

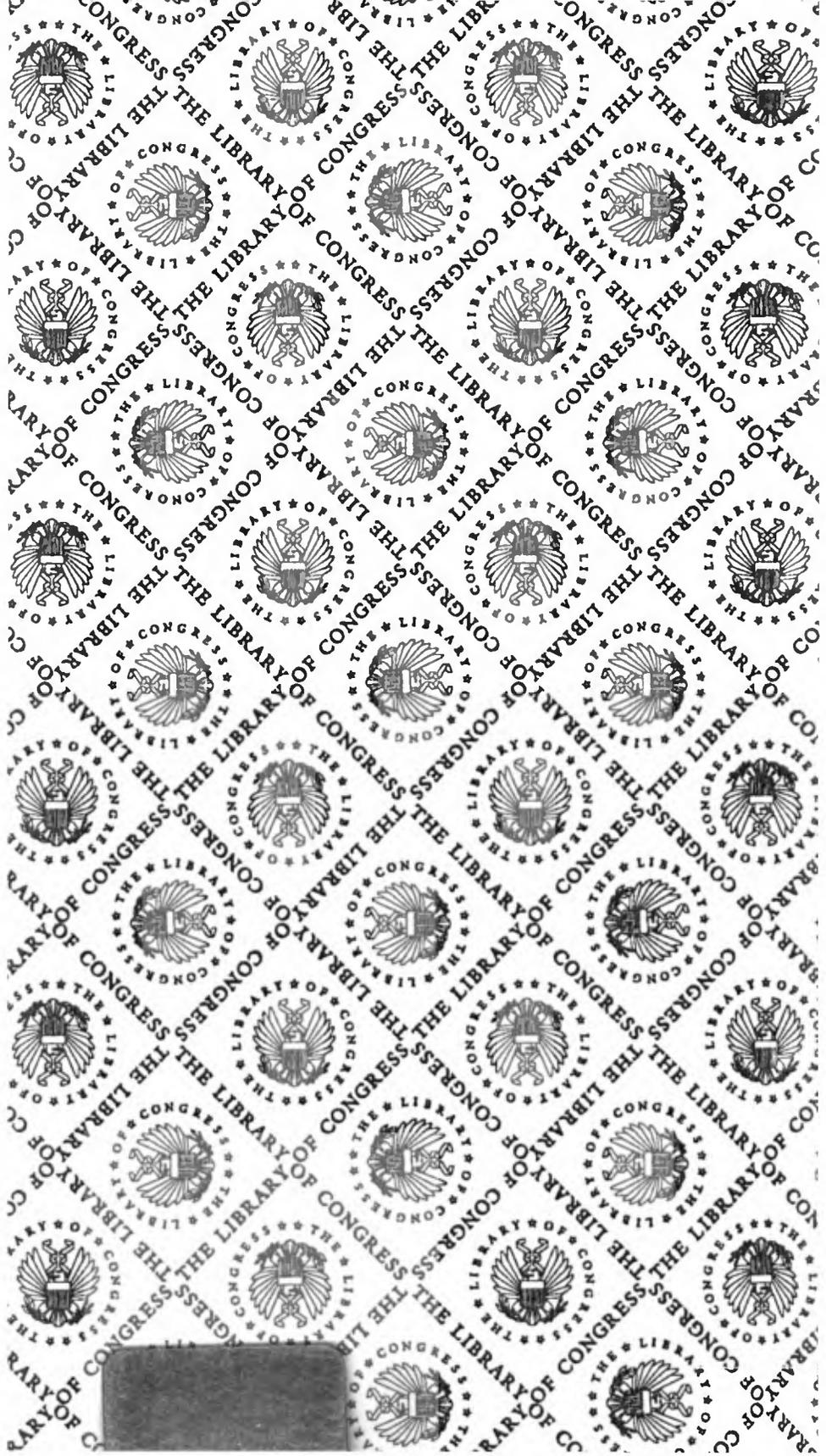
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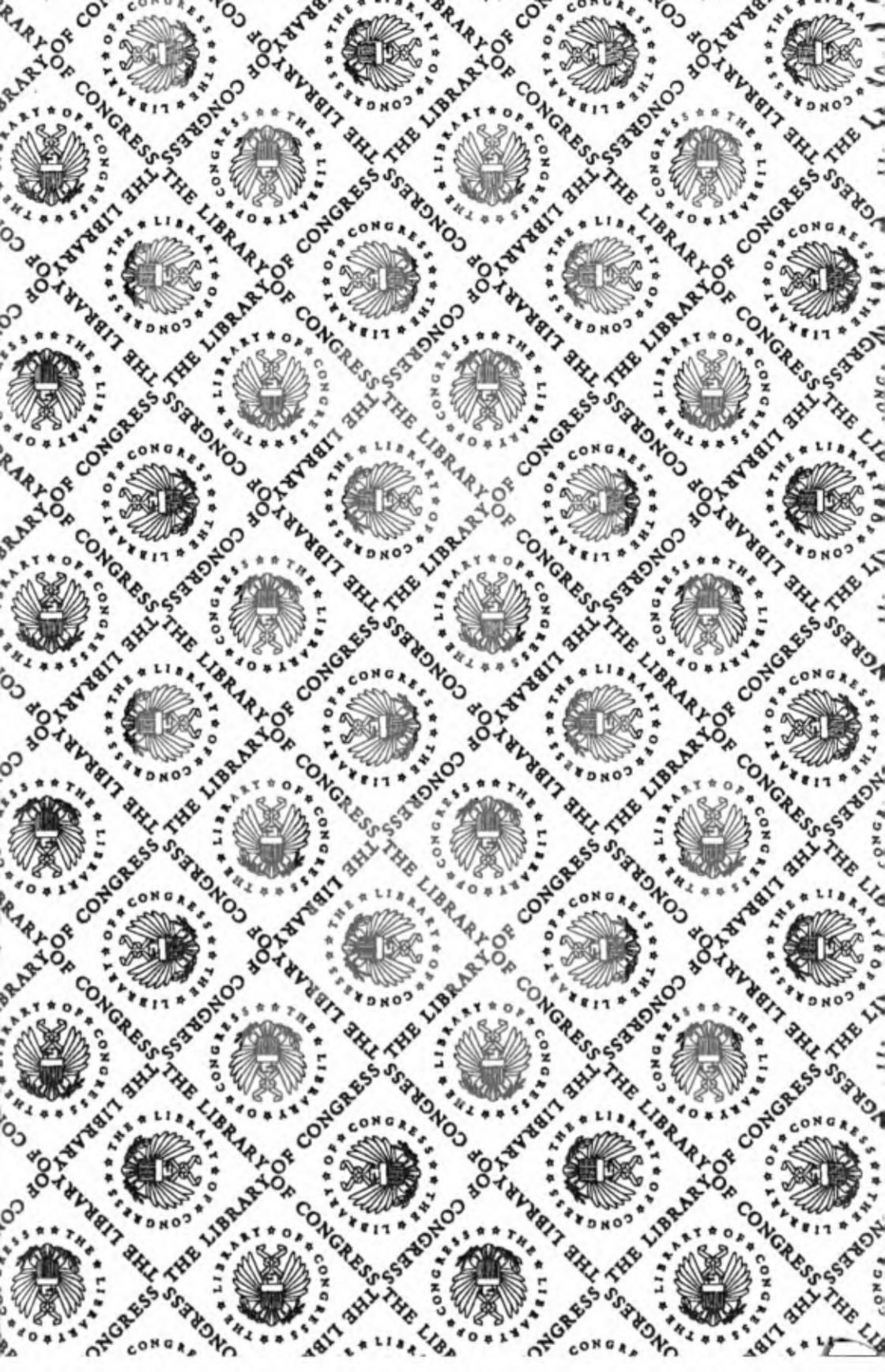
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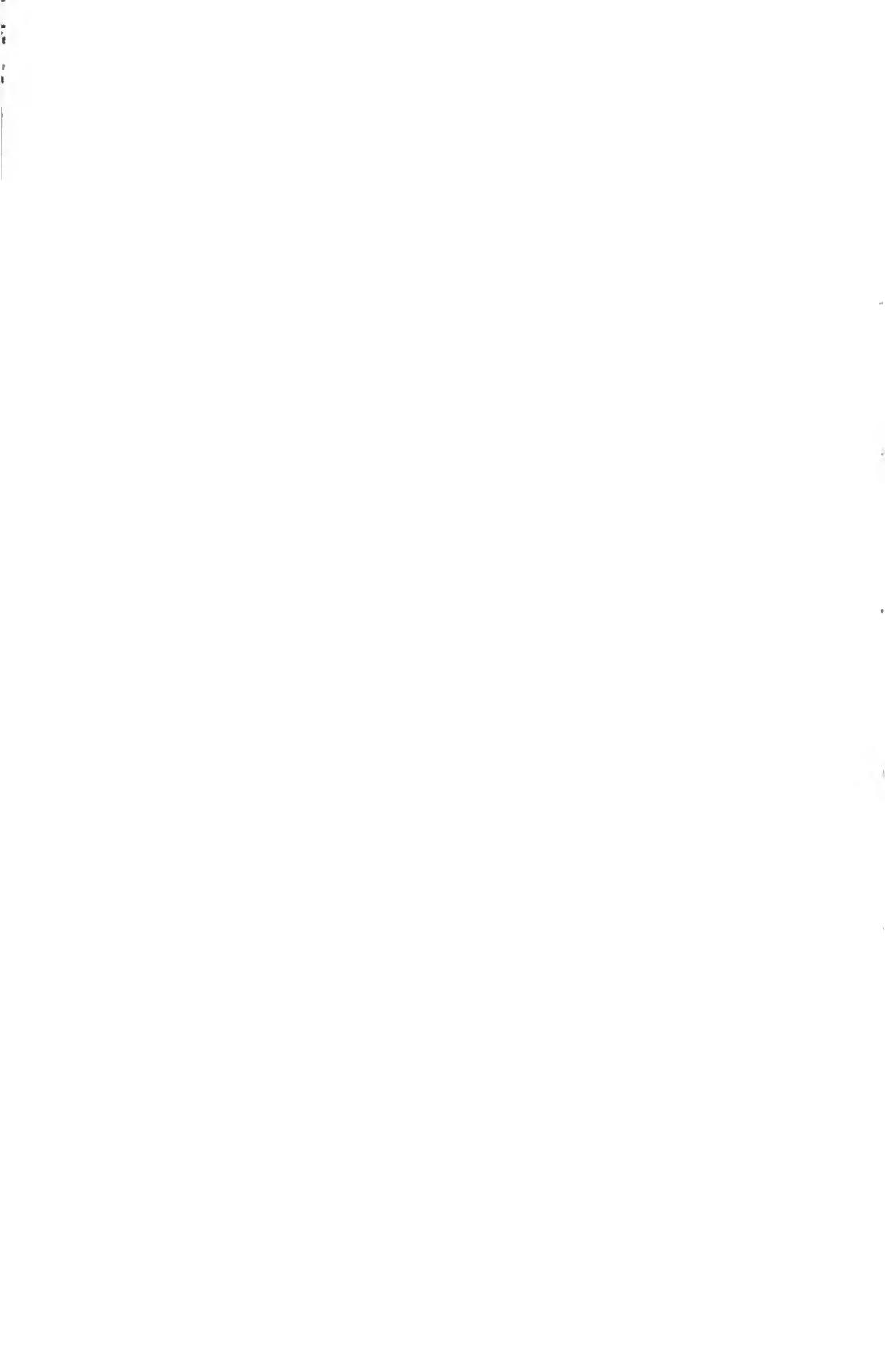
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**PUNISHING DEPICTIONS OF ANIMAL CRUELTY  
AND THE FEDERAL PRISONER HEALTH CARE  
CO-PAYMENT ACT OF 1999**

