We don't treat any other resource that way—not coal, not water, not oil or gas. No State allows mining on its land without some royalty. No private landowner tolerates it. No foreign nation. ''Only in America,'' as they say, would we give away billions of dollars in gold and ask nothing for the taxpayers who own it.

But it isn't fair to say we get nothing from the mining activity. The mining industry has left behind a legacy of environmental destruction—including hundreds of thousands of abandoned, toxic and contaminated minesites, that threaten our environment, our public health and our public lands and wildlife.

Fifty-nine sites on the Superfund list are the result of hardrock mining. According to the Environmental Protection Agency, mine wastes have polluted more than 12,000 miles of our Nation's waterways and 180,000 acres of lakes and reservoirs. At least 50 billion tons of untreated, unreclaimed mining wastes—including arsenic, cadmium, copper, cyanide, iron, lead, mercury, sulphur, and zinc-contaminate public and private lands. The costs of cleanup is in the tens of billions of dollars.

Those of us who represent western States know there are special problems resulting from past mining activity.

In California, the inactive Iron Mountain mine discharges one-fourth of the entire national discharge of copper and zinc to surface waters from industrial and municipal sources, according to the EPA. The city of Redding can no longer use the Sacramento River for drinking water because of the contamination levels.

In Colorado, a father and son were riding their motorbikes cross-county when they plunged into an unmarked abandoned mine. The son was killed.

In Nevada, long-abandoned Comstock Lode gold and silver mines are leaching heavy metals into the Carson River, not far from Lake Tahoe.

In Montana, windblown heavy metal particulates from old mine tailings forced official to replace high-school baseball fields around Butte.

In Idaho, EPA found lead levels in the area downwind from the abandoned Bunker Hill silver mine to be 30 times higher than the maximum levels deemed ''safe.'' Nearly all of the 179 children living within 1 mile of the site have potentially brain-impairing lead levels in their blood.

This is the legacy—not only of an antiquated mining program that let mining companies run amok, but of a Congress that has ignored the mounting cost to taxpayers, to the environment, and to public health. It has to end.

The bills Senator DALE BUMPERS and I are introducing today will raise $1.5 billion directly from the industry that has profited from the mining program in order to clean-up the legacy of the mining program. Our bills will: Impose a 5-percent net smelter return royalty on all hard rock minerals mined from public lands to that taxpayers will—finally—receive a fair return on the extraction of hard rock minerals from public lands; impose a reclamation fee on all hard rock minerals mined from lands patented under the 1872 mining law; and close the depletion allowance loophole so that mining operators can no longer take a tax credit for depleting taxpayers' mineral wealth.

Overhaul of the mining law is long overdue. Powerful special interests, with the help of a few members of Congress, have literally lined their pockets with gold. And the taxpayer and the environment have paid the price. These bills will finally begin to give a fair return to the taxpayer and restore despoiled public lands.

Why might we succeed in 1997 were we have failed before? Because, I believe, the public is demanding an end to the multi-billion dollar orgy of corporate welfare that swells our deficit every year. Because the Clinton administration has targeted the mining program for reform in its 1998 budget. Because we are winning bipartisan support for ending outdated and expensive Federal subsidies. And because, even in the mining States of the West, four out of five Americans support mining reform.

It is a disgrace that on the eve of the 21st century, taxpayers and the environment continue to be ripped off by an antiquated law from the 19th century. If Congress is serious about reducing wasteful and unjustified corporate welfare, we should begin by reforming the mining law of 1872.

