

The towns of Durham, Newmarket, and Lee have all expressed vigorous support for the inclusion of the river in the program. Although the portion of the Lamprey in the town of Epping was included in the study and deemed eligible for inclusion in the program, the town has opted not to vote on designation at this time but may seek designation for its portion of the river at some point in the future.

The management of the Lamprey will be based on the locally-developed river management plan. The plan emphasizes the importance of both individual responsibility to "Tread Lightly" and of local zoning laws and public education. Federal acquisition of land by condemnation is prohibited. In essence this plan will insure that local concerns and interests are the basis for the management of the river. The State of New Hampshire will continue to be involved in the management of the river, as it has since the river was included in the State's River Protection Program in 1988. Additionally, the National Park Service will continue to offer its assistance to the Lamprey River Advisory Committee as it is needed.

In closing, there has been a great deal of discussion here in Washington on the issue of what the Federal Government's role should be when it comes to the protection of our natural resources. The local, State, Federal partnership that has developed in relation to the Lamprey River is a perfect example of the direction we must head in; namely, an emphasis on local input and control, with State and Federal agencies working to assist and provide information and expertise where appropriate.

I am very proud to submit this legislation at the request of my constituents in Lee, Newmarket, and Durham, NH, as well as for the scores of people who use the Lamprey River for the recreational and educational opportunities it offers. I am also very pleased to see the circle completed, having initiated both the legislation to study the river and today's legislation to include the studied portion of the Lamprey in Lee, Newmarket, and Durham in the Wild & Scenic program. I am grateful that the citizens of New Hampshire have given me this opportunity.

THE PRIOR DOMESTIC
COMMERCIAL USE ACT OF 1995

HON. CARLOS J. MOORHEAD

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, August 4, 1995

Mr. MOORHEAD. Mr. Speaker, I introduce the Prior Domestic Commercial Use Act of 1995. It is the product of many months of hard work and represents a compromise that I believe will be acceptable to all interested parties.

This bill is about patents. It is about inventions that have already been in commercial use and benefiting the public before another inventor comes later and applies for a patent.

Normally inventions already in use are what is called prior art and in most circumstances issuing from subsequent applications on such prior art will be found invalid. A problem arises, however, where the invention is not publicly known and where the process of commercialization did not reveal the invention itself to the public. These situations can occur, for example, when the invention is part of a man-

ufacturing process used to make a commercial product or software used to control such a process. For such cases, there is no statutory or case law that makes clear what should happen if the holder of such a patent sues the earlier practitioner for infringement. Is the patent enforceable against the earlier practitioner? Some attorneys predict the patentee will prevail because the invention was not publicly disclosed. Other predict the patent will be found unenforceable against the earlier practitioner.

At present the court's only option is a finding of either infringement or invalidation. One party must lose everything. Yet in these circumstances, each party has created some public benefit; the first by bringing the fruits of the invention to the public, the second by disclosing the invention to the public. Fairness suggests that neither party deserves to lose everything. Thus present law confronts us with a quandary. It provides only for a "winner take all" outcome and it does not make clear who the winner should be.

Earlier attempts to resolve this issue have met with opposition from those who believe that inventors have an obligation to disclose or patent every innovation. For inventors who fail to do so, these opponents presumably believe that their inventions should be taken away from them by others who come along later and file patents on the same material.

Mr. Speaker, anyone who has worked in industry or built a manufacturing business knows that there are any number of reasons why one might not secure a patent one very invention. Once issued, an American patent tells the whole world how to copy the invention. Manufacturers fear that inventions relating to internal processes are almost impossible to police and protect in many other countries. Then too, small investors may be unable to afford the costs of obtaining even a U.S. patent on every invention, much less world wide protection. It is also true that in many cases, the inventor does not realize that what seemed like just an innovation was indeed a patentable invention. In any case, a serious problem arises when a later inventor, and that later inventor need not be an American, comes along and independently invents the same process, tool, or software that the earlier innovator has been using. This later inventor can apply for a U.S. patent. If the earlier innovator did not publish the innovation, the Patent Office may not know of it and the later inventor might actually receive a patent on the innovation. This situation gives rise to the question of whether or not that patent is or ought to be valid and whether or not it may be enforced against the earlier innovator.

We also should not assume that all of these later inventors have been operating in good faith. In these days of growing industrial espionage, it is possible that the later inventor simply patented the product or process by means of reverse engineering or by looking through a factory window. I have seen U.S. patents issued to foreign companies who appear to have reverse engineered American products and patented the method of manufacture. The law in those companies' home countries prevents them from enforcing such patents in their own land. The bill I am introducing today will ensure that American industry has the same protection.

