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REMARKS

Final Chapter on Senate S-1904 Polygraph protection Act.

There will be a conference to work out differences between S-1904 + HR 1212

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of the points in support of the INF Treaty that I have made in this speech. They also make one additional and specially impressive point. They call attention to the virtually unanimous support of the INF Treaty by the European leaders in NATO. Here, Mr. President, are the countries that are literally on the firing line. If the NATO military alliance were weakened and NATO was unable to withstand a pact attack these are the countries that would suffer. Many of their people would lose their lives. All of them would lose their freedom. The leaders of these countries know the INF Treaty makes NATO stronger. This is why, Mr. President, the Senate should promptly ratify it.

Mr. President, I ask unanimous consent that the editorial to which I have just referred be printed in the RECORD.

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

THE TREATY, EUROPEANS AND THE JITTERS

What does Europe think of the treaty to eliminate Euromissiles? The answer, as the Senate weighs ratification, is clear: Virtually all West European leaders support the treaty. Some Americans say that behind the official blessings lie deep divisions and doubts. But they confuse genuine support for this treaty and equally genuine concern about the state of the alliance. Failure to ratify the treaty would only deepen those concerns.

European leaders support the I.N.F. agreement because it would leave NATO stronger, not because somebody's twisting their arms. It would eliminate a class of weapons threatening to Europe in which the Russians hold a clear superority. It is the first arms accord dealing directly with European security. Not least, it holds the door open for further diplomatic opportunities with Mikhail Gorbachev's Soviet Union. That's strongly desired by Europeans from far left to far right.

Still, Americans who insist they know the real European mind ignite charge after charge. They contend that the treaty weakens deterrence. But why? More than 300,000 American troops remain in place. So do 90 percent of U.S. nuclear weapons in Europe—4,000 warheads on various delivery systems, including bombers that can reach Soviet territory.

The critics see it all leading to a denuclearized Europe, leaving Moscow with a threatening superiority in conventional forces. But European leaders are well aware that deterrence still requires nuclear weapons on their territories and they won't be suckered into that game by Moscow. The critics maintain that the treaty will make Europe safe for conventional war. How will eliminating Soviet advantages in missiles with ranges between 300 and 3,000 miles do that? They say it will neutralize Bonn. Did Bonn feel safer when Moscow had the edge in mid-range missiles?

Reagan Administration policies have undermined European confidence in America. In its early years, the Administration unsettled Europe with talk of the possibility of limited nuclear war. Then it undercut the doctrine of nuclear deterrence with talk of rendering nuclear weapons impotent with a space shield over the U.S., not Europe. Then in Reykjavik, President Reagan proposed eliminating all ballistic missiles, having breathed nary a word of that remarkable idea to his allies.

Little wonder that many Europeans worry loudly about American thinking and the balance of strategic and conventional forces. The treaty may give a focus to this fretting. But it did not create the worries nor does it exacerbate the underlying problems. On the contrary, it strengthens the alliance militarily and demonstrates its political strength. In the face of dire Soviet threats, Europeans went ahead with deployment of the U.S. Euromissiles, and through the alliance's steadiness, brought about the agreement to destroy all such missiles.

The Senate will serve both the alliance and the ratification process best by doing what the treaty's critics fail to do: take the treaty on its merits—and the Europeans at their word.

POLYGRAPH PROTECTION ACT

Mr. SPECTER. Mr. President, although I strongly support this bill, I am voting against cloture at this time because I strongly believe such a procedure establishes an attitude of undue rush to judgment by the Senate.

This bill was called for floor action 2 days ago on the afternoon of Tuesday, March 1. The bill was considered by the Senate for only a few hours that afternoon and a cloture motion was filed the same afternoon without any indication of a filibuster or extensive debate.

Extended discussion is unnecessary to emphasize the importance of debate, appropriate consideration and the Senate's deliberative process. That does not occur when a cloture motion is filed virtually contemporaneously with a bill's reaching the Senate floor.

Yesterday, on March 2, amendments were considered with a 10-minute time limitation so that each side had 5 minutes for the presentation of arguments. That rush-atmosphere is hardly conducive to appropriate consideration.

An amendment was considered yesterday on their bill expressing the sense of the Senate to oppose a $400 million loan from the World Bank to Mexico to establish a steel industry. Debate on that important matter was limited to 15 minutes, slowing the prevailing attitude that the Senate should rush to judgment on such important matters. That procedure, in my judgment, is most unwise and the Senate should take the time which it needs to give appropriate consideration to such issues.

Accordingly, I believe that it is unwise to establish a practice for premature resort to cloture. The Senate has ample time to consider these matters.

On Monday last, 6 hours of debate were set on a resolution which, most agreed, did not require that much time. In any event, the 6 hours were not used.

There is ample time during the course of the workday for the Senate to be in session to give appropriate time to consider issues like the pending bill and the World Bank loan. Accordingly, while I strongly support the pending substantive legislation, I am equally strongly opposed to this cloture practice and believe the Senate should reject it.

ORDER OF PROCEDURE

Mr. BYRD. Mr. President, I simply take a moment to remind all offices that the rollcall vote on the motion to invoke cloture will begin at 9:30 a.m., some 5 minutes from now. That will be a 30-minute rollcall vote and the call for the regular order will be automatic at the conclusion of the 30 minutes.

So if there are any offices that are listening and I am sure there are, I suggest that they make preparations for reminding all Senators that the vote is rapidly approaching.

Mr. President, I yield the floor.

CONCLUSION OF MORNING BUSINESS

Mr. BYRD. Mr. President, I ask that morning business be closed.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. BYRD. Mr. President, the mandatory quorum was waived. So I will not suggest the absence of a quorum. Morning business has been closed.

The ACTING PRESIDENT pro tempore. The majority leader is correct.

Mr. BYRD. Very well.

Mr. President, I suggest what I intend to be a short quorum, and if no Senator objects to the calling off of this quorum, it will be a short quorum. I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

POLYGRAPH PROTECTION ACT OF 1987

The ACTING PRESIDENT pro tempore. Under the previous order the hour of 9:30 o'clock a.m. having arrived the clerk will report the motion to invoke cloture.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators in accordance with the provisions of Rule XXII of the Standing Rules of the Senate hereby move to bring to a close the debate upon the committee substitute to the bill S. 1904, Polygraph Protection Act of 1987.

Senators Edward M. Kennedy, Howard Metzenbaum, Brock Adams, Lowell Weicker, Patrick Leahy, John F. Kerry, Tom Harkin, Thomas Daschle, Orrin G. Hatch, Don Riegle, Christopher Dodd, Barbara A. Mikulski, Timothy E. Wirth, J.J. Exon, Dale Bumpers, and Robert Stafford.

VOTE

The ACTING PRESIDENT pro tempore. By unanimous consent the quorum call has been waived.

The question is, Is it the sense of the Senate that debate on the committee substitute to S. 1904, the Polygraph Protection Act of 1987, shall be brought to a close? The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Tennessee [Mr. GORE] and the Senator from Illinois [Mr. SIMON] are necessarily absent.

I also announce that the Senator from Delaware [Mr. BIDEN] is absent because of illness.

Mr. SIMPSON. I announce that the Senator from Kansas [Mr. DOLE] is necessarily absent.

The PRESIDING OFFICER (Mr. DIXON). Are there any other Senators in the Chamber who desire to vote?

The yeas and nays resulted—yeas 77, nays 19, as follows:

[Rollcall Vote No. 42 Leg.]

YEAS—77

Adams	Evans	Metzenbaum
Armstrong	Exon	Mikulski
Baucus	Ford	Mitchell
Bentsen	Fowler	Moynihan
Bingaman	Glenn	Murkowski
Bond	Graham	Nunn
Boren	Grassley	Packwood
Boschwitz	Harkin	Pell
Bradley	Hatch	Proxmire
Breaux	Hatfield	Pryor
Bumpers	Heflin	Reid
Burdick	Heinz	Riegle
Byrd	Hollings	Rockefeller
Chafee	Humphrey	Roth
Chiles	Inouye	Rudman
Cohen	Johnston	Sanford
Conrad	Kassebaum	Sarbanes
Cranston	Kasten	Sasser
D'Amato	Kennedy	Shelby
Danforth	Kerry	Simpson
Daschle	Lautenberg	Stafford
DeConcini	Leahy	Stennis
Dixon	Levin	Weicker
Dodd	Lugar	Wilson
Domenici	Matsunaga	Wirth
Durenberger	Melcher	

NAYS—19

Cochran	McClure	Symms
Garn	McConnell	Thurmond
Gramm	Nickles	Trible
Hecht	Pressler	Wallop
Helms	Quayle	Warner
Karnes	Specter	
McCain	Stevens	

NOT VOTING—4

Biden	Gore
Dole	Simon

The PRESIDING OFFICER. On this vote, the yeas are 77 and the nays are 19. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

POLYGRAPH PROTECTION ACT OF 1987

The Senate continued with the consideration of the bill S. 1904.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. BYRD. Mr. President, may I ask a question of the distinguished acting Republican leader? Included in the order last evening was a provision to allow for up to three amendments to be called up from the other side of the aisle. What are the prospects, may I ask of the distinguished acting Republican leader, on that matter?

Mr. SIMPSON. Mr. President, I would advise the majority leader that the Senator from Texas has indicated to me that he would not be presenting those amendments. He will withdraw those amendments. Perhaps the Senator from Texas wishes to comment upon that.

Mr. BYRD. I yield.

Mr. GRAMM. If the distinguished majority leader would yield.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Mr. President, I had a discussion this morning with the distinguished Senator from Massachusetts, a discussion dealing with the area of the pharmaceutical industries. He gave me assurances that would be dealt with, and based on that, we are not offering additional amendments.

Mr. BYRD. I thank all Senators. I ask unanimous consent that no further amendments now be in order, which would leave the debate time in position for Senators to speak on the matter. I believe it is 40 minutes equally divided.

Mr. SIMPSON. That is correct.

Mr. BYRD. I thank the acting Republican leader, and I thank all Senators, particularly the Senator from Texas [Mr. GRAMM] and the Senator from Massachusetts [Mr. KENNEDY].

Mr. KENNEDY. Mr. President, I know the Senator from Utah wants to speak on this bill. We just had a vote. We will be glad to do whatever the leadership wants, as long as we wind up the consideration, have third reading, and have the vote after that. I imagine that will be in a short period of time.

Mr. BYRD. Very well. Mr. President, shall we count on the full use of the 40 minutes?

Mr. KENNEDY. Mr. President, I think it will be less. I plan to speak just briefly, 4 or 5 minutes. The Senator from Utah wants to speak for 4 or 5 minutes. He is at the Judiciary Committee now, and he wanted to be notified.

I do not believe anyone has contacted us on our side. I think most of those who wanted to speak have spoken.

Mr. SIMPSON addressed the Chair.

The PRESIDING OFFICER. The acting Republican leader.

Mr. SIMPSON. Mr. President, let me suggest, if I may, 20 minutes are allocated on our side, the side in opposition to the bill. Senator GRAMM has a conflict, and perhaps if he goes forward for 5 minutes and perhaps if Senator KENNEDY would like to go forward, we can do it a bit in reverse. We can have Senator QUAYLE speak in opposition, and then yield back.