NOT WHOM YOU TELL, BUT HOW YOU KNOW

HON. NORMAN D. DICKS

OF WASHINGTON

IN THE HOUSE OF REPRESENTATIVES

Thursday, February 13, 1997

Mr. DICKS. Mr. Speaker, several Members of the House of Representatives, including the chairman of the Republican Congressional Campaign Committee, have made some rather hasty public statements concerning the recorded cellular telephone call involving Speaker GINGRICH and all of its legal ramifications. Many claims have been made about the laws that are applicable to disclosure of confidential information, but I am concerned there has been insufficient legal research into the statutes involved and into the legal precedents in existence. In this regard, Mr. Speaker, I am submitting for the RECORD an analysis that was printed in this week's National Law Journal by an expert first amendment lawyer whose practice involved areas of newsgathering, publishing, and broadcasting. In this article, Victor A. Kovner takes issue with an assertion made by allies of Speaker GINGRICH who were involved in the recorded conversation. Specifically, the charge was made that forwarding and publishing information from such a conversation was a felony. In this article, Mr. Kovner explores the Federal wiretap statute (18 U.S.C. 2510 et seq.) as it pertains to recorded conversations and concludes that ''there is scant authority for finding a criminal violation based on mere disclosure by a person who had no role in the underlying recording.''

I urge my colleagues to carefully consider Mr. Kovner's compelling reasoning as presented in the National Law Journal.

[From the National Law Journal, Feb. 10, 1997]

NOT WHOM YOU TELL, BUT HOW YOU KNOW

(By Victor A. Kovner)

Congressman Jim McDermott has ''committed a felony,'' New York Rep. Bill Paxon charged at his initial press conference, referring to the alleged delivery by Mr. McDermott, D-Wash., of the tape of the Newt Gingrich strategy conference to the New York Times and Atlanta Journal-Constitution. It is sad to see a fine career ''disintegrate,'' said Mr. Paxon.

Strong words, coming as they did from the chair of the Republican Congressional Campaign Committee and a participant in the taped conversation in which, as later found by Special Counsel James M. Cole, Speaker Gingrich violated his promise to the Ethics Committee not to orchestrate an effort to minimize the charges brought against him.

But was there any basis for such a serious charge by Mr. Paxon? Perhaps the Florida couple who overheard the conversation on their police scanner (equipment that has been for years widely and lawfully available at retail outlets around the country) may have technically violated the Federal Wiretap Statute, 18 U.S.C. 2510 et seq., which was amended in recent years to cover interception of cellular and cordless calls, as well as regular phone calls. Congress apparently intended to provide for an expectation of privacy with the amendments, and the 8th U.S. Circuit Court of Appeals agreed that cordless phone calls made before the amendments did not have a justifiable expectation of privacy. *Tyler v. Berodt,* 877 F.2d 705 (8th Cir. 1989), cert. denied, 110 S. Ct. 723 (1990).

What about the role of Mr. McDermott, who reportedly sent copies to the newspapers? Assuming those reports are accurate (he has declined to define the role, if any, he played), the Paxon theory goes, Mr. McDermott violated the portion of the statute that bars disclosure of an illegal tape or its contents.

This theory proves too much, for if Mr. McDermott's alleged conduct was criminal, why not that of the New York Times or the Atlanta Journal-Constitution? The statute in question makes unlawful not only the unauthorized interception or recording, but also disclosure ''knowing or having reason to know'' that the recording was unlawful. 18 U.S.C. 2511(1)(c). Why Bill Paxon presumed that Jim McDermott had such knowledge while the newspapers, which examined the tape carefully and transcribed it in its entirety, did not, is unclear. Notably, Mr. Paxon did not charge either newspaper with criminal conduct.

Though, in the context of civil claims for damages, courts have taken various views of the statute's reach, there is scant authority for finding a criminal violation based on mere disclosure by a person who had no role in the underlying recording. In 1993 a number of people associated with Sen. Charles Robb, D-Va., were fined for distributing illegal tapes of personal calls of then-Lt. Gov. Douglas Wilder. Unlike the serendipitous recording of the Gingrich strategy conference, the Wilder tapes were made by a person who had systemically and unlawfully recorded hundreds of cellular calls.

PROTECTIVE PRECEDENT

But any attempt to prosecute people who had no involvement in or knowledge of the unlawful recording, such as Mr. McDermott or the newspapers—neither of whom had any prior association of any kind with the Florida couple—would face serious constitutional problems. In *Landmark Communications* v. *Virginia,* 435 U.S. 829 (1978), the Supreme Court held that the First Amendment prohibits criminal punishment for disclosure of confidential judicial disciplinary proceedings by nonparticipants in the proceedings. The mere publication of truthful information, even though confidential by law, was found protected.