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**HEARING**  
BEFORE THE  
SUBCOMMITTEE ON CRIME  
OF THE  
COMMITTEE ON THE JUDICIARY  
HOUSE OF REPRESENTATIVES  
ONE HUNDRED SIXTH CONGRESS



FIRST SESSION  
ON  
**H.R. 1887 and H.R. 1349**

SEPTEMBER 30, 1999

**Serial No. 39**



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# **PUNISHING DEPICTIONS OF ANIMAL CRUELTY AND THE FEDERAL PRISONER HEALTH CARE CO-PAYMENT ACT OF 1999**

**THURSDAY, SEPTEMBER 30, 1999**

**HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON CRIME,  
COMMITTEE ON THE JUDICIARY,  
*Washington, DC***

The subcommittee met, pursuant to call, at 1:30 p.m., in Room 2226, Rayburn House Office Building, Hon. Bill McCollum [chairman of the subcommittee] presiding.

Present: Representatives Bill McCollum, Asa Hutchinson, Robert Scott and Sheila Jackson Lee.

Also present: Representative Elton Gallegly

Staff present: Glenn R. Schmitt, Chief Counsel; Bobby Vassar, Minority Counsel; and Veronica Eligan, Staff Assistant.

## **OPENING STATEMENT OF CHAIRMAN McCOLLUM**

Mr. McCOLLUM. This hearing, the Crime Subcommittee will come to order. I want to thank everybody for being here today.

We have two important bills to consider, two really very different bills. Both deal with issues of criminal law or corrections that have not previously been considered by the Subcommittee on Crime.

The first one we are going to consider today is H.R. 1887, a bill to punish the depiction of animal cruelty. This bill was introduced by my good friend, Congressman Elton Gallegly, a Member of the Judiciary Committee, in response to information he received from law enforcement authorities and prosecutors in his district that they had encountered an underground business which sells videos and other depictions of animals being tortured and killed by women.

These videos depict what is unquestionably an act of animal cruelty, punishable under the law of every State. As I understand it, the people who buy these videos have an unusual sexual fetish in which they are aroused by watching living things being tortured and crushed to death. As part of the allure of these depictions, the women killing the animals in many of these depictions wear high heeled or stiletto shoes.

Because the identity of the persons inflicting the torture in these depictions is often unknown, prosecutors have found it difficult to use State laws to punish those who make the videos. And because there often is no way to prove where or when the depictions were

produced, defendants have been able to avail themselves of jurisdictional and statute of limitation defenses to avoid conviction.

H.R. 1887 would make it a crime to create, sell, or possess any depiction of animal cruelty with the intent that it be placed in interstate commerce for commercial gain. The term "depiction of animal cruelty" is defined in the bill to cover most forms of visual images and sound recordings where an animal is being maimed, mutilated, tortured, wounded, or killed in a manner that violates the laws of the State in which the creation, sale, or possession takes place. Mere possession of this material would not be made illegal, rather, only possession with intent to sell in interstate commerce for commercial gain would be prohibited.

I must confess that until Representative Gallegly brought this issue to my attention I had never heard of any of these types of videos. But this problem should not be underestimated. Last Sunday night, the ABC television program "The Practice", the winner of this year's Emmy award for the best television drama, featured a character with a fetish to which these videos appeal. Other characters in the show made mention of the underground industry that sells depictions of this torture and killing.

I think it is entirely appropriate we consider the bill today, in part for the interest that we all have in preventing harm to animals. But we also know that those who commit the most violent crimes and especially those who commit murders often have progressed to that point after first killing animals. Anything we can do to prevent them from getting access to materials that might encourage this desire might make a difference in the long run. The one thing that these depictions have in common is that they are sent through interstate commerce, over the internet, through the mails, and by common carrier. Congress has the clear power to regulate interstate commerce and so it is appropriate we consider the bill here today.

At the same time we want to make sure that we do not chill forms of speech that should be protected. For example, we should consider whether the bill will unintentionally bring within its reach education programs that might depict a bull fight as part of the native culture of Spain or illustrate the illegal activities of elephant poachers in Africa. I know Congressman Gallegly shares this concern and intends to offer an amendment at the mark up of this bill to address that concern and I look forward to working with him to strike the right balance in this regard.

[The bill, H.R. 1887, follows:]

106TH CONGRESS  
1ST SESSION

## H. R. 1887

To amend title 18, United States Code, to punish the depiction of animal cruelty.

### IN THE HOUSE OF REPRESENTATIVES

MAY 20, 1999

Mr. GALLEGLY (for himself, Mr. SHAYS, Mrs. MORELLA, Mr. BROWN of California, and Mr. LIPINSKI) introduced the following bill; which was referred to the Committee on the Judiciary

## A BILL

To amend title 18, United States Code, to punish the depiction of animal cruelty.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

### SECTION 1. PUNISHMENT FOR DEPICTION OF ANIMAL CRUELTY.

(a) IN GENERAL.—Chapter 3 of title 18, United States Code, is amended by adding at the end the following:

#### “§ 48. Depiction of animal cruelty

“(a) CREATION, SALE, OR POSSESSION.—Whoever knowingly creates, sells, or possesses a depiction of animal cruelty with the intention of placing that depiction in interstate or foreign commerce for commercial gain, shall be fined under this title or imprisoned not more than 5 years, or both.

“(b) DEFINITIONS.—In this section—

“(1) the term ‘depiction of animal cruelty’ means any visual or auditory depiction, including any photograph, motion-picture film, video recording, electronic image, or sound recording of conduct in which a living animal is intentionally maimed, mutilated, tortured, wounded, or killed, if such conduct is illegal under Federal law or the law of the State in which the creation, sale, or possession takes place, regardless of whether the maiming, mutilation, torture, wounding, or killing took place in the State; and

“(2) the term ‘State’ means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any other commonwealth, territory, or possession of the United States.”.

(b) CLERICAL AMENDMENT.—The table of sections for such chapter is amended by adding at the end the following:

“48. Depiction of animal cruelty.”.

○

The second bill that we will consider in today’s hearing is H.R. 1349, the Federal Prisoner Health Co-payment Act. This bill would require the Bureau of Prisons to assess and collect a co-payment fee from inmates for the health care services provided to them. The fee would be collected from any inmate who requests a visit with a health care provider. If one inmate is injured by another inmate, the other inmate would be assessed the fee for the injured inmate’s treatment.

The bill also specifies that fees are not to be assessed for preventive health care services provided by the Bureau of Prisons. And the bill also states that inmates are not to be refused treatment because they are insolvent or otherwise unable to pay the fee to be assessed under the bill. While the bill does not specify the amount of the fee to be assessed, it would require that it not be less than \$2.

Currently, inmates in the Federal prison system receive free medical care from Bureau of Prisons employees and the Public Health Services personnel assigned to each institution. Additionally, the Bureau of Prisons maintains contracts with medical specialists in private practice to provide care that cannot be provided by the Bureau of Prisons employees and the Public Health Service

personnel. For the most seriously ill inmates, the Bureau of Prisons operates several Federal Medical Centers at which are located at fully accredited hospitals.

Most American citizens have to pay nominal co-payments when they visit their own doctors. This is because most managed health care plans are trying to prevent what economists call the "moral hazard" problem, in other words, the fact that people will likely consume too much of any good when they do not believe they have to pay for it. The issue before us today is whether inmates in our Federal prisons consume too much health care because it is free and whether, if so, imposing a nominal co-payment on them will solve that problem.

I welcome all of our witnesses this afternoon. I think it will be an interesting hearing on both bills. They raise unusual and interesting questions and important questions and I hope my colleagues will be asking those questions of you. I am sure they will be.

[The bill, H.R. 1349, follows:]

106TH CONGRESS  
1ST SESSION

## H. R. 1349

To amend title 18, United States Code, to combat the overutilization of prison health care services and control rising prisoner health care costs.

### IN THE HOUSE OF REPRESENTATIVES

MARCH 25, 1999

Mr. SALMON (for himself, Mr. SHOWS, Mr. SMITH of New Jersey, Mr. MARTINEZ, Mr. COBURN, Mr. TAYLOR of Mississippi, Mr. SCHAFFER, Mr. HAYWORTH, Mr. NETHERCUTT, Mr. ENGLISH, Mr. GILMAN, Mr. COOK, Mr. BARTON of Texas, Mr. FOLEY, and Mr. CASTLE) introduced the following bill; which was referred to the Committee on the Judiciary

## A BILL

To amend title 18, United States Code, to combat the overutilization of prison health care services and control rising prisoner health care costs.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

### SECTION 1. SHORT TITLE.

This Act may be cited as the "Federal Prisoner Health Care Co-payment Act of 1999".

### SEC. 2. HEALTH CARE FEES FOR PRISONERS IN FEDERAL INSTITUTIONS.

(a) IN GENERAL.—Chapter 303 of title 18, United States Code, is amended by adding at the end the following:

#### "§ 4048. Fees for health care services for prisoners

"(a) DEFINITIONS.—In this section—

"(1) the term 'account' means the trust fund account (or institutional equivalent) of a prisoner;

"(2) the term 'Director' means the Director of the Bureau of Prisons;

"(3) the term 'health care provider' means any person who is—

"(A) authorized by the Director to provide health care services; and

"(B) operating within the scope of such authorization;

"(4) the term 'health care visit' means a visit, as determined by the Director, by a prisoner to an institutional or noninstitutional health care provider; and

"(5) the term 'prisoner' means—

"(A) any individual who is incarcerated in an institution under the jurisdiction of the Bureau of Prisons; or

"(B) any other individual, as designated by the Director, who has been charged with or convicted of an offense against the United States.