Mr. KENNEDY. Fine.

Mr. BYRD. Mr. President, for the time being, I believe the Senators would prefer to leave the 40 minutes in place, if it is needed. It may not be needed, and the respective offices on both sides should take that into consideration, that the vote on final passage may occur earlier than anticipated.

The PRESIDING OFFICER. There remain 40 minutes of debate evenly divided on the bill.

Mr. KENNEDY. Mr. President, I would be glad to yield such time as the Senator from Texas desires.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Mr. President, I will be brief. We have debated this bill now for several days. I think Members at least have come to a conclusion as to where they stand on it. I for one think the issues are not as clear as I wish they were.

No one believes that polygraphs are an infallible tool in ferreting out information. I think one thing that we have all come to understand is that the polygraph is a very dull tool. It is a procedure that has inherent problems, and I think, quite frankly, all of us are concerned about the intrusive nature of the polygraph examination in terms of putting people under stressful situations and creating the potential that people are going to turn up negative tests when, in fact, they are telling the truth.

I think everyone in this great body is concerned about the impact on people who test negative and who are affected by it. I think also there is real and legitimate concern about how the tests are administered. But I feel this bill goes far beyond the response that is justified by these concerns.

What a great paradox it is that we go on at great length about the problems with the polygraph exam, and we take steps that deny the private sector the right to use it in prescreening and severely restrict its use, under any circumstances, for the private sector, and yet we totally exempt the Federal Government, State governments, and local governments.

It is as if what government does is so important, so critical to the future of the Republic, that we are forced in government to use dull, inefficient, intrusive tools, but the private sector is so insignificant, so irrelevant to the future of America that the sector of the economy that pays the bills and pulls the wagon is excluded from the use of a tool which government clearly finds in some circumstances indispensable.

I know the distinguished Senator from Massachusetts feels strongly about the use of polygraph. He has spoken with great effectiveness about the inherent problems with the test. I would like to remind my colleagues

that with all the problems we have with polygraph, polygraph is used by all of the intelligence agencies that work on behalf of our Nation.

We found out one thing clearly from the Walker spy case, and that is, if the Soviet Union viewed polygraph in the same way that the GAO study viewed it, they clearly have not shown it in terms of their policy because they told Walker: "You are so important to us that we don't want you to put yourself in a position where you have got to take a polygraph examination."

So do I think there are problems with private use of polygraph today in the Nation? Yes. But I think we are going too far, for all practical purposes, in excluding the use of polygraph for prescreening and so severely limiting it in other uses as to render it virtually ineffective.

I think there are many uses. Whether we are talking about polygraph for people who are flying airplanes, driving trucks and buses, driving trains, where drug tests have an inherent problem that if you are not using the drug at the time you are given the test it does not show up, I for one am loath to preclude the use of this test, imperfect though it be.

Forty States have responded to the problems discussed here. It is not as if no other element of government has become concerned about this problem. I, for one, do not understand why suddenly this is a Federal problem. I happen to believe that the State that I represent, the great State of Texas, is perfectly competent in setting standards for the use of polygraph, whether it is being used to detect whether airline pilots are using cocaine or whether it is being used to determine where convenience store cash register operators are stealing from the company and therefore stealing from the people who are buying milk, bread, and eggs from the store.

I think the State of Texas is competent to determine what kind of standards ought to be used, in using polygraph, to ask people who are going to work in day care centers whether or not they have ever been indicted or convicted for child molesting.

Now, I know that there are always other ways of going back into all these records. I am not saying that a failed polygraph examine is in and of itself proof of anything other than a failed polygraph examine, but at least it allows you to then go back and look at the records more carefully. I think this bill goes too far. I think it unnecessarily and unreasonably tramples on States rights and I urge my colleagues to vote no.

Do I think this bill is going to pass? Yes, I do. Do I think, given the fact that the House has already cast a vote that would sustain a Presidential veto, that the President may look at the final product and decide that this is not the way to go and veto it, and therefore the vote would be on sustaining that veto, I do not know whether that is going to happen or not, but I think it is a clear possibility. If we get a substantial vote here, I think that gives the President more leeway to look at this bill.

I do not believe this is a wise bill. I do not think it is in the public interest. I do not think it balances the rights of people who do not want to take polygraph examines with the rights of people who do not want someone using narcotics while they are flying planes or driving buses or driving trains. There ought to be some reasonable compromise. If the problem is with private sector testing and the procedures, perhaps we need some Federal guidelines. But to come in and simply outlaw prescreening, to so severely limit the use of polygraphs for the private sector when we in no way affect the ability of the public sector, it is as if we are not concerned about privacy and the rights of people. If those people happen to be working in wild flower research at the Department of Agriculture, suddenly we are not concerned about their rights and the problems with this test. If they happen to be working as security guards at a bank or if they happen to be working in child day care centers or they happen to be flying an aircraft, suddenly we are concerned that no one should have a right to ask them a question and have some ability to determine whether they are answering that question honestly so that they might look behind that question. So I know there are those who are concerned about abuses, and so am I. But one abuse does not justify another.

In my humble opinion this bill is not in the public interest. I urge my colleagues to vote no.

I reserve the remainder of my time.

Mr. President, I am not sure who controls time on this side. I think it was equally divided.

The PRESIDING OFFICER. That is correct.

Mr. GRAMM. I would like the distinguished Senator from Indiana to control the time since I have to leave the floor.

The PRESIDING OFFICER. The Senator from Texas has yielded the floor. Who yields time?

The Senator from Indiana controls the time in opposition. Who yields time?

Mr. QUAYLE addressed the Chair.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. QUAYLE. I yield myself such time as I may consume.

The PRESIDING OFFICER. The Senator from Indiana is advised there are 11 minutes and 8 seconds remaining on his side. The Senator from Indiana is recognized for such time as he may need.

Mr. QUAYLE. I yield myself 8 minutes.

Mr. President, first, I congratulate the chairman of the committee, Senator KENNEDY, on the legislation before us. He and Senator HATCH have fought valiantly, and I think that they will in fact have an overwhelming vote. There was friendly but adversarial discussion on this bill.

My opposition goes to this bill on two fundamental points. One, I do not believe that the Federal Government should involve itself in something in which the State governments and State agencies are doing quite well. It has been pointed out that a number of States which in fact already have either a ban or requirements on polygraphs are taking it very seriously. I think this is the beginning of getting into preemployment screening, and I do not know where it is going to end.

Once we start with lie detectors, we will get on to perhaps drug testing, although the Senate went on record yesterday saying it would not do that. But drug testing is not reliable in many cases either. We will get into all sorts of other preemployment things, perhaps like the preemployment psychological tests that some might say are harassing or intimidating. Once the Federal Government starts down this road, I do not know where it will end.

As far as principle, I think that is a very fundamental point that I simply cannot overcome in trying to support this bill, even though I, like others, have a great lack of confidence in lie detector tests. I cannot help if employers want to rely on information that is not valid. If they want to make dumb mistakes, I do not think it is the role of the Federal Government to clear up those mistakes.

Second, I do believe there is a tinge or perhaps a bit of hypocrisy in this bill. What we do is say it is OK to do in certain instances, particularly for the Federal Government, but it is not OK for the private sector. As a matter of fact, even if we would apply the standards of polygraphers for the Federal Government, that still would not be OK for the private sector. Once again we are saying that Washington knows best.

Unfortunately, I had the Washington syndrome come home last night as I was unable to attend the game but Washington beat the very capable, skillful, dedicated Indiana Pacers at the Capital Centre, devastating them. Washington won out in that basketball game last night and now Washington is going to win out once again today. I could not control or influence the outcome of that basketball game. I do believe, however, we have had some impact on what Washington is going to do now to my State and to the rest of the country on this particular vote.

Mr. President, many Senators have come to me and asked how they should vote on this bill. And I am going to say now to Senators who have asked me that, if they have any desire whatsoever to vote for this bill, they ought to go ahead and vote for it. I have philosophical concerns about it, particularly the Federal preemption

and the Federal Government getting involved in something I do not believe it should, and I do not know where that road leads us, but I say this is going to be construed more as a political vote.

It is very important to some political constituencies. I know that organized labor has this very high on their agenda. To many of the so-called civil rights groups, I am sure this will be cast as perhaps a civil liberties vote.

So I would say that Senators on this side of the aisle particularly that are inclined to give maybe the administration the benefit of the doubt and want to go along in case, as the Senator from Texas said, there may be a veto, I would say there is almost no chance at all for a veto. I do not think it is going to happen. Therefore, I do not think Senators, who have some concern about this and are worried about maybe not changing their vote on it when the veto comes back—there is not going to be a veto. This administration will sign this bill.

This administration a year ago opposed this bill on the fundamental philosophical point that this was an unreasonable Federal intrusion and something that was clearly relegated to the States. This year they did not. This year they set up a statement of opposition on three minor concerns that they had. This administration on this bill is caving like a house of cards. They in fact will not veto this bill. And therefore why should, unless you are just really philosophically opposed to this, you go out on a limb on something that is not politically popular, and vote in opposition to it?

So I would say to those Senators who have still not made up their mind that as far as my advice to them, if you want to vote for this bill, you have any inkling that you want to be on record on the political right side of the issue, and you do not have the major philosophical objection as far as the Federal Government, go ahead and vote for it. Do not worry about a veto. A veto is not going to happen. This administration does not have the backbone at this time to veto this bill. They will not do it. As a matter of fact, you could probably almost send anything down there under this bill, and it will get passed. They will sign it.

They may say if you go too far in conference we might not sign it. Well, there will be lots of threats, a lot of joking. But I know this administration pretty well. I deal with them, dealt with them for a number of years. And on this issue from a year ago their position has changed dramatically. They have folded up shop like a house of cards, and they will not veto this bill.

I might just say, Mr. President, that this has been a debate on what I consider to be a very minor bill. I do not consider this a major piece of legislation. I think it is a piece of legislation that did not warrant the Senate's attention. I do not think it warranted the 3 days we took on this bill. There could have been ways to delay this bill even further. We decided not to because it just simply was not beyond the few that have the philosophical opposition. So there is no use to prolong debate.

The cloture has been invoked. We can see where the votes are. There were something like 122 amendments that were filed that could have been called up in a postcloture type of filibuster. It could have gone on and on and on on a very minor piece of legislation. It could have been a very long and protracted debate but we decided there was no reason to be a Don Quixote on this, that there will be other issues that will come along that will be far more important legislation.

But even on this matter, having 120-some amendments on the desk on postcloture, spending 3 days invoking cloture, also we now have an arrangement for not putting a sense-of-the-Senate resolution on the arresting of Senators on this bill. We now have 5 hours I believe dedicated to the issue after this bill. So it became much more entangled with much more debate than it indeed deserved. But I think that these issues are important. I am still, as I said, principally philosophically opposed.

The PRESIDING OFFICER. The Senator's 8 minutes have expired.

Mr. QUAYLE. I yield myself an additional minute.

Mr. President, I am still opposed to this bill. I think the role that we are on involving ourselves in is something that has been relegated to the States properly—they have done a good job—and is something that I cannot support. I will vote in opposition to that because of the double standard I think it sets. It is a philosophical opposition that I have.