Opponents of earlier legislation have feared that any law recognizing unpublished earlier

use would be misused and weaken legitimate patents issued to persons who are undisputed first inventors. The university community was particularly concerned that such a law might impair their opportunity to license their inventions. This bill introduced today has been carefully crafted to prevent such an outcome. As a result of its limitations, this bill will not affect the vast majority of patents. The only patents that will be affected are those patents written on internal software, processes, or tools which were already being used by others for public benefit. For those questionable patents, this bill promotes sound public policy by recognizing the public contribution made by both parties.

By providing a specific defense for this limited class of inventions, this bill will make long and expensive infringement or invalidation litigation unnecessary. Moreover, some very strict limitations must be met before the defense can be used. First, the earlier use of the invention must have been commercial and the public must have benefited from that commercial use. Simply making an invention and even reducing it to practice are insufficient grounds for the defense. Second, the commercial use and public benefit must have occurred more than one year prior to the priority date of the patent. Third, the defense will not be available where the commercial use has been terminated and abandoned. Fourth, the patentee or the patentee's work must not have been the source of the user's technology. Fifth, the commercial use must have occurred on American soil. Sixth, the defense is not a license under the patent nor is it a defense against the entire patent. It is a defense only for the subject matter that can be proved to have been used commercially before the filing date. Seventh, the burden of proof falls entirely on the prior commercial user. Eighth, the defense is personal, it cannot be transferred to another. Finally, sanctions are provided to discourage a frivolous defense.

This bill will create for American manufacturers the same protection that their overseas competitors already have. It is a domestic bill that removes some of the incentives now enjoyed by offshore manufacturing. In addition, considerations of fairness, public policy, and the need to make America more competitive in the international economy all strongly support this legislation.

Mr. Speaker, I am hopeful that all concerns about this legislation have been resolved and that this bill can become enacted this year.

TIME FOR TOUGH ACTION ON TERRORISM—THE UNITED STATES MUST NEVER YIELD TO TERRORIST THREATS

HON. TOM LANTOS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, August 4, 1995

Mr. LANTOS. Mr. Speaker, earlier this week our Government barred the entry into the United States of Musa Mohammed Abu Marzuq, a senior official of the Islamic Palestinian extremist terrorist organization, Hamas. Abu Marzuq is chief of Hamas' political bureau where he is responsible for coordinating international aspects of Hamas' terrorist activities, and in particular, fund raising efforts and the

training of Hamas' operatives—activities that are critical to Hamas' vicious terrorist campaign against Israel, against those who support Israel, and against Palestinians who do not follow Hamas' violent line. Hamas has viciously opposed the efforts of the PLO to work with Israel in bringing peace and ending violence.

Mr. Speaker, I welcome the action of our Department of State in barring the entry into our country of Abu Marzuq. I raised this issue earlier this week in a hearing of the International Relations Committee and repeated my concern to the Assistant Secretary of State for Near Eastern Affairs that our Government must move decisively against all those individuals who are involved in terrorist activities of any kind. We have no obligation to admit such individuals who support, encourage, and engage in terrorism. Furthermore, I urge the administration and the courts to comply with the request by the Government of Israel for the extradition to Israel of Abu Marzuq. The Israeli Government has evidence of the involvement of this Hamas leader in terrorist activities, and it would be most appropriate that he be returned to Israel to stand trial in an Israeli court of justice to determine his guilt or innocence of these heinous crimes.

Mr. Speaker, it is an absolute and unmitigated outrage that the vicious, unprincipled leaders of Hamas have threatened President Clinton and the United States if the extradition of Abu Marzuq is carried out. In a letter published in an Arab-language newspaper in Israel earlier this week, Hamas published an open letter to President Clinton with intolerable and offensive threats: "If your government decides to hand Abu Marzuq to the Israeli authorities, we would consider this a hostile act against all Arabs and Muslims. You will bear the consequences of such an act." The letter threatened that the extradition would unleash "a wave of anger and retaliation throughout the Arab and Islamic world." A leader of another militant group, Islamic Jihad, said the United States would "pay dearly" for detaining or extraditing Abu Marzuq.

The United States must never, under any circumstances, yield to such blatant, mind-boggling terrorist threats. Our foreign policy must be based on principled decisions and respect for the rule of law. Our actions at home and abroad must never be influenced by timidity or trepidation in the face of blatant threats by terrorist thugs. To yield to such treats will only encourage every other international terrorist group to issue an carry out such threats. Our policy must always be to stand up against intimidation.

Mr. Speaker, the detention of Abu Marzuq only serves to highlight the continuing danger of international terrorists. The Oklahoma City bombing a few months ago highlighted the danger we face from domestic terrorists and anti-Government militias, but we must not let that tragedy and the necessity of dealing with terrorism at home obscure the need to deal with international terrorism.

I urge my colleagues to move quickly to bring to the floor of the House the Comprehensive Antiterrorism Act, which has been developed with the cooperation and full support of the Department of Justice. If that legislation had been enacted, dealing with the detention of Abu Marzuq and extraditing him to Israel would probably be an easier task.