**"(b) FEES FOR HEALTH CARE SERVICES.—**

"(1) **IN GENERAL.**—The Director, in accordance with this section and with such regulations as the Director shall promulgate to carry out this section, may assess and collect a fee for health care services provided in connection with each health care visit requested by a prisoner.

"(2) **EXCLUSION.**—The Director may not assess or collect a fee under this section for preventative health care services, as determined by the Director.

**"(c) PERSONS SUBJECT TO FEE.**—Each fee assessed under this section shall be collected by the Director from the account of—

"(1) the prisoner receiving health care services in connection with a health care visit described in subsection (b)(1); or

"(2) in the case of health care services provided in connection with a health care visit described in subsection (b)(1) that results from an injury inflicted on a prisoner by another prisoner, the prisoner who inflicted the injury, as determined by the Director.

**"(d) AMOUNT OF FEE.**—Any fee assessed and collected under this section shall be in an amount of not less than \$2.

**"(e) NO CONSENT REQUIRED.**—Notwithstanding any other provision of law, the consent of a prisoner shall not be required for the collection of a fee from the account of the prisoner under this section.

**"(f) NO REFUSAL OF TREATMENT FOR FINANCIAL REASONS.**—Nothing in this section may be construed to permit any refusal of treatment to a prisoner on the basis that—

"(1) the account of the prisoner is insolvent; or

"(2) the prisoner is otherwise unable to pay a fee assessed under this section.

**"(g) USE OF AMOUNTS.—**

"(1) **RESTITUTION OF SPECIFIC VICTIMS.**—Amounts collected by the Director under this section from a prisoner subject to an order of restitution issued pursuant to section 3663 or 3663A shall be paid to victims in accordance with the order of restitution.

"(2) **ALLOCATION OF OTHER AMOUNTS.**—Of amounts collected by the Director under this section from prisoners not subject to an order of restitution issued pursuant to section 3663 or 3663A—

"(A) 75 percent shall be deposited in the Crime Victims Fund established under section 1402 of the Victims of Crime Act of 1984 (42 U.S.C. 10601); and

"(B) 25 percent shall be available to the Attorney General for administrative expenses incurred in carrying out this section.

**"(h) REPORTS TO CONGRESS.**—Not later than 2 years after the date of enactment of the Federal Prisoner Co-payment Act of 1999, and annually thereafter, the Director shall transmit to Congress a report, which shall include—

"(1) a description of the amounts collected under this section during the preceding 12-month period (or 24-month period in the case of the initial report); and

"(2) an analysis of the effects of the implementation of this section, if any, on the nature and extent of health care visits by prisoners."

**(b) CLERICAL AMENDMENT.**—The analysis for chapter 303 of title 18, United States Code, is amended by adding at the end the following:

"4048. Fees for health care services for prisoners."

**SEC. 3. HEALTH CARE FEES FOR FEDERAL PRISONERS IN NON-FEDERAL INSTITUTIONS.**

Section 4013 of title 18, United States Code, is amended by adding at the end the following:

**"(c) HEALTH CARE FEES FOR FEDERAL PRISONERS IN NON-FEDERAL INSTITUTIONS.**—Notwithstanding amounts paid under subsection (a)(3), a State or local government may assess and collect a reasonable fee from the trust fund account (or institutional equivalent) of a Federal prisoner for health care services, if—

"(1) the prisoner—

"(A) is confined in a non-Federal institution pursuant to an agreement between the Federal Government and the State or local government; and

"(B) is not indigent;

"(2) the fee—

- "(A) is authorized under State law; and
- "(B) does not exceed the amount collected from State or local prisoners for the same services; and
- "(3) the services—
  - "(A) are provided within or outside of the institution by a person who is licensed or certified under State law to provide health care services and who is operating within the scope of such license;
  - "(B) are provided at the request of the prisoner; and
  - "(C) are not preventative health care services."



Mr. Scott, do you have opening remarks?

Mr. SCOTT. Thank you, Mr. Chairman. I would express my appreciation to you for holding this hearing on issues of Federal inmate responsibility regarding health costs and the sale of videos depicting animal cruelty.

The first issue under consideration today involves the animal cruelty bill involving what are referred to as crush videos. It is my understanding that a market has emerged which features women crushing small animals to death with their feet. The videos include such things as kittens, hamsters and birds taped to the floor while women sometimes barefooted, sometimes in spike heels step on the animals until they die. Remarkably, there are thousands of titles available for sale nationwide, the cost ranging from \$30 to \$100.

While the acts of animal cruelty featured in the video are illegal under many State laws, it is difficult under present laws to get convictions.

First, it is hard to identify the individual in the video because frequently only the person's leg appears in the video.

Second, it is difficult to determine when the act depicted in the video occurred for the purposes of proving that it was done within the statute of limitations. As a result, we are being asked to consider Federal legislation to address the problem.

H.R. 1887 has been introduced for that purpose. The bill will make it a violation of Federal law to knowingly create, sell, or possess a depiction of animal cruelty with the intent of placing that depiction in interstate commerce for commercial gain.

The issue we must consider is whether H.R. 1887 is an appropriate Federal response. The Subcommittee needs to explore whether the bill, as drafted, adequately addresses the specific problem of animal cruelty and whether it is done in a manner that does not violate the first amendment to the Constitution. I am confident that the testimony today will provide answers to these questions.

The second issue under consideration today involves a bill to impose health care co-payments for Federal prisoners. H.R. 1349, the Federal Prisoner Health Care Co-payment Act of 1999 authorizes the Director of Federal Bureau of Prisons to collect a fee of—was it no more than \$2 or at least \$2—at least \$2 from the account of a prisoner for each health care visit made by that prisoner.

While proponents of the bill indicate that its purposes are to prevent inmate abuse of health care visits and to save money, opponents question whether the bill will actually do that and even if it

does, whether the long term negative consequences would outweigh any short term gains.

Prisoner health care is a vital service which the government is required to provide. Prisons, by their very nature, are prolific breeding grounds for the spread and destructive effects of infectious diseases and we have seen this in connection with the AIDS epidemic which ravages many of our prisons and through outbreaks of disease we thought we had under control, such as recent outbreaks of tuberculosis in prisons across the country.

The implications are just as large for prison employees and the public at large as they are for inmates and prison health care is notoriously inadequate generally, so Mr. Chairman, I am sure that we will be able to avoid the consequences of having inmates receive even less access to needed health care.

Again, Mr. Chairman, I thank you for holding the hearing and I look forward to the testimony of the witnesses.

Mr. MCCOLLUM. Thank you very much. I understand Mr. Gallegly has a statement he would like to make and I do not believe there should be a problem as he is a member of the Full Committee, but since we have our subcommittee standards and he is not a member of the subcommittee, I will ask if there is any objection. Without none, you are recognized, Mr. Gallegly.

**STATEMENT OF THE HON. ELTON GALLEGLY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA**

Mr. GALLEGLY. Thank you very much, Mr. Chairman and I appreciate you calling this hearing today on H.R. 1887. As you know, I introduced H.R. 1887 to put a stop to the production and sale of crush videos. These videos feature women crushing small animals to death with their feet. Kittens, hamsters, birds, even monkeys are taped to the floor while the women, sometimes barefooted and sometimes in spiked heels step on the animal until it dies. The videos sell as the Congressman said a minute ago from \$30 to \$100, sometimes even more and there are known to be over 2,000 titles that are available today nationwide.

Many studies have found that individuals who commit violent acts on animals, later commit violent acts on people. Ted Bundy, David Berkowitz, known as the Son of Sam, and Ted Kaczynski, all tortured or killed animals before they started killing people.

The FBI recently stated that children that torture animals should be considered potentially violent and this may be a factor in profiling a child as the next school shooter. By putting an end to these disgusting videos, we can also help stop the sick behavior of these individuals before it involves more serious crimes toward people.

District Attorney Michael Bradbury of Ventura County in my home district, came to me because he cannot prosecute people for crush videos. Today, we will hear from his Deputy District Attorney, Tom Connors and Ms. Susan Creede, an investigator. We also will have a chance to hear them explain why it is difficult to prosecute these cases and why a Federal law is needed.

The bill targets the profits made from promoting illegal cruel acts toward animals. The bill was drafted very narrowly to protect the freedom of speech guaranteed under the first amendment.

Some of the leading constitutional lawyers in the nation have helped me draft the bill.

However, since the bill was originally drafted, we have seen some unforeseen problems of the bill that were brought to my attention and I will introduce a manager's amendment to address these concerns. Today, I have distributed a draft of that to my colleagues and to anyone else who would like to see it.

[The amendment of Mr. Gallegly follows:]

AMENDMENT TO H.R. 1887 OFFERED BY MR. GALLEGLY OF CALIFORNIA

Page 2, after line 4, insert the following:

"(b)EXCEPTION.— Subsection (a) does not apply to any depiction that has serious political, scientific, educational, historical, or artistic value.

Page 2, line 5, strike "(b)" and insert "(c)."

Mr. GALLEGLY. I want to thank the witnesses for being here today, particularly Tom Connors, Susan Creede and certainly one that needs no introduction, Loretta Swit, known for her animal activism and caring for those that cannot care for themselves, for appearing here today and I look forward to their testimony.

For the record, it is my understanding that the ACLU and others have been invited to testify today and express any concerns that they or someone that they might delegate to represent other interests to be here today and it is my understanding that there was no response or their response was that they did not need to be here.

In any event, thank you very much, Mr. Chairman. I yield back the balance of my time.

[The prepared statement of Mr. Gallegly follows:]

PREPARED STATEMENT OF HON. ELTON GALLEGLY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

I introduced H.R. 1887 to put a stop to the production and sale of "crush videos." These videos feature women crushing small animals to death with their feet. Kittens, hamsters, birds, and even monkeys are taped to the floor while the women, sometimes barefooted, and sometimes in spiked heels, step on the animal until it dies. The videos sell for \$30-\$100 and more than two thousand titles are available for sale nationwide.

Many studies have found that individuals who commit violent acts on animals later commit violent acts on people. Ted Bundy, David Berkowitz (the "Son of Sam" murderer), and Ted Kaczynski all tortured or killed animals before they started killing people. The FBI recently stated that children that torture animals should be considered "potentially violent" and this may be a factor in profiling a child as the next school shooter. By putting an end to these disgusting videos, we could also help stop the sick behavior of these individuals before it involves more serious crimes toward people.