But once again, those Senators that are inclined to vote for this or trying to think this issue through, if you have any inclination at all to vote for this bill, you might as well do it. It will be signed. You will not have to face a veto because the administration will simply sign this legislation in my judgment.

I reserve the balance of my time.

The PRESIDING OFFICER. Who yields time? The Senator from Indiana has 2 minutes and 32 seconds remaining.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I would like to take a few minutes to say why we are here today and why we are where we are today. After 3 days of debate and numerous amendments, we are on the verge of passing a significant change in Federal labor laws. Why? Because the bill before us, S. 1904, is a carefully crafted compromise designed to protect both individual rights and employer rights.

Mr. President, I believe my record in this body is second to none when it comes to defending the rights of the private sector. But I have been a willing participant in fighting for employee rights as well. That is why I am proud to be the lead cosponsor of this legislation along with the sponsor, Senator KENNEDY. It protects both employers and employees and does so in a manner that does not violate the other fundamental interests.

The record is fairly clear on the limitation of the polygraph. But do not take my word for it. Do not take the committee word for it. Look at the scientific record. All the scientific data indicates that preemployment polygraphs cannot—I reemphasize that word "cannot"—predict future performance. The machine was simply not designed to predict future performance.

Given this fact and the fact that more than 2 million Americans are given polygraphs every year, we know that even under the best of circumstances, with the best polygrapher doing the best test and perming the best analysis 300,000 honest Americans are branded as liars every year. That is pure and simply wrong.

That is a stigma that they are going to wear like a scarlet letter every day of their remaining lives. Let us change the world "lies" to "careers."

The evidence also indicates that a carefully crafted polygraph test given in conjuction with an investigation can be of assistance. This bill permits all employers to use the polygraph in such instances so long as the results of the exam are not the sole basis of the resulting employment action. In other words, the bill is a reasonable and responsible attempt to focus use of the polygraph where it is likely to be the most accurate.

Mr. President, if polygraph testing is so critical to screening of felons and drug abusers, if polygraph testing was the last defense against anarchy in the workplace as the opponents on the floor have argued, then one would imagine that States like New Jersey where the polygraph is already banned would be awash in criminality. The State's economy should be devastated on the brink of collapse but of course everybody knows that it is not.

Over the last 3 years I have asked every employer organization that has met with me on this issue to pull together data, hard evidence, that demonstrates how the polygraph ban has hurt these States. To this date, I have received absolutely no data because there is none. We have also heard about how effective the polygraph is in scaring confessions out of applicants.

I do not doubt for a minute that the polygraph is a very terrifying experience. But really, is this body really ready to say that we feel it is so important for employers to be able to terrify a few applicants into confessions that we are willing to pay the price of branding 300,000 honest Americans as

liars every single year? I think not. I am not willing to do that.

Mr. President, I wonder how many of my colleagues would like to take a polygraph on a regular basis. I wonder how many of them would like to take a polygraph, period. I wonder why anybody would want to take one. There are some instances where perhaps we have to utilize them. This bill takes care of those instances. But I do not think anybody wants to take them.

I wonder how many of us would like to see our chances to represent our respective States hang upon a 15-minute special polygraph given by some ill-trained, unbonded examiner of, you know, someone else's choosing.

Well, that is disturbing to me. I think it is disturbing to many other people. Of course, with that understanding, let us just welcome everybody to the real world of the polygraphing in the private sector. This bill is going to change that.

Mr. President, employers are not without tools to screen applicants. But unfortunately some, I would say the best, tools really take some time: Checking résumés, references, personal involvement in interviews, testing where appropriate, and knowing how to ask the applicant questions. These methods are still the key to hiring people. We all know that, because that is the way we hire our staffs here.

Finally, Mr. President, some have argued that the banning of free employment polygraph tests will destroy the private sector. As the ranking member of the Committee on Labor and Human Resources, I can say with great confidence that this bill is not an economy destruction bill. I can guarantee that a lot of them will come out of this committee in the future, in this year. You will be able to know when they come, because I will be right here arguing against them, and I will be arguing vociferously against them, but this is not one of those bills. S. 1904 is a carefully crafted compromise designed to protect employer rights and the rights of employees. I hope my colleagues will support this bill and give individuals throughout the Nation some needed added protection.

Mr. President, I appreciate the efforts made by our staffs on this bill, and I appreciate the leadership of Senator KENNEDY on this bill. He has been prepared and has done a terrific job, and he has explained many good reasons why this bill is important. I have enjoyed working with him and will enjoy working with him through the rest of this process.

This bill deserves to be passed for the benefit of employers and employees. It is the right thing to do.

I am sick and tired of people using this instrument in an improper way, knowing that with 15-minute quickie polygraphs, virtually all of them are not accurate.

I ask unanimous consent to have printed in the RECORD a letter from the National Federation of Independent Business and a letter from the National Restaurant Association.

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

NATIONAL FEDERATION OF INDEPENDENT BUSINESS,
Washington, DC, March 1, 1988.

Hon. ORRIN G. HATCH,
U.S. Senate,
Washington, DC.

DEAR ORRIN: On behalf of the more than 500,000 small business members of the National Federation of Independent Business (NFIB), I want to convey our support for your efforts to delete the mandatory posting requirements (Section 4) contained in S. 1904, the Polygraph Protection Act of 1987. If a roll call vote occurs on your amendment, it will be a Key Small Business Vote for NFIB in the 100th Congress.

As our field representatives travel the country each day renewing memberships, we ask our members to respond to a survey of eight questions. The questions on the survey are changed each quarter. Though not taken from a statistically valid stratified sample, the responses are certainly indicative of the pulse of small business at the time they are taken.

On the issue of polygraph examinations, 94.7 percent of those surveyed do not administer polygraph tests to prospective employees. With regard to current employees, 93 percent do not administer polygraph exams.

Government paperwork, whether state or federal, remains a burden to small businessmen and women. The notification requirement in S. 1904 serves no useful purpose in our view. It is patently absurd to require employers to post a notice for an action they cannot take. Therefore we support your efforts to relieve small business of this improper burden.

Once again, Orrin, I thank you for your efforts on behalf of our nation's small employers.

Sincerely,

JOHN J. MOTLEY III,
Director, Federal Governmental Relations.

NATIONAL RESTAURANT ASSOCIATION,
Washington, DC, February 26, 1988.

Senator ORRIN G. HATCH,
Washington, DC.

DEAR SENATOR HATCH: It is my understanding that Senate floor action is expected on S. 1904, the Polygraph Protection Act of 1987, in the near future. As always, thank you for your efforts on behalf of the National Restaurant Association in crafting this legislation.

S. 1904 addresses a primary concern of the business community—it preserves the ability of employers to utilize polygraphs in the event of theft or misconduct in the workplace. This bill is significantly less restrictive than the House bill proposing an absolute ban on polygraph testing, which the association adamantly opposes.

I urge your ardent protection of S. 1904 section 7(d) provisions that preserve incident-specific polygraph testing. Only if these provisions are retained during floor consideration and in conference, can the association maintain its support of polygraph legislation.

Many thanks for your continued interest in the foodservice industry.

Sincerely,

MARK GORMAN,
Senior Director, Government Affairs.

S. 1904—POLYGRAPH PROTECTION ACT

(Kennedy (D) Massachusetts and 13 others)

S. 1904 differs in various respects from its House counterpart, H.R. 1212. The President's senior advisors have indicated that they would recommend that H.R. 1212 be vetoed. However, the Administration also strongly opposes S. 1904 unless amendments including the following are made:

Expand section 7(d) (which would permit polygraph examinations to be administered in connection with ongoing investigations of business loss or injury) to allow the investigation of serious workplace problems that threaten not only material loss, but also the health, safety and well-being of other employees;

Revise section 8 to transfer from the Department of Labor to a more appropriate agency the responsibility for establishing standards governing certification of polygraph examiners; and

Delete provisions in section 6 which would authorize private civil actions by employees or job appliants against employers who violate the provisions of S. 1904. These provisions are unnecessary given the other enforcement provisions contained in the bill.

Mr. HATCH. Mr. President, I should like to make a statement on administration policy.

While it is clear that the administration still opposes S. 1904, they have not sent us a veto threat.

I find this shift of position encouraging. I look forward to working with the administration during the conference, and I hope we can report a bill that the President will be able to sign.

Mr. President, I believe that the administration has been able to look and realize that there are some really good arguments for this particular legislation. I think they also understand that this legislation is a carefully crafted compromise among all sides and that we have worked hard to pass this legislation.

I hope that by the vote today, we send the message that this legislation deserves to become law. I will do everything I can through the remaining part of this process to see that it does.

I compliment our committee and our staff members, and certainly Senator KENNEDY and others who have played an important role.

The PRESIDING OFFICER. Who yields time?

The Senator from Massachusetts is advised that his side has 11 minutes and 41 seconds remaining.

Mr. KENNEDY. I yield myself 8 minutes.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized for 8 minutes.

Mr. KENNEDY. Mr. President, as we come to the final moments of discussion of this legislation, I want to take a moment of the Senate's time. First, I wish to express my appreciation to the Senator from Utah [Mr. HATCH], who is the ranking minority member of the Committee on Labor and Human Resources, the former chairman of this committee, with whom I have had the opportunity to work closely in the shaping and the

drafting of this legislation. It has been an ongoing and continuing challenge.

Senator HATCH had introduced other legislation dealing with polygraphs in the last Congress. We were unable to get floor consideration of that legislation, and we have gone back to the drafting board. We now come to the Senate and urge our colleagues to vote favorably on what we consider to be an extremely important piece of legislation that will provide a much greater degree of dignity to the American worker, fairness to the worker, and a greater sense of realism in terms of the use and abuse of polygraphs in the workplace.

Mr. President, we do not take the Senate's time lightly. We believe that this legislation is important. Over the course of this past year, we have been able to work with a number of individuals, corporations, and trade associations in the private sector in fashioning and shaping this legislation. I, for one, am very grateful for their help, their assistance, and their insights as well as for their cooperation and support. We have worked with a number of the representatives of workers who have given enormously revealing testimony of what has happened to many of them and is happening to many of them in different job sites all across this country. It is indeed a chilling story that has been revealed to us, not only during the course of our hearings but also in private conversations. We are grateful to them for their help and support.

In the past hours, we have received some information from the administration in connection with reservations they have expressed about this particular approach. We have been very much aware of the division that had existed within the administration with respect to their official position. Some of the agencies within the Justice Department, who have commented upon the value of polygaphs in the past, had differing views from the position which has been taken by the Department of Labor.

By and large, I feel that their involvement has been a constructive one; and we hope that before the ink is dry on this legislation, we might be able to persuade them, and to gain their support. I think their impact has been important and useful, but I think the legislation must come into law with or without their support. I would prefer that we have their support.

Mr. President, as we come to a final conclusion on this matter, I want to remind our colleagues why this measure is of importance. We have more than 2 million polygraphs given in this country every year, and that number has grown dramatically, almost exponentially, all across our Nation.

It is fair, I believe, in evaluating the effectiveness of the polygraph, in trying to tell the difference between truth and deception, for Members of Congress to speak on the issue. In many instances, it is a instrument which is abusing the rights of millions of workers and in many instances scarring those individuals in ways that they will remember for the rest of their lives, and that their families will remember for the rest of their lives.