In dismissing a claim for invasion of privacy by a rape victim whose identity had been inadvertently but unlawfully released to a reporter by an employee of a sheriff's office, the Supreme Court later noted, ''We hold only that where a newspaper publishes

truthful information which it has lawfully obtained, punishment may lawfully be imposed, if at all, only when narrowly tailored to a state interest of the highest order.'' *Florida Star* v. *B.J.F.*, 490 U.S. 524, 109 S. Ct. 2603 (1989).

Given the extraordinary newsworthiness of Speaker Gingrich's violation of a commitment he had just made as part of his plea bargain, it is hard to imagine the presence of a state interest of the ''highest order'' warranting the institution of criminal proceedings against Mr. McDermott or the newspapers.

In a case similar to Landmark Communications, a California appellate court has written, ''[S]tate law cannot impose criminal or civil liability upon a nonparticipant for breach of the confidentiality required by [law].'' *Nicholson* v. *McClatchy Newspapers*, 177 Cal. App. 3d 509,223 Cal. Rptr. 58 (Cal. App. 3d Dist. 1986).

As a matter of common sense, the participants in the recorded conversation plainly had a diminished expectation of privacy when Rep. John A. Boehner, R-Ohio, joined the conversation on his car phone. Surely the others were aware that he was on a car phone. Surely they were aware that cellular phones may be recorded by nonparticipants with equipment that has been sold lawfully in thousands of stores throughout the country. If Speaker Gingrich was aware he was participating in a nonsecure communication and was then caught violating his commitments to the Ethics Committee, he and Ohio Republican Representative Boehner are principally to blame. Under these circumstances, any claim that the conduct of Jim McDermott (or the newspapers) was felonious would be reckless and irresponsible.

INTRODUCTION OF THE NATIONAL CLEAN WATER TRUST FUND ACT OF 1997

HON. PETER J. VISCLOSKY

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Thursday, February 13, 1997

Mr. VISCLOSKY. Mr. Speaker, today, I am introducing legislation to expedite the cleanup of our Nation's waters. This bill, the National Clean Water Trust Fund Act of 1997, would create a trust fund established from fines, penalties, and other moneys collected through enforcement of the Clean Water Act to help alleviate the problems for which the enforcement actions were taken. This legislation is identical to a measure I introduced with bipartisan support in the last Congress, and it was the model for a amendment that received 156 votes in 1995 during House consideration of legislation to reauthorize the Clean Water Act.

Currently, there is no guarantee that fines or other moneys that result from violations of the Clean Water Act will be used to correct water quality problems. Instead, some of the money goes into the general fund of the U.S. Treasury without any provision that it be used to improve the quality of our Nation's waters.

I am concerned that Environmental Protection Agency [EPA] enforcement activities are extracting large sums of money from industry and others through enforcement of the Clean Water Act, while we ignore the fundamental issue of how to pay for the cleanup of the water pollution problems for which the penalties were levied. If we are really serious about ensuring the successful implementation of the Clean Water Act, we should put these enforcement funds to work and actually clean up our Nation's waters. It does not make sense for scarce resources to go into the bottomless pit of the Treasury's general fund, especially if we fail to solve our serious water quality problems due to lack of funds.

Specifically, my bill would establish a national clean water trust fund within the U.S. Treasury for fines, penalties, and other moneys, including consent decrees, obtained through enforcement of the clean Water Act that would otherwise be placed into Treasury's general fund. Under my proposal, the EPA Administrator would be authorized to prioritize and carry out projects to restore and recover waters of the United States using the funds collected from violations of the Clean Water Act. However, this legislation would not preempt citizen suits or in any way preclude EPA's authority to undertake and complete supplemental environmental projects [SEP's] as part of settlements related to violations of the Clean Water Act and/or other legislation.