District Attorney Michael Bradbury of Ventura County, California, came to me because he cannot prosecute people for "crush videos." Today we will hear from his Deputy District Attorney, Tom Connors, and Ms. Susan Creede, an investigator, who will explain why it is difficult to prosecute these cases and why this federal law is needed.

The bill targets the profits made from promoting illegal cruel acts toward animals. The bill was drafted very narrowly to protect the freedom of speech guaranteed by the First Amendment. Some of the leading constitutional lawyers in the nation helped me draft the bill. However, since the bill was dropped in May, some unforeseen problems of the bill have been brought to my attention. I will introduce a Manager's Amendment to address these concerns. Today, I have distributed a draft of the Manager's Amendment to you.

I want to thank Tom Connors, Susan Creede and Loretta Swit for appearing here today and look forward to their testimony. Thank you Mr. Chairman and I yield back the balance of my time.

AMERICAN HUMANE ASSOCIATION,  
*Washington, DC, September 30, 1999.*

Congressman ELTON GALLEGLY,  
*US House of Representatives, Washington, DC.*

DEAR CONGRESSMAN GALLEGLY: The American Humane Association (AHA) would like to commend your steadfast efforts on behalf of protecting animals. In particular, we would like to thank you for sponsoring HR 1887, legislation to Punish the Depiction of Animal Cruelty. I would like to take this opportunity to inform you of some far-reaching activities we have undertaken to bring about awareness between animal abuse and human violence—what has become labeled “The Link.”

Founded in 1877, AHA through its Children’s Division, has worked for over a century on issues involving troubled and at-risk youth. Today, it is a nationwide association of child welfare professionals, public and private social service agencies, medical and mental health professionals, as well as educators, researchers, judicial and law enforcement professionals and child advocates.

Our efforts began back in 1992 when ARA sponsored the first-ever conference on the Link entitled “Protecting Children and Animals: Agenda for a Non-Violent Future.” This conference not only allowed professionals from the child and animal welfare fields to discuss ways to address the “Link” between animal abuse and human violence but also offered an ideal opportunity to highlight the issue here in Washington. Indeed, in 1994, Representative Tom Lantos (D-CA), upon AHA’s urging, introduced the first ever congressional resolution officially recognizing the link between animal abuse and human violence, including child abuse, youth violence and domestic violence. It was a promising start to our efforts here on Capitol Hill.

In 1997, AHA filed a formal petition with the U.S. Department of Health and Human Services (HHS), asking that the agency conduct further research into the important link between violence to animals and child abuse, as well as its connection to later juvenile delinquency and/or adult criminal behavior towards humans. In the petition, we argued that it is vitally important for child welfare professionals to take animal abuse seriously and to recognize it as a possible indicator of serious family dysfunction, including child maltreatment and domestic violence. Too often the animal and child welfare fields work separately from each other when, in many instances, coordinated action could mean faster intervention and prevention efforts.

This petition was supported by several members of Congress from both political parties and its release coincided with a well attended press conference in the U.S. Capitol that announced AHA’s ground-breaking national initiative, the Campaign Against Violence. Congressional staff, HHS personnel and the national media all showed up to find out more about AHA’s work on this important issue, raising awareness within several circles of the Washington establishment. The actress Joan Van Ark came and spoke at the press conference, commenting on the need for more research and commending AHA for its pioneering efforts.

AHA helped organize a congressional briefing last year entitled “Interpersonal Violence and Animal Cruelty.” The briefing jointly sponsored by the Congressional Children’s Caucus, the Congressional Friends of Animals and the Congressional Women’s Caucus, featured a distinguished panel of experts, including AHA’s Suzanne Barnard. The forum was enormously successful in that it brought together people from different disciplines to talk about the cycle of violence. We can no longer turn a blind eye to the role that animal abuse plays in dysfunctional families, sometimes prompting the adult who abuses the family pet to then abuse the spouse or child. Men those children who witness the abuse learn that violence is a way to vent their anger. However the link is played out, the panelists agreed that a more comprehensive response to both children and animals should be developed and should involve not only child and animal welfare professionals but also teachers, lawyers, legislators, physicians, law enforcement and day care work workers. Given that substantiated cases of child maltreatment are too high nationwide (with nearly one million cases reported in 1998), Congress can no longer sit idly by but needs to take a leading role on this issue. The recent spate of school shootings nationwide only added urgency to the case being made.

On another front, AHA worked successfully with both the U.S. Department of Education and the U.S. Department of justice in getting them to insert language in a guidebook that identified cruelty to animals as one of the early warning signs of potential violence by youths. This guidebook, entitled “A Guide to Safe Schools,” was distributed to every school in the country. It offers parents, administrators, teachers and students valuable information on what to look for in troubled students before violence erupts. People that we contacted at these federal agencies were simply amazed that so many of these school shooters shared a history of serious animal abuse before turning on their peers and agreed that animal cruelty was important

enough to be included as a possible warning flag of youth violence. We are making extensive headway on this important issue, yet there is still much work to be done, and AHA is committed to its role in protecting our most vulnerable resources—children and animals.

Again, we applaud your efforts to protect animals. If you need any further information, please don't hesitate to contact me at 202-543-7780.

Sincerely

ADELE DOUGLASS, *Director.*

Mr. McCOLLUM. Well, thank you, Mr. Gallegly and thank you for sponsoring this legislation. We look forward to hearing from our witnesses and you are right, our first one does not probably need an introduction, but she gets one from me. She deserves the honor.

Ms. Loretta Swit is well known as a theater, film, and television actress. She has starred in 25 television movies. Her most recent, *A Killer Among Friends*, was the highest rated television movie of the year. She has starred in six feature films and recently appeared on Broadway in *"The Mystery of Edwin Drood."* She currently stars in the Chicago production of *"Shirley Valentine"* for which she received Chicago's most prestigious theatrical honor. She is most well-known for her long-running role as Major Margaret Houlihan in the television program *"MASH."* For many years, Ms. Swit has been active in humanitarian efforts and has been named Woman of the Year by the Animal Protection Institute of America and by the International Fund for Animal Welfare. She is a board member of Actors and Others for Animals, on whose behalf she appears today and we welcome you.

Tom Connors is the Deputy District Attorney for Ventura County, California. Prior to becoming an attorney, Mr. Connors was a Ventura County Deputy Sheriff for 19 years. After becoming a lawyer, he worked in the Ventura District Attorney's Office for 6 year, prosecuting a number of felony crimes, including those involving sexual assault unit and gangs. In 1998, he was asked to develop an agriculture prosecution unit. That unit is also responsible for prosecuting animal abuse cases. He is a graduate of Ventura College of Law.

Susan Creede has been a police officer for nearly 20 years. She joined the Ventura County Sheriff's Department as a Deputy Sheriff in 1980 and in 1984 was promoted as Senior Deputy and assigned to work sexual assaults. In 1995, she transferred to the Ventura County District Attorney's Office as an investigator and has worked homicide and other major crimes in that office. In 1998, she was assigned the animal crush video investigation as a special interest case.

And with that in mind, I think we will start with Ms. Swit. All of the statements of the witnesses, any written statements you have will be admitted in its entirety to the record, without objection, and I hear none and you may feel free to summarize or give any portion of your testimony

Ms. Swit, welcome.

#### **STATEMENT OF LORETTA SWIT, ACTORS AND OTHERS FOR ANIMALS**

Ms. SWIT. Thank you very much, Mr. Chairman and Members of the Subcommittee. Thank you for the opportunity for me to appear here before you today and I want to thank you, too, Congressman

Elton Gallegly for the leadership you have had in introducing the legislation, bringing to light a disturbing industry that benefits from acts of animal cruelty.

I am testifying today on behalf of the Actors and Others for Animals, the Doris Day Animal League, the American Humane Association, the American Society for the Prevention of Cruelty to Animals, the Humane Society of the United States, the Society for Protective Animal Legislation and the Ark Trust, collectively representing about 10,000 members and supporters.

I am, as you know, a long-time member of the creative arts community, and I can attest to the fact that there is nothing creative or entertaining about the videos we are talking about. In all my years of work in the humane community, I do not think I have ever seen anything approaching the evil that I see in these so-called "crush" videos. The sustained and deliberate torture of any sentient being is unacceptable in any civilized society. And the premeditated, purposeful production of such cruelty, for money, boggles the mind.

As you know, there is increasing evidence of the link between violence to animals and violence to human animals. Special Agent Alan Brantley currently serving in the FBI's Behavioral Science Unit finds animal abuse "prominently displayed in the histories of people who are habitually violent."

Let me share this with you. A study of sex offenders in a psychiatric facility finds that 47.6 percent of rapists and 27.9 percent of child molesters showed cruelty to animals in their childhood or adolescence.

A paper examining the relationship between childhood cruelty and aggressive behavior in criminals finds that nearly 70 percent of aggressive criminals reported acts of animal cruelty in their childhood.

In just one battered women's shelter, in Utah, as it happens, interviews revealed that 71 percent reported that their partners had threatened to or had actually killed the victim's pets.

I do not pretend to understand what would compel an individual to willingly participate in a crush video, but after years of work in the humane community I do know that when we find cruelty we usually find people making money.

Now I know if money can be made from doing something, anything, even if it is illegal, it will be done. This is really what we are addressing here, the production with intent to sell of films that demand the intentional maiming, mutilation, torture, wounding and killing of living animals.

I do not know if you have seen the video clip. I regret we're meeting after lunch. It is pretty awful. Awful, seeing women in stiletto heels crush a living creature. The animals are tortured. They are eventually killed in a way that violates anti-cruelty laws that already exist and probably violates every other law known to any civilized society and higher laws than that, laws of human nature.

The intentional cruelty in these films clearly violates State laws. Congress can help the State enforce these laws by eliminating the financial incentive to produce these films. The intent of Congressman Gallegly's bill is simple. Remove the financial incentive to produce these types of videos. He and his staff and legislative coun-

sel have taken great care to focus this intent as narrowly as possible. At this point I would love to commend Congressman Gallegly for taking a stand against these illegal acts of animal cruelty. His legislation, I think, takes the legs right out from under the producers of these films by eliminating the financial incentive to produce them.

Profiting from these illegal acts should be illegal and prosecutable, and I hope his colleagues on the Crime Subcommittee will join him and support this bill. The evil, the cruelty that is depicted in crush videos is against the law and we should insure that it is prosecutable.