We have been extremely fortunate in having the Office of Technology Assessment do a very thorough and comprehensive review of all the studies that have been done on polygraph over a period of some 18 years, right up to the most modern ones. We have a number of experts in this area. One of the most significant and thoughtful is Professor Raskin, of the State of Utah.

What we find are some undeniable truths: With the current number of polygraphs taking place in this country, there are going to be up to 320,000 individuals, workers, who will be wrongfully labeled by the polygraph. Two-thirds of those individuals will be telling the truth but labeled deceptive. What that means in terms of those families, what that means in terms of the possibilities of future employment, what that means in terms of their future is one of the most heartrending stories that affect working men and women in this country.

That problem is growing. Somehow or other even on the floor of the Senate, we have the false understanding or false impression that we are getting truth with the administration of the polygraph.

The scientific and medical information is that truth is only part of the story and a small part of the story.

We have not ruled out all polygraphs, Mr. President, and we have recognized that under certain circumstances when you have a reasonable suspicion that individuals have been involved in a specific economic loss on injury, we permit under limited circumstances the use of the polygraph. Under these circumstances, the possibility of gaining the truth is enhanced dramatically, and under these circumstances the polygraph itself will not be used solely in making the ultimate judgment in terms of the employment possibilities for that individual, without additional supporting evidence.

So, we believe that we have here recommending to the Senate an equitable balance.

The PRESIDING OFFICER. I must reluctantly advise the Senator the time has expired.

Mr. KENNEDY. I yield myself 2 minutes.

The PRESIDING OFFICER. The Senator is recognized for an additional 2 minutes.

Mr. KENNEDY. With this balanced bill, that has been described in the past days, we believe that we are meeting our responsibilities both to the workers and to the private sector.

Mr. President, in just making some concluding remarks, I want to remind our colleagues who are concerned about the Federal aspects of this legislation that this is an intrusion in the States, that one of the great States righters of this body and one of the great libertarians of this body was a distinguished Senator from North Carolina, Senator Ervin. No one ever accused Senator Ervin of wanting to extend the long arm of the Federal Government, but those of us who had the opportunity to serve with him know of his deep devotion to the constitutional civil liberties of this country, and it was Senator Ervin who said over a decade ago that the polygraph is "20th century witchcraft". He was right.

So, Mr. President, we understand that the polygraphs do not stop lies; in too many instances they tell lies.

It is important that we in this body are going to put the polygraph, which has been used as an instrument to intimidate and to terrify so many workers in this country, on the scrap heap, so to speak, with other instruments which have been used in the same manner in the past.

I again think that with this legislation we are going to see the day when the average worker in this country is going to be able to walk into his or her workplace with the sense of dignity and self-respect.

With this legislation, I think we are striking a blow for greater sense of decency not only for millions of workers but for American society.

I urge my colleagues to vote in favor of this legislation.

I withhold the remainder of the time.

The PRESIDING OFFICER. The Senator from Massachusetts is advised he has 1 minute and 15 seconds remaining.

Who yields time to the Senator from Mississippi?

Mr. QUAYLE. I yield the remainder of my time to the Senator from Mississippi.

The PRESIDING OFFICER. The Senator from Mississippi has 2 minutes and 32 seconds.

Mr. COCHRAN. Mr. President, I thank the distinguished Senator from Indiana for yielding to me. He has provided strong leadership in our committee on this issue and I commend him for that.

In looking at the proposal before us, one aspect jumps out at the Senate. Here again we are being asked to substitute Federal regulations, Federal judgment on issues such as qualifications for the performance of a job, licensing in the States, for the judgment and wisdom of State legislators and State government officials, for no good reason.

I say that, Mr. President, because in States such as mine—where for 20 years there has been a law on the books regulating the administration of polygraph examinations and the licensing of polygraph examiners—State regulation has worked very well.

While workers and prospective employees are protected, those who have

a legitimate interest in the use of polygraphs as an investigative technique—the State government, city governments, police departments, other investigators—are permitted to use them because they have been shown to be useful tools in the investigative process.

One witness before our committee testified that in States where there are no restrictions on the use of polygraphs for prospective employees or those in the workplace, losses from inventory are 25 percent less than in States where polygraphs are banned, such as in Massachusetts and other States.

The evidence is clear that passage of this legislation today will increase consumer costs in many areas and increase losses in certain businesses.

Others who testified in opposition to the bill included the Jewelers of America, American Retail Federation, and others who have had day-to-day practical experience, in the workplace in selective use of the polygraph examination.

Obviously, the committee felt that the polygraph examination could be useful and was appropriate in some circumstances, since it exempted many areas of Government activity and many contractors who do business with the Federal Government.

So, in the wisdom of the Federal Government, on the one hand, the polygraph is lawful and appropriate to be used and, on the other, it is not.

I suggest, Mr. President, that we vote against this bill. Let us leave the regulation of the use of polygraphs to the States where it rightfully belongs.

Mr. FOWLER. Will the Senator from Massachusetts yield for a question?

Mr. KENNEDY. I certainly will yield for a question from the Senator from Georgia.

Mr. FOWLER. We need the continued use of the polygraph for preemployment screening of those who handle controlled substances. The House passed by a very wide margin such an exemption to the Williams bill—by a vote of 313 to 105. Would the Senator from Massachusetts be willing to accept that language in the conference between the two bodies on this legislation?

Mr. KENNEDY. Senator HATCH and I have discussed this, we have discussed this with the other Senate conferees, discussed this with the sponsors of the House amendment, and discussed this with the principal sponsors and likely House conferees. We will be willing to agree to recede to the House conferees insistence on the amendment dealing with the employees who handle controlled substances.

Mr. FOWLER. I thank the Senator from Massachusetts, and will not offer my amendment.

Mr. DURENBERGER. Mr. President, I rise today in support of S. 1904, the Polygraph Protection Act of 1987. This bill is designed to curb the abuses of widespread polygraph testing and to protect the rights of individuals who are subjected to the lie detector test. I applaud the efforts of my distinguished colleagues from Massachusetts and Utah, Mr. KENNEDY and Mr. HATCH, in crafting a sensible, fair response to the growing misuse and abuse of polygraph examinations.

Over the last decade, private employer's use of polygraphs has increased dramatically. The American Polygraph Association estimates that approximately 98 percent of the over 2 million polygraphs given each year are administered by private employers. Only 2 percent of all tests are administered by the public sector. Mr. President, I find this fact alarming. Over 2 million tests are being given each year; yet, there are no uniform standards for polygraph machines, there are no uniform licensing requirements for examiners, and there are no uniform protections for individuals who take a polygraph examination. Up until now, the Federal Government has relied upon State legislatures to regulate the use of lie detector tests. However, I believe that the time has come for Congress to establish national minimum standards for polygraph examinations.

S. 1904 bans the use of lie detector testing for preemployment and random employee screening. Employers have increasingly been using lie detectors to test job applicants and current employees to determine character traits such as honesty and trustworthiness. However, there is no scientific evidence to suggest that a polygraph test can accurately or reliably predict the honesty or dishonesty of an individual. The polygraph test does accurately measure stress by plotting changes in three physiological responses—blood pressure, respiration, and sweat gland activity—but it cannot pinpoint the cause of stress. And because there is no physiological response unique to lying, stress caused by anger, fear or anxiety will produce the same physiological reaction as stress caused by deception.

As a result, many honest individuals are being denied employment because they have failed a polygraph exam, while many dishonest individuals are being employed because they were able to outsmart a machine or an examiner. Mr. President, polygraph examiners simply cannot identify stress caused by deception, nor can they assess such obscure qualities as honesty or trustworthiness in a 15-minute interview. Even in criminal investigations, where there is a scientific basis for using the polygraph, interviews of suspects regarding their involvement in a specific incident last at least 2 hours.

S. 1904 does recognize the scientific basis for using the lie detector test in investigations of specific incidents. The bill allows employers to use the polygraph examination when investigating an economic loss; however, the employer must meet the following requirements before requesting an examination. First, the employer must have experienced an economic loss, such as theft, embezzlement, or industrial espionage. Second, the employer must have reason to believe that the employee had access to the property in question. Third, the employer must have reason to suspect that the employee was involved in the incident. Finally, the employer must file a police report; an insurance report; or an internal statement describing the details of the situation. Once an employer has met these requirements, he or she may request an employee to take a polygraph test as long as the test does not violate State or local law, or any collective bargaining agreement.

Under the bill, an employee has the right to refuse to submit to the polygraph examination. And, his or her employer is prohibited from taking any adverse employment action based solely upon that refusal. An employer may only discipline or dismiss an employee when there is additional supporting evidence.

If an employee does submit to a polygraph examination, S. 1904 provides important protections. For example, an employee must be advised of his or her rights in writing prior to the examination, and the employee must be given an opportunity to review all questions which will be asked in the interview. S. 1904 also defines the types of questions an examiner may ask, and specifies that the employee may terminate the test at any time.

Again, once the interview is completed, an employer may not take disciplinary action against an individual based solely upon the results of the polygraph examination. However, evidence used to support dismissal may include statements or confessions made during an examination.

To protect the privacy rights of the tested employee, S. 1904 provides that the information disclosed during an examination may not be released to anyone other than the employee or employee's designee, the employer, government agencies authorized to conduct such tests, or any person authorized by a warrant to obtain such information. Because irrelevant, yet highly personal, details are often disclosed in a polygraph examination, I believe that this provision is a particularly important safeguard against the misuse of information obtained in an interview.

The final component of S. 1904 governs the regulation of polygraph machines and examiners. This legislation requires the Secretary of Labor to set minimum standards for polygraph examiners relating to conduct, competency, bonding, instrumentation, training, and recordkeeping. I believe uniform standards are necessary to ensure a minimum degree of accuracy in an already unreliable test, and to prevent employers from taking employment action based on bad results

obtained from a faulty instrument or an inexperienced examiner.

Federal, State, and local governments are all exempt from the provisions of S. 1904, as are Federal Government contractors with national security responsibilities. As former chairman of the Senate Select Committee on Intelligence, I recognize the necessity of a "national security" exemption. The polygraph examination has limitations, but it does play a role in the effort to protect highly sensitive information.

Mr. President, opponents of S. 1904 use the above exemptions to argue that polygraph testing should be good enough for use in the private sector if it is good enough for use in the public sector. I don't buy this statement, because the Federal Government has in place very strict rules governing lie detector testing. For example, the Federal Government trains its own examiners, defines who can be tested, and prohibits the denial of employment based solely on the results of a polygraph. In general, Federal Government uses the lie detector test as only one component of an extensive background investigation.

Because S. 1904 sets minimum national standards for use of the lie detector test, this bill will only affect States which have no polygraph regulations or have less strict laws. Therefore, in States where use of the lie detector test has been banned, such as my home of Minnesota, S. 1904 will have little effect.