For example, in 1993, Inland Steel announced a $54.5 million multimedia consent decree, which included a $26 million SEP and a $3.5 million cash payment to the U.S. Treasury. I strongly support the use of SEP's to facilitate the cleanup of serious environmental problems, which are particularly prevalent in my congressional district. However, my bill would dedicate the cash payment to the Treasury to the clean water trust fund. The bill further specifies that remedial projects be within the same EPA region where enforcement action was taken. Northwest Indiana is in EPA region 5, and there are 10 EPA regions throughout the United States. Under my proposal, any funds collected from enforcement of the Clean Water Act in region 5 would go into the national clean water trust fund and, ideally, be used to clean up environmental impacts associated with the problem for which the fine was levied.

To illustrate how a national clean water trust fund would be effective in cleaning up our Nation's waters, I would like to highlight the magnitude of the fines that have been levied through enforcement of the Clean Water Act. Nationwide, in fiscal year 1996, EPA assessed $85 million in penalties for violations of the Clean Water Act.

My bill also instructs EPA to coordinate its efforts with the States in prioritizing specific cleanup projects. Finally, to monitor the implementation of the national clean water trust fund, I have included a reporting requirement in my legislation. One year after enactment, and every 2 years thereafter, the EPA Administrator would make a report to Congress regarding the establishment of the trust fund.

My legislation has garnered the endorsement of several environmental organizations in northwest Indiana, including the Grand Calumet Task Force, the Indiana Division of the Izaak Walton League, and the Save the Dunes Council. Further, I am encouraged by the support within the national environmental community and the Northeast-Midwest Congressional Coalition for the concept of a National Clean Water Trust Fund. I would also like to point out that, in a 1992 report to Congress on the Clean Water Act enforcement mechanisms, and EPA workgroup recommended amending the Clean Water Act to establish a national clean water trust fund.

In reauthorizing the Clean Water Act, we have a unique opportunity to improve the quality of our Nation's waters. The establishment of a national clean water trust fund is an innovative step in that direction. By targeting funds accrued through enforcement of the Clean Water Act—that would otherwise go into the Treasury Department's general fund—we can put scarce resources to work and facilitate the cleanup of problem areas throughout the Great Lakes and across this country. I urge my colleagues to support this important legislation.

ADDRESS TO THE PARLIAMENT OF THE NAGORNO-KARABAGH REPUBLIC

HON. FRANK PALLONE, JR.

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Thursday, February 13, 1997

Mr. PALLONE. Mr. Speaker, as the cochair of the Congressional Caucus on Armenian Issues, I traveled to the Republics of Armenia and Nagorno-Karabagh in late January to learn more about the courageous struggle of the Armenian people as they try to build self-sustaining economies and protect their land and freedom.

In Armenia, I met with government officials to discuss the role of the United States and Armenia in preserving the security and economic viability of Nagorno-Karabagh, where peace is threatened by the territorial aggression of Azerbaijan.

Earlier in the week, on January 27, I was most honored to be the first Member of Congress from the United States to speak before the Nagorno-Karabagh Parliament. I am providing my colleagues with a text of the speech in hopes that it will help educate them to the serious problems faced by the Armenian people and enable Members to cast votes in the future that could ease the suffering in that troubled part of the world.

Mr. President, Mr. Foreign Minister, Mr. Chairman and ladies and gentlemen.

It is a great honor for me to address the elected legislature of the Republic of Nagorno-Karabagh. As an elected legislator myself, I see you as my colleagues and friends, fellow-Parliamentarians and fellow-democrats. Yet, to my deep regret, your service to your homeland is not generally granted the same recognition and respect that my status as an elected official of my country grants me around the world. This situation must change. You have earned the right to be accorded the respect of the international community as the legitimate representatives of your land and your people.

I hope that my visit to Karabagh, and especially my presence in your legislative chamber today, will contribute in some small way to a growing international recognition that the Republic of Nagorno-Karabagh is a reality.

Just about one year ago today, I had the privilege of meeting with President Kocharian and Foreign Minister Ghoukasian during their visit to Washington. While the President and Foreign Minister were accorded meetings with Members of Congress, I regret that they were not accorded the type of official welcome from the U.S. Administration that they deserve. Despite the lack of official recognition, the visit of the President and Foreign Minister did a great deal to advance the cause of the Republic of Nagorno-Karabagh, solidifying support among the Armenian-American community,