We cannot afford to give violence a stamp of approval. Subliminally it is giving a message to young people that it is all right to do this, that it is okay, that any life form is not valuable and that is not true.

H.R. 1887 is a wonderful bill. Please give it your support. I am supposed to end, with that I would be happy to answer any questions, but I am going to field one that I always get asked. Why, Ms. Swit, do you work so hard for animals? I mean, why not people (as though it were a contest.) It is not. It is all one deal.

At "Actors and Others For Animals," we receive about 200 telephone calls for help every day. Not one of those phone calls is from an animal. Thank you.

[The prepared statement of Ms. Swit follows:]

PREPARED STATEMENT OF LORETTA SWIT, ACTORS AND OTHERS FOR ANIMALS

PRESS STATEMENT

Thank all of you for coming,

Although I am pleased to be here with you today, I find it almost unbelievable that we need to be here at all. These sick, violent and utterly cruel crush videos so clearly violate any laws I can think of-state anti-cruelty statutes, morality, the very laws of nature-that it's hard for me to believe there is a need to speak out against them. In all my years of animal advocacy, I have never witnessed anything approaching the violence depicted in these so-called "crush" videos. The sustained and deliberate torture of any sentient being is unacceptable. And the purposeful production of such cruelty, for money, is mind-boggling. And that is really the crux of this issue: violence.

If you take one thing away with you today, please let be this: that violence, no matter who the victim, is violence. We are all connected; the harm and torture we inflict on animals, we inflict on our selves. If we succumb to the sin of apathy, of doing nothing about violence, when it's staring at us right in the face, then we let this poison spread. Some people might say, "well, it's just an animal ... what's the big deal?" Here's the big deal: when we are silent or look the other way when a living being is violated and cruelly exterminated, we send a message that it is acceptable. It is not.

We cannot compartmentalize and fool ourselves into thinking that "just because it's an animal" who is suffering that it is ok. You have to look at the bigger picture. Whether you want to call it "the link," the "violence connection," or whatever, the truth remains-the psychological impact of letting violence go unaddressed and unpunished is the erosion of compassion and empathy from ourselves and our future generations.

*I want to share with you a snapshot of our society:*

1. A study of sex offenders in a psychiatric facility finds that 47.6% of rapists and 27.9% of child molesters showed cruelty to animals in their childhood or adolescence<sup>1</sup>

<sup>1</sup>Tingle, David, et al. "Childhood and Adolescent Characteristics of Pedophiles and Rapists." *International Journal of Law and Psychiatry*, Vol. 9 (1986): 103-16.

2. A paper examining the relationship between childhood cruelty and aggressive behavior in criminals finds that nearly 69% of aggressive criminals reported at least one act of animal cruelty in their childhood<sup>2</sup>

3. In just one battered women's shelter (in Utah), interviews revealed that 71 % reported that their partners had threatened to or had actually killed the victim's pets. Of the women in the shelter who had children, 32% reported that one or more of their children had abused animals. And so the cycle goes.<sup>3</sup>

I understand that there have been issues raised about "free speech" or "freedom of expression." Well if that's true, we would have to extend the same kind of protection to rapists, child molesters and murderers, because they're just expressing themselves. But we don't, of course, because these acts are fundamentally wrong and we have agreed as a nation, to condemn these crimes. We should just as strongly condemn these crush videos. The acts depicted are just as forbidden and heinous and illegal. The only reason they exist is because an enclave of self-serving individuals have found that they can produce and market this violence under the duplicitous guise of "entertainment" and no one will do anything about it because "they're just animals." Where is the entertainment in watching animals being tortured and crushed? Is this the kind of "freedom of expression" our country stands for? These films have nothing to do with entertainment. They are a horrendous example of cruelty at its worse and they must be stopped.

Washington has focused extensively in the last year on television, film, and Internet violence. I think it would be incredibly hypocritical for our government to ignore the crush film industry. If Congress is serious about diminishing violence in our communities and in our films, on our televisions, on the Internet and other creative media, it must recognize that violence is violence, and put an end to this horror.

I commend Congressman Gallegly for taking a stand against these illegal acts of animal cruelty. His legislation takes the legs right out from under the producers of these films by eliminating the financial incentive to produce, with the intention of selling, "crush" videos. The acts depicted in the videos are already illegal, so why shouldn't profiting from them be illegal as well? I hope Congressman Gallegly's colleagues on the Crime Subcommittee will join him and support this bill. The cruelty depicted in "crush" videos is against the law and we should ensure that it is prosecutable. We cannot afford to give violence a "stamp of approval" by remaining silent.

#### SUMMARY

- Testifying today on behalf of Actors and Others for Animals, the Doris Day Animal League, the American Humane Association, the American Society for the Prevention of Cruelty to Animals, the Humane Society of the United States and the Society for Protective Animal Legislation, collectively representing 7,932,400 members and supporters.<sup>4</sup>
- Commends Congressman Elton for his leadership in introducing H.R. 1887. Supports the bill, which removes the financial incentive to produce films (and other depictions) that capitalize on acts that violate existing state anti-cruelty statutes. Bill is a "win-win" situation for prosecutors and animal advocates alike, without compromising individual expression.
- One look at these videos clearly demonstrates there is no society value condoning this kind of cruelty. In all my years of work, I have never witnessed anything approaching the cruelty depicted in these so-called "crush" videos. The sustained and deliberate torture of any sentient being is unacceptable. And the purposeful production of such cruelty, for money, is mind-boggling.
- If we as a nation are serious about diminishing violence in our communities and in our films, on our televisions, on the Internet and other creative media, we must recognize that violence is violence, no matter who the victim. When violence, in any form, is not addressed and rectified, we send a message that it is acceptable. It is not. The violence depicted in "crush" videos is against the law and Congress should ensure that it is prosecutable.

Mr. Chairman and members of the Subcommittee, thank you for the opportunity to appear before you today. I want to say thank you especially to Congressman

<sup>2</sup>Kellert, Stephen and Felthous, Alan. "Childhood Cruelty toward Animals Among Criminals and Noncriminals." *Human Relations*, Vol. 38 (1985): 1113-29.

<sup>3</sup>Ascione, Frank. "Battered Women's Reports of Their Partners' and Their Children's Cruelty to Animals." *Journal of Emotional Abuse*, Vol. 1 (1998): 119-33.

<sup>4</sup>The American Humane Association also represents 6,500 animal care and control agencies.

Elton Gallegly for his leadership in introducing this legislation; bringing to light a disturbing industry that benefits from acts of animal cruelty.

#### BIOGRAPHY

Loretta Switt is well known for her varied career in theater, film and television, most notably as the quick-witted Major Margaret Houlihan on *M\*A\*S\*H\**, television's most honored series. She has starred in 25 seriously regarded movies for television, including the movie *Cagney and Lacy*, in which she casted the role of Chris Cagney. Her most recent prime time television film *A Killer Among Friends* on CBS was the highest rated movie of the year. Her dancing and singing talents have been seen on every major musical variety show including "The Muppets", "The Bob Hope Special," "It's a Bird ti's a Plane, It's Superman" and "The Perry Como Special," to name just a few. Ms. Swit has starred in six feature films : *Stand up and Be Counted* with Jacqueline Bissett, *Freebie and the Bean* James Caan, *Race with the Devil* with Peter Fonda, Blake Edwards S.O.B. with Juila Andrews and William Holden, *Beer* with Rip Torn, and with Peter Cook and Herbert Lom in Britian's *Whoops Apocalypse*. Ms Swit made her Broadway debut in *Same Time, Next Year* starring with Ted Bessell, and again with Don Murray. She was seen most recently on Broadway in *The Mystery of Edwin Drood*, replacing Cleo Lane. Currently reaping accolades for her starring role in *Shirley Valentine*, the award-winning play by Willy Russell, Ms. Swit was given Chicago's most prestigious theatrical honor, the Sarah Siddons Awards, the People's Choice Award, the Genie Award, the Silver Satelite Award, and the Jean Golden Halo Award.

For her ceaseless humanitarian efforts, Ms. Swit was named "Woman Of The Year" by the Animal Protection Institute of American, and again by the International Fund for Animal Welfare. She is a Board Member of Actors and Others. For Animals, the Orlando Humane Society, and the Dallas SPCA. Ms. Swit's passions are her work reading, languages, and needlepoint (her expertise in the art of needlepoint was reflected in her book, "Needlepoint Scrapbook"). A sportswomen at heart, she enjoys scuba-driving and equestrian sports. She rides for two hours every morning and compete in the hunt seat equitation and jumping division.

#### DORIS DAY STATEMENT

The connection between people who harm animals and those who maim or kill other humans is increasingly strong. These acts of cruelty are hard to comprehend, and every time I think I have heard the most horrible, other aberrant behavior surfaces. "Crush videos" in which small animals are crushed to death by women in high heels are not only being made, but are being sold for profit. I am very grateful to Congressman Elton Gallegly and the law enforcement officials in his district for their leadership in introducing H.R. 1887. The individuals who create these videos to make a profit must be stopped, and the bill's prohibition of profiting from animal cruelty will help.

PRESS STATEMENT—SEPTEMBER 30, 1999

HOLLY HAZARD, EXECUTIVE DIRECTOR, DORIS DAY ANIMAL LEAGUE

After 17 years as an animal protection advocate, I have seen, or heard, so many horrors in so many areas of abuse, neglect, and cruelty that I thought, although new issues often sicken me, nothing people do to animals could shock me anymore.

Unfortunately, I found out recently I was wrong. When Assistant District Attorney Tom Conners came to me and described his frustration with the prosecution of individuals profiting from "crush videos" and wanted to know if there was anything the Doris Day Animal League could do to help, I had no idea what a "crush video" was.

After viewing some photos from a "crush video," my first response was to try to think of a reason not to help. This issue is simply the most barbaric and unfathomable of all the cruelties I have dealt with. It is cruelty exploiting the most helpless victims of all. Then I realized, precisely because it is so offensive, we must take a stand. And although it affects a relatively small number of animals, each of those animals matters. Also, odds are that anyone getting gratification from this industry probably will not stop there. We can indirectly help many more animals and families if we can make these videos harder to obtain.

As an organization supportive of social justice and attuned to the importance of the free expression of ideas, we are acutely aware of the balance that must be struck between truly offensive and destructive actions and our cherished First Amendment. We are confident that this legislation, once passed, will move the issue

of protection of animals forward, while preserving the important values of our constitutional guarantees.

I commend Congressman Gallegly for agreeing to take the lead on this issue, when his legislative time, energy and resources are so precious. Likewise, I commend the Ventura County DA's office for highlighting this barbarity and recognizing the need for national attention to this activity.