Mr. President, I would also like to express my support for the amendment offered by my distinguished colleague from Ohio, Mr. METZENBAUM, on an issue unrelated to polygraph testing. My colleague's amendment, which I am pleased to cosponsor, expresses this body's opposition to the proposed $400 million World Bank loan to the Mexican steel industry. The World Bank has proposed to lend Mexico $400 million to restructure and modernize an inefficient steel industry. However, I cannot understand how this loan will assist economic development when there is already an excess capacity of world steel production. Mexico will be unable to repay its World Bank loan and unable to repay its loans to American banks if it cannot sell steel. And although I agree that it is in the best interest of the United States to promote growth in the Mexican economy, I do not believe that a $400 million loan to the Mexican steel industry will provide steady jobs and stable growth. This loan will only put Mexico deeper into debt and will further harm an ailing United States steel industry. I urge my colleagues to send a strong message to the World Bank that it should reject the proposed loan to Mexico.

Mr. President, I support S. 1904 because I believe that American workers need protection from the widespread abuse and misuse of the lie detector test. The bill crafted by my colleagues from Massachusetts and Utah is a sensible and balanced response to a growing problem, and it has broad support in both the public and private sectors. I am pleased that S. 1904 is being considered by this body. I urge all of my colleagues to support the Polygraph Protection Act of 1987.

Mr. KERRY. Mr. President, I support S. 1904, the Polygraph Protection Act of 1987. I believe that this legislation represents an appropriate balance of the interests of employees and employers, and is a reasonable and fair solution to the problems inherent in widespread polygraph testing. This bill has bipartisan support, and also has support from labor, business, and civil liberties organizations. As a member of the Labor Committee in the 99th Congress, I cosponsored similar legislation. I commend Senator KENNEDY for bringing this bill before the Senate.

I oppose the use of polygraphs in preemployment screening, which this bill would prohibit. This bill does not prohibit the use of polygraphs in postemployment investigations of economic loss, with appropriate safeguards. This is a reasonable and balanced approach. The bill contains appropriate exemptions where they are needed, and I oppose the attempts of some to carve out additional industry exemptions. This legislation does not need amendments to cater to specific special interests, beyond the carefully crafted amendments included in the bill as amended by the Senate.

S. 1904 already has the support of a number of organizations which opposed other polygraph bills, including the American Association of Railroads, the American Bankers Association, the National Association of Convenience Stores, the National Grocers' Association, the National Mass Retailers Institute, the National Restaurant Association, the National Retail Merchants Association, and the Securities Industry Association.

The use of polygraphs has tripled over the past 10 years. As industry reliance on this device grows, Congress has an obligation to decide whether the use of this tool constitutes an infringement of the rights of employees and prospective employees. I believe that polygraph use in preemployment screening, because of questions about its reliability as well as the possibility of abuse, constitutes such an infringement.

The polygraph instrument, sometimes called a lie detector, cannot actually detect lies. It is wholly dependent on a subjective reading by a polygrapher. A 1983 OTA study by Dr. Leonard Saxe of Boston University concluded that lies were detected between 50.6 percent to 98.6 percent of the time, and that true statements were correctly classified between 12.5 percent and 94.1 percent of the time. That represents not much better than a toss of the coin in many instances. These statistics refute the use of the polygraph as a means of judging the veracity of a subject.

As a prosecutor in Massachusetts, I found the polygraph to be sometimes a useful tool in criminal investigations. I am pleased, therefore, that this legislation contains an exemption for Federal, State, and local governments as well as for contractors doing sensitive defense work. I also believe that an exemption for private employers in the areas of armored-car personnel, security alarm systems, and other security personnel is warranted as a law enforcement tool, in conjunction with other law enforcement measures.

But of the estimated 2 million people a year who are administered polygraph tests, 98 percent of them are given by private business, with 75 percent of those tests being given for preemployment screening.

The OTA study concluded that "the available research evidence does not establish the scientific validity of the polygraph test for personnel screening." Yet the increasing amount of preemployment testing means an increasing number of our citizens who are dependent on the results of this often unreliable machine. American courts cannot compel defendants to take these tests, and employers should not be able to mandate the test as a condition of employment.

I also have other concerns about the use of the polygraph as a tool of intimidation. A Florida polygrapher noted that the polygraph was "the best confession-getter since the cattle prod." Many polygraphers say that the bulk of their confessions take place just prior to the actual examination when the subject is told about the high accuracy of the machine. They believe that the specter of an infallible lie detector causes people to confess rather than be caught by the machine. This technique is unfair to prospective employees, who are not guilty of any crime, and is more reminiscent of the methods of a totalitarian country than of the United States of America.

For this reason I have opposed efforts to add an exemption to this bill for voluntary polygraph examinations. I have serious questions about how voluntary these tests would actually be in many instances, given the balance of power between employer and employee and the inherent potential for coercion in a so-called voluntary test. I have also opposed other efforts to open up loopholes in this bill by granting exemptions for specific industries. Given the unreliability of polygraph testing, particularly the 15 minute quickie tests given in many commercial and industry situations, these tests are unwarranted, unnecessary and unfair.

The State of Massachusetts long ago banned the use of the polygraph for employment purposes. In 1959, we became the first State in the country to bar its use in employment. As is well known, the economy of Massa-

chusetts has thrived without the use of this device in industry. Merchants and industries in Massachusetts have not suffered the huge losses that some have alleged would take place with a polygraph ban. I am told that some national companies which operate in States like Massachusetts, or the 20 other States that ban or restrict polygraph use, do test prospective employees out of State on a regular basis. This bill would end this wholesale circumvention of our State laws.

This is an important and timely piece of legislation. Last year, we celebrated the 200th anniversary of our Constitution. This year, let us remember that the Constitution is a living document, and let us protect the constitutional rights of American workers. I am pleased to join with my colleagues in supporting the passage of S. 1904.

Mr. MATSUNAGA. Mr. President, I rise to urge my colleagues to pass, as amended, the Polygraph Protection Act of 1987. As reported by the Labor and Human Resources Committee the bill strikes a delicate balance between protecting the rights of employees and ensuring that employers have appropriate means to protect their businesses in cases of specific illegal incidents.

Mr. President, the polygraph test is administered over 2 million times each year. In the private sector, most polygraph tests are administered for preemployment screening purposes of random tests of employees. The test measures changes in blood pressure, respiration patterns, and perspiration. The test does not measure deception. Changes in these physiological conditions may also indicate fear, anxiety, embarrassment, or resentment rather than deception.

Mr. President, the testimony presented to the Committee on Labor and Human Resources, of which I am a member, indicates that the broad, prospective questions which are common to preemployment and random polygraph examinations are often inaccurate. The inaccuracy of polygraph examinations does not vary by industry. Although we may be particularly sympathetic to the concerns of some industries in their effort to protect themselves from unscrupulous potential employees, there is no evidence which leads us to believe that the use of polygraphs is any more effective for preemployment and random screening in these particular industries. I urge my colleagues, therefore, to avoid diluting the protections offered in this measure by adopting industry-wide exemptions to the bill.

The committee did find that a polygraph test used to investigate specific illegal incidents under strictly regulated conditions can be effective, though it is far from infallible. The bill, therefore, allows the use of a polygraph test in the course of an ongoing investigation if an employee had access to the property that is the subject of the investigation and the employer has a reasonable suspicion that the employee was involved in the incident. However, adverse action may not be taken against an employee based solely upon the results of a polygraph test; additional supporting evidence must be presented to justify such action. Furthermore, the bill requires that employees may refuse to take the examination without fear of recrimination. In addition, the bill established specific conditions under which the test may be administered and establishes minimum qualifications for polygraph examiners.

Finally, Mr. President, though many would like to leave the resolution of this issue to the States, it is clear that State regulation has not been and will not be effective. State policy on polygraph use varies widely. In fact, nine States have no laws governing the use of polygraphs. Without interstate uniformity, employers and examiners have been able to circumvent the intention of State laws, and individuals are often uncertain about the rights they may have with respect to polygraphs. It is clearly time that a uniform national policy be adopted.

Mr. President, I wish to congratulate the two principal sponsors of this legislation, the senior Senator from Massachusetts, Mr. KENNEDY and the senior Senator from Utah, Mr. HATCH. I am pleased to be an original cosponsor of this bipartisan measure to protect employees and job applicants from unjust employment actions. I strongly urge my colleagues to support S. 1904.

Mr. GRASSLEY. Mr. President, I would like to address the subject before us, namely, the use of polygraphs in the workplace.

The employment relationship is one which we, in our free market economy, value highly. Businesses, large and small, depend upon their workers to make goods and deliver services. Likewise, individuals look to employers to provide an opportunity to earn a living. A cooperative and trusting relationship between employees and employers generally creates the best environment for good profits, as well as good wages.

In regulating the workplace, Congress should strive to foster cooperation between workers and business owners. The current proposal before the Senate on polygraphs, does not, however, advance that spirit of cooperation. Rather, the legislation is a piecemeal approach to supposed-employer abuse of polygraphs.

First, the bill exempts government employers, from State and local to Federal offices. If the polygraph is so untrustworthy, why are we allowing Government officials to continue to use it? It seems to me that we in the Government, especially we in the Congress, must begin to live by the legislation we impose on private industry.

Second, the bill attempts to create a narrow situation in which an employer may require an employee to take a polygraph. But, the exception may swallow the rule. As long as an employer has a "reasonable suspicion" that an employee was involved in an incident where the employer suffered a loss or injury, the employer can order a polygraph. The only thing the employer must do is file a report, and that report can, at a minimum, be filed in the employee's personnel file.

As a result of this exception, a host of new litigation will arise. The courts will pass upon whether the employer was justified in ordering the polygraph—whether the employer had "reasonable suspicion." And, the courts will decide whether the employer filed an appropriate report about the incident leading up to the polygraph.

Finally, the bill creates a blanket prohibition on the use of polygraphs as a preemployment screening device. Before there is any employment relationship between the applicant and the employer, we are telling the employer that he may not use the polygraph as a final check on the applicant, to confirm or corroborate the judgment about the applicant.

The vast majority of employers in this country do not use the polygraph—it is costly and its value is limited. But there are industries which may find the polygraph to be worthwhile—those involved in child care, security services, financial services or narcotics, just to mention a few. The complete ban may unnecessarily limit these employers.

Clearly, the polygraph cannot be a substitute for good management and supervision. And Americans must be protected from unwarranted invasions by employers and those who administer the polygraph. The use of polygraphs may have gotten out of hand in the last few years, and while the problem needs to be addressed, I do not believe that this bill is our best step forward. I will vote against S. 1904.

Mr. METZENBAUM. Mr. President, I am an original cosponsor and a strong supporter of the Polygraph Protection Act of 1987. I want to congratulate my chairman, Senator KENNEDY, for leading this effort to correct an unjust situation facing America's workers. He is a tireless champion for the working men and women of this country and the polygraph bill is another fine example of his commitment in this area. I also want to congratulate Senator HATCH for his leadership on this bill.

It is settled that polygraph tests are not accurate "lie detectors." The American Medical Association, testifying before the Labor Committee, stated that polygraph tests "measure nervousness and excitability, not truth." Honest workers and job applicants may well be nervous when strapped to a machine and asked a series of intimidating or personal questions. We cannot have careers and rep-

utations depending on the results of such a frightening, unscientific test. But currently there is no Federal protection for millions of workers subjected to these tests by private employers. The Kennedy-Hatch bill corrects this critical problem.

