTER OF FOREIGN AFFAIRS,
Jerusalem, 29 April 2002.

Mr. COLIN POWELL,
Secretary of State, Washington, DC.

DEAR MR. SECRETARY: Enclosed are points I raised in a phone conversation with Secretary General Anman on 28 April 2002.

It will be incumbent upon the Team, in considering "recent events in the Jenin refugee camp" to examine the Palestinian terrorist infrastructure and activity in the camp and emanating from it which necessitated Israel's military actions. In so doing, the Team will bear in mind also the relevant elements of international law, including the right of self-defense and the obligation to prevent terrorism.

In accordance with the fact-finding nature of the Team, its work should be submitted as findings of facts only, and not observations. This is a vital concern for Israel in order to avoid abuse and misuse of the work of the Team for political purposes.

Israel understands that requests for interviews with public servants, past or present, or documents, will be made through the Government of Israel. While Israel will carefully consider these requests, Israel will have the right to make final determinations regarding availability to the Team. This sovereign discretion is mandated by Israeli law. Equally, in the spirit of fairness, and with a view to assuring that accurate factual information is provided, Israel should have the opportunity, during the fact-finding work of the Team, to comment on any statements received by the Team from any other Israeli individuals or organizations.

I emphasized the sensitive nature of Israel's present situation, both here in the area and in international fora. Faced with a relentless battle against terrorism, on the one hand, and wishing to cooperate with the International community, on the other, we are obliged to ensure that our very basic interests, and those of our military and security servicemen, are fully protected.

Sincerely yours,

SHIMON PERES.

Mr. BIDEN. Madam President, what is so unreasonable about these requests? Would any other democratic country behave any differently? Indeed, would any Arab country ever be subjected to a similar factfinding investigation in the first place? Perhaps the false cries of massacre coming from Arab circles are a reflection of what they may have come to expect from their own governments.

Was there ever a U.N. factfinding team that investigated the Syrian massacre of as many as 20,000 civilians in the city of Hama in 1982? Was the international press corps ever able to conduct their own investigations there as they are now in Jenin?

Was there ever a U.N. investigation of the genocidal Anfal campaign launched by Saddam Hussein against the Kurds in the late 1980s?

Of course not. There is a double standard when it comes to Israel. And many of those criticizing Israel today know that Israel holds itself to a higher standard than the countries I mentioned.

And Israel is saying the U.N. team is welcome as long as it has a fair mandate and agreed-upon terms of reference. If there is to be true factfinding, and not a witch hunt, then what is so unreasonable about Israel's requests?

My purpose is not to apologize for Israel. As some of you know—both in the caucus, out of the caucus, here on the floor, and in other fora—I have been very critical of some of Israel's actions.

Indeed, many Israelis have raised questions about the military operation in Jenin, including allegations of disproportionate use of force and the denial of medical and humanitarian access.

In fact, the leading Israeli newspaper editorialized yesterday that the army should conduct an internal investigation about possible gratuitous vandalism and destruction of property.

Did Israel do everything right in Jenin? In all probability, no. Did they engage in a wholesale massacre of innocent civilians? No.

How many Arab countries have the capacity for such self-examination? How many Arab countries have a supreme court that would do as the Israeli Supreme Court did to intervene to prevent the Israeli Army from removing bodies in Jenin?

We are not talking about some dictatorship or puppet regime. The Israeli Supreme Court—not an international organization—the Israeli Supreme Court intervened and said: Whoa, don't remove those bodies, army. We want to know what the facts are.

So to give this presumption that Israel intentionally massacred, and then attempted to cover up, I think is incredibly unfair and will be proven, beyond a reasonable doubt, to be wrong.

I believe we have an obligation to examine the facts before we jump to conclusions. Based on reports now coming from Jenin, it appears that far too many reached conclusions before they had the facts.

In the end, Madam President, some may choose to cling to myths in order to perpetuate hatred and conflict. Some prefer to live in the realm of fiction rather than deal with cold, hard facts. But the rest of us should not engage in such self-delusion. If my reading of the facts is correct—and it may not be—but if it is correct, then we will, in the coming days, see the Jenin massacre as the massacre that never was.

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 that 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 the Senate