#### ABOUT THE DORIS DAY ANIMAL LEAGUE AND DORIS DAY ANIMAL FOUNDATION

The Doris Day Animal League (DDAL) was founded in 1987 and is based in Washington, D.C. The lobbying organization focuses on legislative issues that affect animals and the people who love them. Recently:

- DDAL sponsored SB 199 1, which was voted into California law, and requires counseling as a condition of probation for any person convicted of animal cruelty.
- Successfully campaigned in California to pass Proposition 4, which prohibits the use of steel-jawed leghold traps,
- Supports a lawsuit against the US Air Force over the fate of Air Force chimpanzees who have been awarded to a lab which has been investigated by the federal government for negligent chimpanzee deaths,
- Champions the "ICCVAM Authorization Act" (S. 1495). sponsored by Senator Mike DeWine (R-OH), to facilitate acceptance of alternatives to animals in product testing.
- Supports Senator William Roth (R-DE) and Representative Jerry Kleczka's (D-WI) efforts to pass the "Dog and Cat Protection Act" (S. I I 97/H.R. 1622), which prohibits the importing of products made from cat or dog fur and requires all products made from cat or dog fur and requires all products containing fur be clearly labeled,
- Supports the "Great Ape Conservation Act" (S. 1007) sponsored by Senator Jim Jeffords (R-VT) to assist in the conservation efforts needed to protect vanishing species.,
- Championed the Corporate Standard of Compassion for Animals and the international logo for manufacturers of cosmetics and household products and has been a leader in promoting products manufactured with compassion,
- Championed "Pets in Housing" provision allowing persons living in federally subsidized multi-family housing to care for companion animals.

*The Doris Day Animal Foundation* is a 501 (c) (3) non-profit organization formed in 1998. Its own range of programs are designed to find creative solutions to many problems including pet overpopulation. Based in Carmel, California, the foundation sponsors many programs including:

- *SPAY DAY USA* scheduled for February 29, 2000 when individuals, veterinarians, animal rescue groups and humane societies promote the spaying and neutering of pets in an effort to reduce the pet overpopulation problem which costs taxpayers approximately \$2 billion each year to house, feed and ultimately destroy these homeless animals. More than 350,000 cats and dogs have been spayed and neutered in Spay Day USA programs during—its first five years.

DDAL publishes the *Animal Guardian*, a quarterly publication available to members addressing many local and national efforts and issues concerning animals. Additionally, DDAL publishes *Legislative Tracks*, a newsletter for Members of Congress covering animal-related issues and legislation.

# FACT SHEET

AMERICAN  
HUMANE  
ASSOCIATION  
Children's Division

## VIOLENCE TO HUMANS AND ANIMALS: AN IMPORTANT LINK

**O**VERVIEW: *The Link*, as it is referred to in the American Humane Association's *Campaign Against Violence*, is the connection between animal abuse and violence towards people. Information is emerging that demonstrates this connection through empirical research and dramatic real-life stories. Below are frightening examples of each:

- "...a child who learns aggression against living creatures is more likely to rape, abuse and kill other humans as an adult" (Kellert & Felthous, 1985).
- "In 88% of families (receiving services from the N.J. Division of Youth and Family Services) where physical abuse occurred, animals in that home were also abused. In about two-thirds of the cases, the abusive parent had killed or injured the animal to discipline the child" (Deviney, Dickert, & Lockwood, 1983).
- A study of 28 convicted sexual homicide perpetrators found that prevalence of cruelty to animals was 36% in childhood and 46% in adolescence (Reaser, Burgess, & Douglas, 1988).
- Hellman and Blackman noted the frequent association between criminal violence in adulthood and a triad of symptoms: excessive bed-wetting, fire-setting, and animal abuse during childhood...animal abuse is so common a type of criminal, the FBI's profiles of serial killers include histories of animal abuse.
- Twelve-year-old Eric Smith strangled his neighbor's cat with a garden hose, which was dismissed as a prank. One year later, he murdered four-year-old Derrick Robie (Denver Post, Associated Press, 8/15/93).
- Jeffrey Dahmer impaled frogs and cats and decapitated a dog as a child. As an adult, he killed and dismembered 17 people (various media reports).
- Brenda Spencer abused dogs and cats as a little girl by setting their tails on fire. As a grown woman, she fired 40 shots at San Diego school children, killing two and wounding nine.
- David Berkowitz killed a number of his neighbor's pets as a youth. When he grew up, he became New York City's "Son of Sam" murderer.

- As the jury deliberated the death penalty for convicted pedophile and child murderer Jesse K. Timmendequas, whose crimes were the incentive for Megan's Law, lawyers argued that Timmendequas allegedly endured years of childhood physical and sexual abuse during which family pets were tortured in front of him to ensure his silence (New York Times, 6/11/97).

Every year, more than one million children nationally are confirmed as victims of abuse and/or neglect in the U.S. At the same time, thousands of our companion animals also fall victim to malicious cruelty and other forms of violence, often within the same cycle of family violence. On September 15, 1992, in Herndon, Virginia, the American Humane Association held the first-ever summit to address the issue of human/animal violence called "Protecting Children and Animals: Agendas for a Non-Violent Future." Among the attendees were animal protection professionals, lawyers, pediatricians, nurses, theologians, teachers, psychologists, reporters, veterinarians, processors, social workers, and researchers. All of them came to share their perceptions and experiences with the linkages between violence to humans and animals.

In keeping with its unique mission to protect children and animals, AHA has continued the work begun at that summit. What have we been doing?

### Educating the Public

- AHA has published several articles on *The Link* in *Advocate* and *Shoptalk* and developed publications describing various aspects of *The Link*. The entire June 1997 issue of *Protecting Children* also featured articles on *The Link*. In addition, AHA staff members have contributed articles to national magazines and submitted chapters to some upcoming texts concerned with the issue.

### Advocating

- Worked with local state legislatures through congressional testimony and legislative advocacy to strengthen the penalties for animal cruelty in Colorado, Connecticut, and Maryland.
- Published a "Cruelty Kit" which contains specific instruction for taking animal abuse seriously by strengthening animal cruelty legislation in local communities. One of the Kit's publications, "Growing Up Humane in a Violent World," is specific

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cally targeted to parents interested in teaching humane ethics involving the care and treatment of animals for children.

- Worked in San Diego to support legislation that now mandates social workers as mandated reporters of animal cruelty and animal control officers as mandated reporters of child abuse.

#### Training

- Conducted training in several states on recognizing and reporting child abuse for animal welfare professionals. AHA has also published a training manual on recognizing and reporting child abuse for animal control officers and humane investigators.
- Held numerous community forums in different states on the issues involved in understanding the linkages between domestic violence, child abuse, juvenile delinquency, and animal cruelty.

#### Much more needs to be done!!

#### AHA recommends:

- More research into the linkages between child abuse, domestic violence, and animal cruelty. AHA would also recommend a large-scale study of incidences of early childhood cruelty to animals and later juvenile delinquency rates.
- Advocate for the inclusion of social workers as mandated reporters of animal cruelty and animal welfare professionals as mandated reporters of child abuse in every state.
- Tougher animal cruelty statutes and penalties for perpetrators of malicious cruelty that include mandatory mental health treatment. AHA also recommends the inclusion of animal cruelty conviction information in determining parole and/or probationary status of perpetrators convicted of a violent crime.
- Development of better reporting laws and definitions of animal cruelty in every state.

By teaching, advocating for, and practicing compassion and empathy toward both children and animals, we produce a more compassionate, less violent society. Every member of society can help take steps toward a nonviolent future.

- Take animal and child abuse and neglect seriously, and report it to your local humane society or child welfare agency.
- Instill compassion and humane values in young people by showing that you value people, animals, and the environment. If your child behaves cruelly

towards an animal or child, you must intervene. Doctors, school counselors, humane educators at local humane societies, or a psychologist can help. If you see someone else's child in such behavior, you might want to talk with the parents if you think an informal chat will help. You may also wish to approach the child to immediately stop the behavior. You can also report the abuse to appropriate authorities.

- Use your political voice: Vote!
- Support organizations that protect animals and children from abuse by volunteering or financially contributing.

The American Humane Association is a national leader in identifying and preventing the causes of child and animal abuse and neglect, and provides advocacy, training, research, technical assistance, and other services in the areas of child and animal protection. Its national constituency is both agencies and individuals. Headquartered in Denver, Colorado, AHA has regional offices in Washington, D.C., and Los Angeles, CA.

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11/97



Mr. McCOLLUM. Thank you for that poignant testimony. We greatly appreciate it.

Tom Connors, I am about to recognize you. Before I do that, as Ms. Swit alluded to, we have not watched the video, but you are going, as I understand it, to show some or all of the video which does show a crush video and anybody in the audience who may find this disturbing, and it may be to some, may wish to either turn away or to leave the room during that portion of your testimony. I am just sort of warning them if they have any concern about it.

I do not know if it is an audio as well—it is. Yes, both. It is both.

Mr. Connors, you are recognized.

**STATEMENT OF TOM CONNORS, DEPUTY DISTRICT ATTORNEY, VENTURA COUNTY DISTRICT ATTORNEY OFFICE**

Mr. CONNORS. Good afternoon, Committee Members. Thank you very much for inviting me to come up here and speak on behalf of this bill. As you indicated, I am a Deputy District Attorney for Ventura County District Attorney Michael Bradbury.

In May 1998 I was sent a video from the United States Humane Society and I became aware of these movie videos depicting small animals being crushed for sexual gratification. And they were being produced and sold by a business in Ventura County appropriately enough called Steponit.

The videos of various animals being killed included mice, guinea pigs, cats, chickens and monkeys, after being taped or tied to the floor and then slowly being crushed to death by a woman in an assortment of different types of shoes, sandals and sometimes bare-footed. The crushing was accomplished by women stepping on various portions of the animal's body.

The audio portion that you referred to includes a woman speaking to the animal in a domineering manner similar to the stereotype of a cruel master and helpless slave. That is blended together with the animal's screams of pain and his bones breaking. The videos have several different segments, each of them lasting anywhere from 5 to 10 minutes and then at the end of the tape there are previews of other videos for sale that are very graphic in their display and in their intensity to try to get persons to buy more.

Our investigation was initiated in order to prosecute the person responsible for the production, sale and distribution of these particularly horrendous acts of animal cruelty. This is a short clip of one of those video segments and it is representative of the type of conduct we are going to be dealing with.

[Video plays.]