The Polygraph Protection Act strikes a careful balance. It bans polygraph use in the two areas where the results are most suspect: preemployment screening and random testing. This will eliminate the most abusive uses of the polygraph in the private sector. The bill allows polygraph use where the employer has reasonable suspicion that a particular employee was involved in an internal theft. Under such limited circumstances, polygraph tests can serve as one tool to help reduce the serious problem of internal theft.

This bill has a broad range of support from labor, civil liberties groups and a number of business associations. I again commend Senators KENNEDY and HATCH. I enthusiastically support the Polygraph Protection Act of 1987 and I urge all my colleagues to support it.

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY. Mr. President, I am prepared to yield back the remainder of my time.

The PRESIDING OFFICER. The Senator from Massachusetts yield back the remainder of his time.

All time has expired or been yielded back.

The question is on adoption of the committee substitute as amended.

Mr. BYRD. 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. BYRD. 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. BYRD. Mr. President, I ask unanimous consent to proceed for 2 minutes.

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

Mr. BYRD. Mr. President, the rollcall vote is imminent and the order was entered last evening making the call for the regular order automatic at the conclusion of 15 minutes. Therefore, I would suggest that Senators be on their way to the floor now as soon as possible.

Mr. President, I take a minute just to compliment and thank the two managers of the bill, Senator KENNEDY and Senator HATCH. They have demonstrated good teamwork on this bill, good cooperation and skill in managing the bill, handling it in committee and in bringing it to final conclusion shortly. They are to be commended.

I especially, though, commend Mr. KENNEDY. He has been in considerable physical pain during this debate, yet has not asked for any special consideration. He did not ask to end the debate last night. He, as a matter of fact, was wanting to press on all the time. And so I admire him for that extra effort that he has put forth over and above the common effort that is ordinarily needed in his position as manager of the bill.

Mr. President, I yield the floor.

Mr. HATCH. Mr. President, I thank the distinguished majority leader and my colleague for his remarks.

Mr. KENNEDY. Mr. President, I ask unanimous consent that I may proceed for 30 seconds.

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

Mr. KENNEDY. Mr. President, I want to also thank the majority leader. We know that there is a very full calendar and there is a great deal of business for this body, and we know that there were several who had some concerns with the legislation. It is always a challenge to the leadership to try to work these matters out. I am grateful to the leader. I know I speak for all the members of our committee and, hopefully, for those who will vote in support and even those who might express some opposition.

I thank the leader very much, as well as the Senator from Utah.

The PRESIDING OFFICER. The question is on agreeing to the committee substitute, as amended.

The committee substitute, as amended, was agreed to.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

Mr. KENNEDY. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 1212, Calendar Order No. 431, the House companion bill.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 1212) to prevent the denial of employment opportunities by prohibiting the use of lie detectors by employers involved in or affecting interstate commerce.

There being no objection, the Senate proceeded to consider the bill.

Mr. KENNEDY. Mr. President, I ask unanimous consent that all after the enacting clause be stricken and the text of S. 1904, as amended, be substituted for the House language.

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

Mr. KENNEDY. Mr. President, I ask unanimous consent that the vote ordered on final passage of the Senate bill be transferred to final passage of H.R. 1212.

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

Mr. KENNEDY. 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.

The PRESIDING OFFICER. The question is on the engrossment of the amendment and third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass? The yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Tennessee [Mr. GORE] and the Senator from Illinois [Mr. SIMON] are necessarily absent.

I also announce that the Senator from Delaware [Mr. BIDEN] is absent because of illness.

Mr. SIMPSON. I announce that the Senator from Kansas [Mr. DOLE] is necessarily absent.

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

The result was announced—yeas 69, nays 27, as follows:

[Rollcall Vote No. 43 Leg.]

YEAS—69

Adams	Durenberger	Melcher
Baucus	Evans	Metzenbaum
Bentsen	Exon	Mikulski
Bingaman	Ford	Mitchell
Boren	Fowler	Moynihan
Boschwitz	Glenn	Nunn
Bradley	Harkin	Packwood
Breaux	Hatch	Pell
Bumpers	Hatfield	Proxmire
Burdick	Heflin	Pryor
Byrd	Heinz	Reid
Chafee	Hollings	Riegle
Chiles	Humphrey	Rockefeller
Cohen	Inouye	Sanford
Conrad	Johnston	Sarbanes
Cranston	Kasten	Sasser
D'Amato	Kennedy	Shelby
Danforth	Kerry	Simpson
Daschle	Lautenberg	Specter
DeConcini	Leahy	Stafford
Dixon	Levin	Stennis
Dodd	Lugar	Weicker
Domenici	Matsunaga	Wirth

NAYS—27

Armstrong	Karnes	Roth
Bond	Kassebaum	Rudman
Cochran	McCain	Stevens
Garn	McClure	Symms
Graham	McConnell	Thurmond
Gramm	Murkowski	Trible
Grassley	Nickles	Wallop
Hecht	Pressler	Warner
Helms	Quayle	Wilson

NOT VOTING—4

Biden	Gore
Dole	Simon

So the bill (H.R. 1212), as amended, was passed, as follows:

H.R. 1212

Resolved, That the bill from the House of Representatives (H.R. 1212) entitled "An Act to prevent the denial of employment opportunities by prohibiting the use of lie detectors by employers involved in or affecting interstate commerce," do pass with the following amendment:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Polygraph Protection Act of 1988".

SEC. 2. DEFINITIONS.

As used in this Act:

(1) COMMERCE.—The term "commerce" has the meaning provided by section 3(b) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(b)).

(2) EMPLOYER.—The term "employer" includes any person acting directly or indirectly in the interest of an employer in relation to an employee or prospective employee.

(3) LIE DETECTOR TEST.—The term "lie detector test" includes—

(A) any examination involving the use of any polygraph, deceptograph, voice stress analyzer, psychological stress evaluator, or any other similar device (whether mechanical, electrical, or chemical) that is used, or the results of which are used, for the purpose of rendering a diagnostic opinion regarding the honesty or dishonesty of an individual; and

(B) the testing phases described in paragraphs (1), (2), and (3) of section 8(c).

(4) POLYGRAPH.—The term "polygraph" means an instrument that records continuously, visually, permanently, and simultaneously changes in the cardiovascular, respiratory, and electrodermal patterns as minimum instrumentation standards.

(5) RELEVANT QUESTION.—The term "relevant question" means any lie detector test question that pertains directly to the matter under investigation with respect to which the examinee is being tested.

(6) SECRETARY.—The term "Secretary" means the Secretary of Labor.

(7) TECHNICAL QUESTION.—The term "technical question" means any control, symptomatic, or neutral question that, although not relevant, is designed to be used as a measure against which relevant responses may be measured.

SEC. 3. PROHIBITIONS ON LIE DETECTOR USE.

Except as provided in section 7, it shall be unlawful for any employer engaged in or affecting commerce or in the production of goods for commerce—

(1) directly or indirectly, to require, request, suggest, or cause any employee or prospective employee to take or submit to any lie detector test;

(2) to use, accept, refer to, or inquire concerning the results of any lie detector test of any employee or prospective employee;

(3) to discharge, dismiss, discipline in any manner, or deny employment or promotion to, or threaten to take any such action against—

(A) any employee or prospective employee who refuses, declines, or fails to take or submit to any lie detector test; or

(B) any employee or prospective employee on the basis of the results of any lie detector test; or

(4) to discharge, discipline, or in any manner discriminate against an employee or prospective employee because—

(A) such employee or prospective employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act;

(B) such employee or prospective employee has testified or is about to testify in any such proceeding; or

(C) of the exercise by such employee, on behalf of such employee or another person, of any right afforded by this Act.

SEC. 4. NOTICE OF PROTECTION.

The Secretary shall prepare, have printed, and distribute a notice setting forth excerpts from, or summaries of, the pertinent provisions of this Act. Each employer shall post and maintain such notice, in conspicuous places on its premises where notices to employees and applicants to employment are customarily posted.

SEC. 5. AUTHORITY OF THE SECRETARY.

(a) IN GENERAL.—The Secretary shall—

(1) issue such rules and regulations as may be necessary or appropriate to carry out this Act;

(2) cooperate with regional, State, local, and other agencies, and cooperate with and furnish technical assistance to employers, labor organizations, and employment agencies to aid in effectuating the purposes of this Act; and

(3) make investigations and inspections and require the keeping of records necessary or appropriate for the administration of this Act.

(b) SUBPOENA AUTHORITY.—For the purpose of any hearing or investigation under this Act, the Secretary shall have the authority contained in sections 9 and 10 of the Federal Trade Commission Act (15 U.S.C. 49 and 50).

SEC. 6. ENFORCEMENT PROVISIONS.

(a) CIVIL PENALTIES.—

(1) IN GENERAL.—Subject to paragraph (2), any employer who violates any provision of this Act may be assessed a civil penalty of not more than $10,000.

(2) DETERMINATION OF AMOUNT.—In determining the amount of any penalty under paragraph (1), the Secretary shall take into account the previous record of the person in terms of compliance with this Act and the gravity of the violation.

(3) COLLECTION.—Any civil penalty assessed under this subsection shall be collected in the same manner as is required by subsections (b) through (e) of section 503 of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1853) with respect to civil penalties assessed under subsection (a) of such section.

(b) INJUNCTIVE ACTIONS BY THE SECRETARY.—The Secretary may bring an action to restrain violations of this Act. The district courts of the United States shall have jurisdiction, for cause shown, to issue temporary or permanent restraining orders and injunctions to require compliance with this Act.

(c) PRIVATE CIVIL ACTIONS.—

(1) LIABILITY.—An employer who violates this Act shall be liable to the employee or prospective employee affected by such violation. Such employer shall be liable for such legal or equitable relief as may be appropriate, including but not limited to employment, reinstatement, promotion, and the payment of lost wages and benefits.

(2) COURT.—An action to recover the liability prescribed in paragraph (1) may be maintained against the employer in any Federal or State court of competent jurisdiction by any one or more employees for or in behalf of himself or themselves and other employees similarly situated.

(3) COSTS.—The court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.

(d) WAIVER OF RIGHTS PROHIBITED.—The rights and procedures provided by this Act may not be waived by contract or otherwise, unless such waiver is part of a written settlement of a pending action or complaint, agreed to and signed by all the parties.

SEC. 7. EXEMPTIONS.

(a) NO APPLICATION TO GOVERNMENTAL EMPLOYERS.—The provisions of this Act shall not apply with respect to the United States Government, a State or local government, or any political subdivision of a State or local government.

(b) NATIONAL DEFENSE AND SECURITY EXEMPTION.—

(1) NATIONAL DEFENSE.—Nothing in this Act shall be construed to prohibit the administration, in the performance of any counterintelligence function, of any lie detector test to—

(A) any expert or consultant under contract to the Department of Defense or any employee of any contractor of such Department; or

(B) any expert or consultant under contract with the Department of Energy in connection with the atomic energy defense activities of such Department or any employee of any contractor of such Department in connection with such activities.