Mr. Speaker, there is absolutely no reason for further delay. We have dealt with all kinds of issues in the House of Representatives in recent days, but none have the urgency and immediate importance of taking action to improve the ability of our law enforcement officials to deal with international terrorism. I urge that the Comprehensive Antiterrorism Act be brought to the floor and that we move quickly to improve our ability to deal decisively with the scourge of terrorism, both within our borders and beyond.

TRIBUTE TO BILL MORGAN

HON. MARCY KAPTUR

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Friday, August 4, 1995

Ms. KAPTUR. Mr. Speaker, I come to the floor in sadness today to pay tribute to a good friend and a man of exceptional political insight, Bill Morgan of Baton Rouge, LA. Bill died this week at the age of 53.

Bill Morgan served the Congress as majority counsel to the Joint Economic Committee from 1977 to 1980. Subsequently, he worked as a media consultant on numerous campaigns throughout the south and midwest, including some of mine.

I knew Bill as a knowledgeable, intelligent, and wise counselor. A person whose advice could be relied upon. He began his working life as a reporter. He went on to earn a masters degree in political science and a law degree from LSU. And he transformed his varied experience into his own political media consulting firm in 1983. A Vietnam veteran, he always distinguished himself by his love of country, his deep dedication, and his infectious sense of humor.

Bill Morgan will be missed. We thank his family for sharing him with us and wish them Godspeed.

TRIBUTE TO JESSE SANCHEZ

HON. SAM FARR

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, August 4, 1995

Mr. FARR. Mr. Speaker, the Latino community has lost a great leader.

Jesse Sanchez, who devoted every ounce of his spirit to empowering the Latino community in the city of Salinas, in my congressional district, died on August 2, 1995, of cancer. Mr. Sanchez always spoke first when Latinos in Salinas confronted public racism—and often, he spoke alone. He had the courage and uncompromising conviction to express what many others felt, but, could not say.

Mr. Sanchez fiercely believed that Latinos belong in every room and at every table where public discourse occurs, and, he fought aggressively to dismantle artificial barriers to Latino political participation. His valiant battles inspired many Latinos to assert their God-given talents and to express their political leadership skills. As a result, the city of Salinas, the county seat in what is one of the most powerful agricultural valleys in our country, now boasts a Latino-majority city council working mightily to represent all of Salinas.

And more importantly, the city's schools are now filled with young Latino students who dream of leading their city some day.

Mr. Sanchez' vitae attests to his commitment to the Latino community. The following list contains just some of Mr. Sanchez' achievements:

As a student during the late 1970's and early 1980's, Mr. Sanchez insisted that commencement ceremonies celebrate Latino culture, first at the predominantly Latino Alisal High School in Salinas, where he convinced authorities to hold the first ever bilingual commencement and then at the University of California at Davis Law School, where Mr. Sanchez became the first valedictorian to address celebrants in Spanish as well as English.

Upon finishing his studies, Mr. Sanchez returned to Salinas in 1981 and became the first Latino elected to the Alisal Union School District Board of Trustees, where for 12 years Mr. Sanchez helped transform the school district into California's leading bilingual, bicultural educational institution.

In 1988, Mr. Sanchez led a successful fight to convince the voters of the city of Salinas to adopt single-member voting districts to elect city council members, thus paving the way for the city's first ever elected Latino city councilman.

In 1992, Mr. Sanchez filed a lawsuit and obtained an order pendent lite requiring judicial elections by districts, an order which yielded the first Latino, the first Latina and the first African-American municipal court judges ever in Monterey County, CA.

In closing, let me make one thing clear: Mr. Sanchez' efforts, although focused on empowering Latinos, have benefited the entire Salinas community. The pool of talent which serves Salinas has now been enlarged to include people who previously could not contribute. Those newly enfranchised people now lend their talent and their commitment to the effort to make Salinas a better community.

TRIBUTE IN HONOR OF RABBI ARYEH SCHEINBERG OF CONGREGATION RODFEI SHOLOM IN SAN ANTONIO, TX

HON. FRANK TEJEDA

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Friday, August 4, 1995

Mr. TEJEDA. Mr. Speaker, I take this opportunity to honor an outstanding spiritual leader in San Antonio, TX, a man who has dedicated the past 25 years to teaching, learning and inspiration. Rabbi Aryeh Scheinberg, who this month will be honored by the community for a quarter century of service as rabbi of Congregation Rodfei Sholom, has the rabbinate in his blood: He stands in a line of seven generations of rabbis who could take pride in his accomplishments. I join in saluting Rabbi Scheinberg for his many positive contributions to our community.

Rabbi Scheinberg can be described as a man of intense knowledge, of passion for learning, of deep spirituality. He is that and more. Rabbi Scheinberg takes seriously the biblical admonition to "Love thy neighbor as thyself" in his daily life. He loves people. He recognizes the divine spark in each person