Now what you just saw was approximately 2 minutes out of a 10 minute clip. The animal lasted 4 minutes before it died. The last 6 minutes it was literally pulverized into the ground by her stamping and jumping up and down on this guinea pig.

After seeing that I am sure you can understand why I decided we needed to prosecute this. What was discovered at the onset though was that the buying and selling of movie videos depicting animal cruelty was not illegal under any State or Federal law.

What we did then was we decided to prosecute the production only, the actual act of animal cruelty as that was the only activity that current animal cruelty laws really applied to. After an exten-

sive investigation it quickly became apparent to us that there several major roadblocks to the prosecution arose. The majority of the film segments showed the filming occurred in several different locations.

As I indicated there were different segments, each lasting up to 10 minutes and those were sometimes in different areas or different locations. That was making it nearly impossible for us to determine the jurisdiction as to what had happened, where it had happened, so we could have the appropriate jurisdiction to prosecute.

Normally, as you saw, only the feet, legs or torso or the woman doing the crushing were filmed, so the identity of the person responsible was going to be extremely difficult to ascertain and prove. The statute of limitations was our final obstacle that we were not able to think of any way we could overcome and that was because there was no way for us to determine that the actual act had happened within the last 3 years in order to apply within the statute of limitations.

The ability to prosecute the production of these "crush" videos require either a policeman or a citizen stumbling on to the production while it was happening by accident and making an arrest, and actual participant, that is, a person photographing it or doing the crushing. Having a guilty conscience has happened in New York and coming forward and supplying the information that was needed as to where it happened and when it happened or finally whether or not we could do an undercover investigation which is, in fact, what we did. And when Ms. Creede speaks, she is the one who did that undercover investigation and she can tell you all about that.

I would urge that 1887, H.R. 1887 is a solution that is desperately needed to correct that omission in the law, to prosecute an obviously morally corrupt and I think as Ms. Swit indicated, an evil practice.

The legislation will eliminate the need to identify the participants because we no longer are after the production part of it, but instead we are going after the commercial incentive of it, the actual selling of it or possession to sell.

Additionally, jurisdictional and statute of limitations will no longer be an impediment because again it is a present time that we are going after and not something that happened in the past.

Individual state law would be great if it would work, however, as you are well aware, individual states cannot legislate interstate commerce. That is up to the Federal Congress. And Federal legislation is needed because this is an interstate and foreign cost commercial aspect of this activity and the use of the United States mail and telephonic and electronic medium in its ordering and distribution make it to the point where States, one State passing a law could not effectively address the problem.

I have prepared an issue sheet, an issue page and I would ask at this time that it would be entered into the record, if I may.

[The information referred to follows:]

*What is the purpose of this legislation*

This legislation is intended to eliminate the commercial incentive to create, possess for sale or sale and distribute videos that require the criminal and horrendous acts of violence and cruelty to animals in their production.

*Doesn't this violate the 1st amendment "Free Speech" protections?*

The Ventura County District Attorney's Office and the United States Congressional legal staff has researched the issue and determined that the proposed statute would not violate the 1st amendment. There is no constitutional right to video tape and sell depictions of criminal activity, such as animal cruelty, similar to there is no constitutional right to video tape and sell depictions of child pornography, the selling of such depictions of child pornography is currently prohibited in 18 USC Sec. 2251 and 2252. As well as many states.

*Osborne v. Ohio* (1990) 495 US 103, 109 L Ed 2d 98? 110 S Ct 1691 quotes *NY v. Ferber* 458 US 747, 73 L Ed 2d 1113, 102 S Ct 3348 stating "The advertising and selling of child pornography provide an economic motive for and are thus an integral part of the production of such materials, an illegal activity throughout the Nation. "It has rarely been suggested that the constitutional freedom of speech and press extends its immunity to speech or writing used as an integral part of conduct 9 in violation of a valid criminal statute."

*Would this statute prohibit videos of Spanish Bullfights from being sold?*

This legislation would not prohibit the creation, sale or possession for sale of videos of Spanish Bullfights unless bullfighting, or any other animal fighting venture, is classified as being included in the animal cruelty statutes of the state in which the conduct is occurring. Additionally the video must also include the specific acts of maiming, mutilating, torturing, wounding or killing prohibited in the animal cruelty statutes. Similarly, 7 USC Sec 2156, prohibits an animal fighting venture, however animal fighting venture is not classified or defined as animal cruelty. This legislation would not encompass that activity as the proposed legislation only prohibits a depiction of certain acts of animal cruelty and does not include animal fighting in its definition.

*Would "news images" of harsh treatment of circus animals be prohibited?*

A depiction of harsh treatment of circus animals would not be prohibited by this legislation unless that harsh treatment rose to the level of a violation of the animal cruelty statutes of the state in which it is occurring and included the specific acts prohibited by this legislation. If during the filming, the conduct escalates into criminal animal cruelty, at that point the video and it's photographers/producers could become part of a criminal investigation as evidence and witnesses to a crime, the same as any other criminal investigation in which conduct has been filmed by an investigative news team or an innocent bystander that is later determined to be criminal in nature. The producers/photographers would obviously not have the required criminal intent to be in violation of this legislation unless the escalation was done at their direction and included the specific acts prohibited.

*Would this legislation ban documentaries on the religious practices of "Santeria" or specials such as "poaching endangered species"?*

This legislation would not ban documentaries on such subjects as "Santeria" or the "poaching of endangered species". The legislation is narrowly drafted to only apply to the visual/audio depiction of animal cruelty as defined in the animal cruelty statutes, and then only to when the animal is intentionally maimed, mutilated, tortured, wounded or killed. All other acts of animal cruelty are not included in the prohibition. Equally important to what is banned is what is not banned. This legislation is directed to the method of killing and not the killing itself. Millions of animals are legally killed everyday in slaughter houses, governmental animal control facilities, veterinarian offices and the like. The method of killing in those facilities are adequately controlled by current regulations and do not fall under animal cruelty statutes. The mere act of killing an animal is not prohibited under the current animal cruelty statutes and therefore the video taping of that activity would not be prohibited under this legislation.

*Would "media photos" of animal cruelty be banned?*

Media photos of animal cruelty would not normally be banned. The content of the photo, the method of it acquisition, and the intent of its possession would have to come under the proposed statute. The photo would have to depict the intentional maiming, mutilating, torturing, wounding or killing of a live animal in violation of

the animal cruelty statutes. If the photo satisfied those elements then the method of its acquisition would need to be examined. If the media knowingly participated in the production the photo then certainly they would be in violation of this statute as well as the state animal cruelty statute where the activity took place. If the media acquired the photo from another and possessed the photo with the intent to display it then they would not be in violation of the statute,, as acquisition or possession is not prohibited conduct nor is displaying the depiction. The statute requires that the depiction be possessed with the intent to place the depiction in interstate or foreign commerce for commercial gain.

*Would the crushing of insects be banned?*

The crushing of insects would not be covered under this legislation unless the insects are included in the definition of animal in the animal cruelty statutes of the state where the creation, sale or possession for sale of the video occurs. Insects are not normally covered under the individual states animal cruelty statutes as required in this legislation. If a state does include insects in its definition of animals then the legislation would also require that the insect is maimed, mutilated, tortured, wounded or killed in such a manner as prohibited by the state animal cruelty statute in order to be a violation of this proposed legislation.

*Isn't this type of conduct already illegal?*

Yes,, all states currently have statutes covering animal cruelty, but only the actual conduct being filmed, the cruelty to animals, is illegal. The subsequent copying, selling and possession for sale of the videos is not illegal. If the actual criminal conduct is not discovered during the filming then the producer is legally free to create, possess for sale or sale and distribute as many copies of the videos as the market will bear.

*Can't you prosecute the producers under existing animal cruelty laws?*

If the production of the video is not discovered during the actual filming then prosecution for the offense is virtually impossible without a cooperative eyewitness to the filming or an undercover police operation. In order to prosecute the producer at a state level we have to establish that the producer was a participant in the animal cruelty conduct / filming (proving identity is extremely difficult since the face of the crusher is rarely shown and the face of the producer or photographer has never been shown), that the animal cruelty conduct / filming took place in the county where the prosecution is taking place to establish Venue, and that the animal cruelty conduct / filming took place within the last 3 years to satisfy the Statute of Limitations.

*Is a Federal law necessary?*

Federal legislation is needed due to the constitutional restrictions of independent states making laws interfering with interstate or foreign commerce. This legislation would make the creating, selling, or possessing for sale of "Crush Videos" a present and continuing crime. Legislation allowing the prosecution of the creation, possession for sale or selling of the videos would allow law enforcement to be able to reduce the incidents of animal cruelty by eliminating the opportunities to profit financially from horrendous criminal acts of animal cruelty.

*Is this conduct widespread?*

Our investigation has shown that not only is this conduct widely accessed through pornographic and sexual activity websites on the Internet but that the people who are actively involved in this perversion are spread out around the globe as far away as Japan. Internet contacts have been established through out the continental United States—Hawaii—Brazil—Mexico—Italy—England—Netherlands—Japan—Dubai.

*Are there actual organizations that promote this conduct?*

During our investigation we discovered that not only was this conduct promoted and accessed through a large variety of Internet websites promoting pornography and sexually deviant activity, but that a "Official Crush Message Board" was in place and promoting this conduct by its users.

Mr. McCOLLUM. Without objection, it is so ordered.

Mr. CONNORS. Thank you again, very much for allowing me to testify.

[The prepared statement of Mr. Connors follows:]

PREPARED STATEMENT OF TOM CONNORS, DEPUTY DISTRICT ATTORNEY, VENTURA  
COUNTY DISTRICT ATTORNEY OFFICE

Good Afternoon Committee members. My name is Tom Connors. I am a Deputy District Attorney for Ventura County District Attorney Michael Bradbury.

In May of 1998 I was the Deputy District Attorney assigned to prosecute animal abuse cases for Ventura County. Pursuant to that assignment I became aware that movie videos depicting small animals being crushed for sexual gratification were being produced and sold by a business in Ventura County called "Steponit." The videos depicted small animals, mice, guinea pigs, cats, chickens, and monkeys, after being taped or tied to the floor, being slowly crushed to death by women in an assortment of different types of shoes, sandals or sometimes barefooted. The crushing was accomplished by the women stepping on various portions of the animal's bodies. The audio portion of the video depicted the woman speaking to the animal in a domineering manner similar to the stereo type cruel master-helpless slave scenario. That is blended together with the animal's screams of pain and its bones breaking. The video had several different segments each lasting several minutes and at the end of the tape there were previews of other videos available for sale. An investigation was initiated in order to prosecute the person responsible for the production of these particularly horrendous acts of animal cruelty.