(2) SECURITY.—Nothing in this Act shall be construed to prohibit the administration, in the performance of any intelligence or counterintelligence function, of any lie detector test to—

(A)(i) any individual employed by, or assigned or detailed to, the National Security Agency or the Central Intelligence Agency, (ii) any expert or consultant under contract to the National Security Agency or the Central Intelligence Agency, (iii) any employee of a contractor of the National Security Agency or the Central Intelligence Agency, or (iv) any individual applying for a position in the National Security Agency or the Central Intelligence Agency; or

(B) any individual assigned to a space where sensitive cryptologic information is produced, processed, or stored for the National Security Agency or the Central Intelligence Agency.

(c) EXEMPTION FOR FBI CONTRACTORS.—Nothing in this Act shall be construed to prohibit the administration, in the performance of any counterintelligence function, of any lie detector test to an employee of a contractor of the Federal Bureau of Investigation of the Department of Justice who is engaged in the performance of any work under the contract with such Bureau.

(d) LIMITED EXEMPTION FOR ONGOING INVESTIGATIONS.—Subject to section 8, this Act shall not prohibit an employer from requesting an employee to submit to a polygraph test if—

(1) the test is administered in connection with an ongoing investigation involving economic loss or injury to the employer's business, including theft, embezzlement, misappropriation, or an act of unlawful industrial espionage or sabotage;

(2) the employee had access to the property that is the subject of the investigation;

(3) the employer has a reasonable suspicion that the employee was involved in the incident or activity under investigation; and

(4) the employer—

(A) files a report of the incident or activity with the appropriate law enforcement agency;

(B) files a claim with respect to the incident or activity with the insurer of the employer, except that this subparagraph shall not apply to a self-insured employer;

(C) files a report of the incident or activity with the appropriate government regulatory agency; or

(D) executes a statement that—

(i) sets forth with particularity the specific incident or activity being investigated and the basis for testing particular employees;

(ii) is signed by a person (other than a polygraph examiner) authorized to legally bind the employer;

(iii) is provided to the employee on request;

(iv) is retained by the employer for at least 3 years; and

(v) contains at a minimum—

(I) an identification of the specific economic loss or injury to the business of the employer;

(II) a statement indicating that the employee had access to the property that is the subject of the investigation; and

(III) a statement describing the basis of the employer's reasonable suspicion that the employee was involved in the incident or activity under investigation.

(e) EXEMPTION FOR SECURITY SERVICES.—

(1) IN GENERAL.—Subject to paragraph (3), this Act shall not prohibit the use of a lie detector test on prospective employees of a private employer whose primary business purpose consists of providing armored car personnel, personnel engaged in the design, installation, and maintence of security alarm systems, or other uniformed or plainclothes security personnel and whose function includes protection of—

(A) facilities, materials, or operations having a significant impact on the health or safety of any State or political subdivision thereof, or the national security of the United States, as determined under rules and regulations issued by the Secretary within 60 days after the date of the enactment of this Act, including—

(i) facilities engaged in the production, transmission, or distribution of electric or nuclear power;

(ii) public water supply facilities;

(iii) shipments or storage of radioactive or other toxic waste materials; and

(iv) public transportation; or

(B) currency, negotiable securities, precious commodities or instruments, or proprietary information.

(2) COMPLIANCE.—The exemption provided under paragraph (1) shall not diminish an employer's obligation to comply with—

(A) applicable State and local law; and

(B) any negotiated, collective bargaining agreement,

that limits or prohibits the use of lie detector tests on such prospective employees.

(3) APPLICATION.—The exemption provided under this subsection shall not apply if—

(A) the results of an analysis of lie detector charts are used as the basis on which a prospective employee is denied employment without additional supporting evidence; or

(B) the test is administered to a prospective employee who is not or would not be employed to protect facilities, materials, operations, or assets referred to in paragraph (1).

(f) NUCLEAR POWER PLANT EXEMPTION.—This Act shall not prohibit the use of a lie detector test by an employer on any employee or prospective employee of any nuclear power plant. This subsection shall not preempt or supersede any state or local law that prohibits or restricts the use of lie detector tests.

(g) Nothing in this Act shall be construed to preclude the use of a lie detector test to any expert or consultant or any employee of such expert or consultant under contract with any Federal Government department, agency, or program where a security clearance is required by the Federal Government for such expert or consultant and such expert or consultant, as a result of the contract, has access to classified and sensitive Government information.

SEC. 8. RESTRICTIONS ON USE OF EXEMPTIONS.

(a) OBLIGATION TO COMPLY WITH CERTAIN LAWS AND AGREEMENTS.—The exemptions provided under subsections (d) and (e) of section 7 shall not diminish an employer's obligation to comply with—

(1) applicable State and local law; and

(2) any negotiated collective bargaining agreement,

that limits or prohibits the use of lie detector tests on employees.

(b) TEST AS BASIS FOR ADVERSE EMPLOYMENT ACTION.—Such exemption shall not apply if an employee is discharged, dismissed, disciplined, or discriminated against in any manner on the basis of the analysis of one or more polygraph tests or the refusal to take a polygraph test, without additional supporting evidence. The evidence required by section 7(d) may serve as additional supporting evidence.

(c) RIGHTS OF EXAMINEE.—Such exemption shall not apply unless the requirements described in section 7 and paragraphs (1), (2), and (3) are met.

(1) PRETEST PHASE.—During the pretest phase, the prospective examinee—

(A) is provided with reasonable notice of the date, time, and location of the test, and of such examinee's right to obtain and consult with legal counsel or an employee representative before each phase of the test;

(B) is not subjected to harassing interrogation technique;

(C) is informed of the nature and characteristics of the tests and of the instruments involved;

(D) is informed—

(i) whether the testing area contains a two-way mirror, a camera, or any other device through which the test can be observed;

(ii) whether any other device, including any device for recording or monitoring the conversation will be used; or

(iii) that the employer and the examinee, may with mutual knowledge, make a recording of the entire proceeding;

(E) is read and signs a written notice informing such examinee—

(i) that the examinee cannot be required to take the test as a condition of employment;

(ii) that any statement made during the test may constitute additional supporting evidence for the purposes of an adverse employment action described in section 8(b);

(iii) of the limitations imposed under this section;

(iv) of the legal rights and remedies available to the examinee if the polygraph test is not conducted in accordance with this Act; and

(v) of the legal rights and remedies of the employer; and

(F) is provided an opportunity to review all questions (technical or relevant) to be asked during the test and is informed of the right to terminate the test at any time; and

(G) signs a notice informing such examinee of—

(i) the limitations imposed under this section;

(ii) the legal rights and remedies available to the examinee if the polygraph test is not conducted in accordance with this Act; and

(iii) the legal rights and remedies of the employer.

(2) ACTUAL TESTING PHASE.—During the actual testing phase—

(A) the examinee is not asked any questions by the examiner concerning—

(i) religious beliefs or affiliations;

(ii) beliefs or opinions regarding racial matters;

(iii) political beliefs or affiliations;

(iv) any matter relating to sexual behavior; and

(v) beliefs, affiliations, or opinions regarding unions or labor organizations;

(B) the examinee is permitted to terminate the test at any time;

(C) the examiner does not ask such examinee any question (technical or relevant) during the test that was not presented in writing for review to such examinee before the test;

(D) the examiner does not ask technical questions of the examinee in a manner that is designed to degrade, or needlessly intrude on, the examinee;

(E) the examiner does not conduct a test on an examinee when there is written evidence by a physician that the examinee is suffering from a medical or psychological condition or undergoing treatment that might cause abnormal responses during the test; and

(F) the examiner does not conduct and complete more than five polygraph tests on a calendar day on which the test is given, and does not conduct any such test for less than a 90-minute duration.

(3) POST-TEST PHASE.—Before any adverse employment action, the employer must—

(A) further interview the examinee on the basis of the results of the test; and

(B) provide the examinee with—

(i) a written copy of any opinion or conclusion rendered as a result of the test; and

(ii) a copy of the questions asked during the test along with the corresponding charted responses.

(d) QUALIFICATIONS OF EXAMINER.—The exemptions provided under subsections (d) and (e) of section 7 shall not apply unless the individual who conducts the polygraph test—

(1) is at least 21 years of age;

(2) has complied with all required laws and regulations established by licensing and regulatory authorities in the State in which the test is to be conducted;

(3)(A) has successfully completed a formal training course regarding the use of polygraph tests that has been approved by the State in which the test is to be conducted or by the Secretary; and

(B) has completed a polygraph test internship of not less than 6 months duration under the direct supervision of an examiner who has met the requirements of this section;

(4) maintains a minimum of a $50,000 bond or an equivalent amount of professional liability coverage;

(5) uses an instrument that records continuously, visually, permanently, and simultaneously changes in the cardiovascular, respiratory, and electrodermal patterns as minimum instrumentation standards;

(6) bases an opinion of deception indicated on evaluation of changes in physiological activity or reactivity in the cardiovascular, respiratory, and electrodermal patterns on the lie detector charts;

(7) renders any opinion or conclusion regarding the test—

(A) in writing and solely on the basis of an analysis of the polygraph charts;

(B) that does not contain information other than admissions, information, case facts, and interpretation of the charts relevant to the purpose and stated objectives of the test; and

(C) that does not include any recommendation concerning the employment of the examinee; and

(8) maintains all opinions, reports, charts, written questions, lists, and other records relating to the test for a minimum period of 3 years after administration of the test.

(e) PROMULGATION OF STANDARDS.—The Secretary shall establish standards governing individuals who, as of the date of the enactment of this Act, are qualified to conduct polygraph tests in accordance with applicable State law. Such standards shall not be satisfied merely because an individual has conducted a specific number of polygraph tests previously.

SEC. 9. DISCLOSURE OF INFORMATION.

(a) IN GENERAL.—A person, other than the examinee, may not disclose information obtained during a polygraph test, except as provided in this section.

(b) PERMITTED DISCLOSURES.—A polygraph examiner, polygraph trainee, or employee of

a polygraph examiner may disclose information acquired from a polygraph test only to—

(1) the examinee or any other person specifically designated in writing by the examinee;

(2) the employer that requested the test;

(3) any person or governmental agency that requested the test as authorized under subsection (a), (b), or (c) of section 7; or

(4) any court, governmental agency, arbitrator, or mediator, in accordance with due process of law, pursuant to an order from a court of competent jurisdiction.

(c) DISCLOSURE BY EMPLOYER.—An employer (other than an employer covered under subsection (a), (b), or (c) of section 7) for whom a polygraph test is conducted may disclose information from the test only to a person described in subsection (b).

SEC. 10. EFFECT ON OTHER LAW AND AGREEMENTS.

This Act shall not preempt any provision of any State or local law, or any negotiated collective bargaining agreement, that is more restrictive with respect to the administration of lie detector tests than this Act.

SEC. 11. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in subsection (b), this Act shall become effective 6 months after the date of enactment of this Act.

(b) REGULATIONS.—Not later than 120 days after the date of enactment of this Act, the Secretary shall issue such rules and regulations as may be necessary or appropriate to carry out this Act.

SEC. 11. EXEMPTION FOR PREEMPLOYMENT TESTS FOR USE OF CONTROLLED SUBSTANCES.

(a) IN GENERAL.—An employer, subject to section 7, may administer a scientifically valid test other than a lie detector test to a prospective employee to determine the extent to which the prospective employee has used a controlled substance listed in schedule I, II, III, or IV pusuant to section 202 of the Controlled Substances Act (21 U.S.C. 812).

(b) EXCEPTIONS.—

(1) ACCURACY AND CONFIDENTIALITY.—Paragraph (1) shall not supersede any provision of this Act or Federal or State law that prescribes standards for ensuring the accuracy of the testing process or the confidentiality of the test results.

(2) COLLECTIVE BARGAINING AGREEMENTS.—If prospective employees would be subject to a negotiated collective bargaining agreement, paragraph (1) shall apply only if testing is conducted in accordance with such agreement.

SEC. 12. MEXICO STEEL LOAN.

The Senate finds—

(1) during the past decade the United States steel industry has witnessed significant economic disruption and employment losses due to increased foreign competition;

(2) the United States steel industry has lost more than $12,000,000,000, more than half its workforce, and closed scores of plants throughout the country;

(3) in order to regain its competitive posture, the United States industry has invested more than 8 billion dollars on modernization, obtained painful wage concessions from its remaining workforce, and slashed production capacity by one-third;

(4) there are more than 200,000,000 excess tons of steel capacity worldwide, causing severe financial strains on steel industries in many countries;

(5) the proposed loan by the International Bank for Reconstruction and Development (hereafter referred to as the "World Bank") would provide Mexico's steel companies with subsidized financing to further the glut of worldwide steel production;

(6) the proposed loan could do irreparable damage to the United States steel industry, therefore, it is the sense of the Senate that the proposed loan is not in the best interests of the United States or in the best interests of Mexico's own economic revitalization; and the World Bank should reject the proposed loan.

SEC. 13. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in subsection (b), this Act shall become effective 6 months after the date of enactment of this Act.

(b) REGULATIONS.—Not later than 120 days after the date of enactment of this Act, the Secretary shall issue such rules and regulations as may be necessary or appropriate to carry out this Act.

Mr. KENNEDY. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. HATCH. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HATCH. Mr. President, I just want to say a few words about the staff who worked so hard to help us pass this legislation. Tom Rollins and Jay Harvey on Senator KENNEDY's staff and Kevin McGuiness on my own staff all did an excellent job of putting together this compromise. I also want to thank Deanna Godfrey, Jeannette Carlile and Angela Pope on my Labor Committee staff who are so critical to my efforts on the floor. All have spent hours on this legislation and other issues, and their efforts often go unacknowledged. I hope they know how much their work is appreciated.

Finally, I would like to express my gratitude to Mike Tiner, who has lived and breathed this issue for 3 years. His efforts were key to our success.

Mr. HATFIELD. Mr. President, I ask unanimous consent to be able to proceed out of order on very important remarks for my State for 5 minutes.

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

OREGON TIMBER SALE APPEALS

Mr. HATFIELD. Mr. President, I would like to take a few minutes of the Senate's time to discuss a very serious situation that has developed in my home State over the last few days.

Beginning last Wednesday, a very small segment of the environmental community in Oregon filed appeals on 36 timber sales being reoffered for sale on the Siskiyou National Forest under the provisions of the Federal Timber Contract Payment Modification Act of 1984. Then, on the first 3 days of this week, the same group filed 189 more appeals on three more national forests in Oregon: 80 appeals on the Siuslaw National Forest, 41 appeals on the Umpqua National Forest, and 68 appeals on the Willamette National Forest. These 225 appeals are more than were filed on all timber sales in both Oregon and Washington during the last 3 years combined.

They were filed in spite of the fact that most of these reoffered sales were modified to improve them under the most current environmental standards. They were filed despite the knowledge that most or all of the timber sale programs of each of the national forests involved would be delayed or completely halted, which would result in serious economic disruption through unemployment and lost Federal forest and tax receipts to local governments.

These appeals were filed despite clear evidence that it is the forest products industry that is among the leaders in Oregon's effort to move out of the economic recession that has burdened the State for nearly a decade. And of no apparent concern to the fringe. And I emphasize this, did not represent the mainstream of environmental organizations. But a fringe environmental group precipitating this tidal wave of potential litigation, as many as 9,000 jobs hang in the balance.

And therein lies our dilemma, Mr. President. It is the continued unwillingness of one environmental faction to accept the lawful decisions of the Congress regarding the management of our public lands by awaiting the final forest plans, which leads us to these appeals. In their haste, and in pushing frivolous appeals by using word processors and simply inserting the name of a timber sale, these actions constitute an end-run around a consensus process crafted through compromises made by all sides.

My major concern is that this action is a polarizing affront to the consensus-building, earnest discussion-process which has been the hallmark of Oregon natural resource legislation. These appeals constitute a collapse in trust, a reckless provocation that actually could serve to harm the environmental values they purport to protect.

I am confident that the public will see this action for what it is and reject it so that there can continue to be a consensus approach to timber management and environmental protection issues.

Mr. President, the bottom line is simply this: you cannot call yourself an environmentalist and at the same time support this type of irresponsible behavior. We environmentalists recognize that the very essence of the word is responsible stewardship of the Earth's natural resources. We debate how many jobs must be maintained. We debate what must be protected at all costs and what should be subject to compromise. We debate amongst ourselves as to the proper balance of development and preservation. And though these in-house disagreements occur frequently—and sometimes quite emotionally—the debate remains within the parameters of common sense. Some of these people have crossed that threshold more times than I can count, but today they have exhausted the last ounce of reasonableness. The challenge to every person in my State who thinks of himself or herself as a true environmental-

ist is to let these people know that their masquerade party is over. We cannot allow them to exploit Oregon's reputation as reasonable people with a passionate love of the Earth. Let us call it like it is: these people are not environmentalists. They seek to set back the clock of environmental progress leaving behind the wreckage of people out of work and communities in collapse. Such action tears down the well-earned reputation of the Oregon environmentalist community.

Mr. President, those of my colleagues with whom I have worked on national forest issues over the years, know that I have definite views about the importance of national forest management to my State, indeed, to the entire Pacific Northwest. I have long believed that predictable multiple use forestry, implemented by using the best sustained-yield silvicultural methods available, results in vital environmental protection and contributes to economic stability in our timer-dependent communities. This is especially important considering that almost 60 percent of the forest products industry in Oregon is dependent upon public timber for its supply of raw material.

But let me remind my colleagues that the sale of public timber from our national forests did not begin until after World War II. Until that time, all of the forest products required by users in the United States and around the world came from those same private landowners who are now so reviled.

It should note construed from these comments that I support the unsustainable harvesting of timber. My record in this body establishes clearly my strong support for sustained-yield public forestry, as well as support for research that will lead to even greater yields from an increasingly narrower land base.

Over the years I have supported these principles in the face of increasing assaults on balanced national forest management in my region by pseudo-environmentalists who do not speak for mainstream environmental concerns.

In 1969, Congress passed the National Environmental Policy Act [NEPA], which established the process by which environmental impact statements were to be prepared. Through this process, the Federal Government would be required to analyze fully the potential effects of all its actions on our natural resources. I can recall Senator Scoop Jackson offering the prediction that these EIS's would be documents about a page long by which the public could easily determine alternative options for proposed actions. Today, in fact, these EIS's frequently run more than thousands of pages in length and are even heavier than those famous continuing resolutions about which the President is so fond of railing against the Congress.

In our efforts to improve national forest management, we enacted the National Forest Management Act [NFMA] in 1976, in response, I might add, to an environmental lawsuit. NFMA went a step beyond the 1960 Multiple Use Sustained Yield Act by setting forth specific management criteria for such resource values as wildlife, watershed, timber, and recreation in a comprehensive national forest planning process. Oregon and Washington are developing new management plans using these new guidelines. The plans are late, and there is much debate and discussion over their content, but they are proceeding ahead.

But for some, waiting is difficult. Some do not accept the process by which we manage our vast resources. And I am not referring to the Sierra Club, the Friends of the Columbia Gorge, the Wilderness Society, the Oregon Rivers Council, the National Wildlife Federation, the Audubon Society, and other groups with which I have worked—and I add that they disagree with me often and vigorously, but they are reasonable about it and never abuse the process in the manner we are now witnessing.

In fact, much of the last two decades has been spent working with these organizations to shape natural resource policy. These fruitful efforts in Oregon were embodied in the two Roadless Area Review and Evaluation studies [RARE I and RARE II], a wilderness-bill-a-year for 20 years, and various other natural resource debates.

During my years in this body I have had the pleasure of drafting and/or assisting in the passage of several pieces of resource legislation relating to Oregon. These efforts include the Oregon Dunes National Recreation Area, the Hells Canyon National Recreation Area, the Yaquina Head Recreation and Research Area, the Cascade Head National Research Area, all four of Oregon's Wild and Scenic Rivers, additions to Crater Lake National Park, the prohibition of mining in Crater Lake National Park, the buyout of mining claims in the Three Sisters Wilderness, the John Day Fossil Beds National Monument, the Columbia River Gorge National Scenic Area, the quadrupling of Oregon's Federal wilderness, and I will soon introduce a major Wild and Scenic Rivers bill for my home State.

The environmental process that has been established through this record of coalition and consensus-building is now being abused through frivolous appeals and lawsuits, and the predictable resource allocation that provides community stability for scores of timber-dependent economies is constantly jeopardized.

But in this instance, Mr. President, the interests of the majority are being subjugated to those of a fringe minority. In this instance, a system I still regard as workable and viable is being misused in a way that has nothing to do with merit or substance. Most challenges to these timber sales have failed on their merits. And having failed on the merits, the challenges are now being directed at an already overburdened agency on procedural grounds. One could quickly draw the conclusion that these appeals have been offered to delay, distract, and harass. Sincere attempts to improve forest management are one thing, but sabotage of the process is another.

I have labored for many years to ensure that the legitimate claims of concerned environmentalists are heard and acted upon. During a 1985 crisis involving the Mapleton Ranger District of the Siuslaw National Forest, Congress authorized the substitution of reoffered timber sales for new green sales which were halted because of a court injunction. The purpose of this action was to ensure a smooth flow of raw material to timber-dependent communities while still ensuring that legitimate environmental concerns about new sales on lands without EIS's were protected.

In 1986, in response to yet another challenge to timber sales—this time on the BLM's Medford District—Congress again provided for the agency to move reoffered sales forward while protecting the appeal rights of concerned environmentalists.

The theme has been consistent: the protection and balancing of competing legitimate interests in environmental disputes.

I must admit that I cannot understand the motive for this latest attack on western Oregon's timber sale program. If the Forest Service or the Congress had pushed through the irrational harvesting of public timber on lands that had not been subjected to close planning, I might understand. But this is not the case. Over half of the sales being reoffered for sale under the 1984 Timber Contract Payment Modification Act have been modified for environmental considerations. That has been done in spite of the fact that the land base remains narrower than it should be because lands released for multiple use management under the 1984 Omnibus Oregon Wilderness Act have not yet been put into appropriate production. The new forest plans, once implemented in final form, will establish the appropriate land allocations for those released lands.

Mr. President, this brief recounting of natural resource policy in Oregon over the last 20 years illustrates that cooperation and reason are the two crucial elements for the successful resolution of difficult public land conflicts. Accordingly, I encourage those interested in resource protection issues to choose this proven path which leads to fairness, equity, and wise management, and to reject those irresponsible methods which lack respect and civility for the process so many have worked so long to create.