What was discovered at the onset was that the buying or selling of the movie videos depicting animal cruelty was not illegal under any state or federal law. A decision to prosecute for the production of the videos was made as it was the only activity that the current animal cruelty laws were applicable to. After an extensive investigation was begun it quickly became apparent to us that several major road-blocks to prosecution arose.

The majority of the filmed segments showed the filming occurred in several different locations making it nearly impossible to accurately determine the appropriate jurisdiction. Normally only the feet, legs, thighs and torso of the women doing the crushing were filmed. The identity of the person responsible for the acts of animal cruelty was going to be extremely difficult to ascertain and prove. The Statute of Limitations was the final obstacle that we were not able to overcome. It proved to be an impossible task to be able to show when the videos were produced in order to prove that the acts of animal cruelty were committed within the last 3 years prior to a complaint being filed as required by the Statute of Limitations.

The ability to prosecute the production of these "Crush Videos" require either a policeman or interested citizen stumbling onto the production of one of these videos while it was occurring and making an arrest, an actual participant coming forward with the necessary information and be willing to testify about what had happened, where it had happened and that it had occurred within the last three years, or by the police conducting an undercover operation.

HR 1887 is the solution that rectifies this omission in the law and allows the prosecution of an obvious morally corrupt activity. This legislation will eliminate the need to identify the participants of the illegal animal cruelty conduct by concentrating instead on the commercial incentive of profit making on the post production sale of the videos. Additionally the Statute of Limitations will also no longer be an impediment due to the illegal conduct being prosecuted is no longer the production stage of the video but instead will be the present creation, selling or possessing for sale of "Crush Videos."

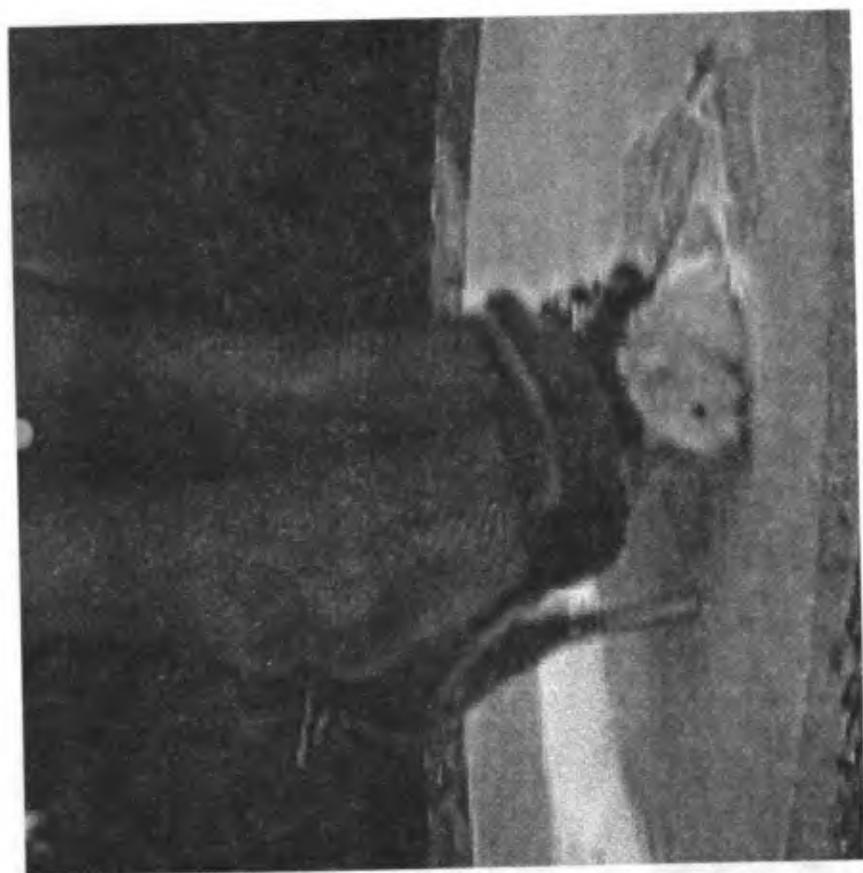
Individual state law would not be able to adequately address the jurisdictional problems that will arise in the interstate sale of "Crush Videos." Federal legislation is needed due to the interstate and foreign commercial aspects of this activity and the use of the United States mail and of telephonic and electronic medium in its ordering and distribution.

Mr. GALLEGLY. Mr. Chairman, may I ask for unanimous consent that this be made a part of the record?

Mr. MCCOLLUM. Yes, without objection it is so ordered.

[The information referred to follows:]







Mr. McCOLLUM. Thank you very much, Mr. Connors, we appreciate your testimony.

Ms. Creede, I understand you have testimony to give and you are recognized.

**STATEMENT OF SUSAN CREEDE INVESTIGATOR, VENTURA COUNTY DISTRICT ATTORNEY OFFICE**

Ms. CREEDE. Thank you. My name is Susan Creede. I am an investigator with the Ventura County District Attorney's Office. I have been a police officer for nearly 20 years and I have only become familiar with animal crush videos after an investigation was assigned to me in September 1998. A Ventura County resident sold one of his animal crush productions to an employee of the United States Humane Society in Washington, D.C.

I ran searches on the Internet for animal crushing, sexual fetishes and crushing fetishes. I found numerous websites and chat rooms involving such activities. I learned a lot about the subject and regularly communicated with people all over the world who are into animal crushing. I usually spoke in a chatroom called Crushcentral. The common denominator was the foot fetish.

Stage names are used in the chat rooms and on the bulletin boards. I used the names Hot Heels and Minnie. The fact that people do not use their real names makes investigating these crimes difficult. One never knows who they are actually corresponding with, which makes it very difficult to prove who is actually producing the videos. It also makes these investigations very dangerous since going undercover is absolutely necessary.

I chatted with people from all over the world. At any time of the day or night people would be in different chat rooms discussing their fetish, sharing crush experiences or just everyday life experiences.

These people spoke about their fetishes and how they developed. For many of them the fetish developed from something they saw at a very early age, usually before the age of five. Most of these men saw a woman step on something. She was usually someone who was significant in their lives. They were excited by the experience and somehow attached their sexuality to it.

As these men grew older, the woman's foot became a part of their sexuality. The power and dominance of the woman using her foot was significant to them. They began to fantasize about the thought of being the subject under the woman's foot. They fantasized about the power of the woman and how she would be able to crush the life out of them if she chose to do so.

Many of these men like to be trampled by women. They prefer to be hurt and the more indifferent the woman is to their pain, the more exciting it is for them. I have learned that the extreme fantasy for these men is to be trampled or crushed to death under the foot of a powerful woman.

Because they would only be able to experience this one time, these men have found a way to transfer their fantasy and excitement. They have learned that if they watch a woman crush an animal or live creature to its death, they can fantasize that they are that animal experiencing death at the foot of this woman.

Many videos are produced wherein defenseless animals are tortured and crushed to death for the sole purpose of sexually exciting men. The animals are tortured in a slow, cruel and deliberate way. The women torturing the animals talk to them as if they are human. The women play the part of a dominiatrix. The women wear different types of shoes including spike heels and stilettos. These videos are usually sold for \$50 to \$300 a piece.

Special orders are made at the request of the buyer or they can be purchased from catalogs. The customer merely e-mails his request to the producer. Either a video from a catalog is sent or the special order is acted out by the actress while being filmed by the producer.

I have learned that these videos are being produced in the United States and in Europe. I am aware of several producers in California, along with producers in Texas and Ohio. The animals being crushed include, but are not limited to, mice, guinea pigs, rats, squirrels, rabbits, birds, chickens, cats, dogs and monkeys. I have been personally asked to make a video of a dog being crushed. I was instructed on how to torture the dog on video step by step. I was told to purchase the dog at a place that would not check on the animal at a later date. Another individual asked me how big an animal I was willing to crush.

In May 1999, I was contacted through the Internet by Gary Thomason, known to the crush community as Get Smart. Thomason sent me a clip of a mouse and rat crush video he filmed with a woman named Diane. Thomason said he would much rather produce a video with me and asked me to consider it.

I agreed and we made arrangements to meet at his apartment on June 19, 1999. With the assistance of Long Beach Police and investigators from the Ventura County District Attorney's Office, I went undercover with a second police officer from Long Beach. After we arrived at Thomason's residence, he went to the local pet store and purchased five large rats. Thomason arranged for a second cameraman to videotape the crushing event from another angle.

After Thomason taped one of the rats to a table and both cameramen had the cameras running and ready to film, the arrests were made. At that point, the investigation was taken over by Long Beach Police Department. A criminal complaint was filed and Mr. Thomason is awaiting trial on felony animal cruelty charges.

During my conversations in the different chatrooms, individuals have sent me samples or clips of these videos to add to my collection. Many photos of animal crush and trampling have also been sent to me over the Internet through the chatrooms similar to the ones you have seen today.

I will be happy to answer any of the questions you may have. Thank you.

[The prepared statement of Ms. Creede follows:]

PREPARED STATEMENT OF SUSAN CREEDE, INVESTIGATOR, VENTURA COUNTY DISTRICT ATTORNEY OFFICE

My name is Susan Creede. I am an investigator with the Ventura County District Attorney's Office. I have been a police officer for nearly twenty years, but I only became familiar with animal crush videos in September 1998, when this case was first assigned to me. The investigation began after we received a video from the United

States Humane Society in Washington D.C. They purchased the video on the Internet from an individual using the name "Steponit," a resident of Thousand Oaks, a city in Ventura County.

During my investigation, I ran searches for animal crushing on the Internet. I found different websites and chat rooms announcing crushing activities. I also located bulletin boards involving animal crushing activities. While in the different chat rooms involving foot fetishes, I communicated on line with people and told them that I was interested in animal crushing. I was eventually directed to a chat room called "Crushcentral," where people with foot fetishes and different sexual deviances meet to talk with people of similar interests. I spent the majority of my time in "Crushcentral," but I was able to locate two other chatrooms that were similar in nature, "Crush 101" and "Feet."

People from all over the world meet in these chatrooms. They use stage names such as "Under Her Feet", "Squished," etc. I met these people on a daily basis, using the name Minnie. I talked to and "made friends with" people from the Netherlands, the United Kingdom, Italy, Mexico, and the United States. Each day I chatted with these individuals during the day and evening, depending on where in the world they lived. We shared crush experiences as well as everyday life experiences. The fact that people do not use their real names makes investigating these crimes difficult. One never knows with who they are actually corresponding, which makes it very difficult to prove who is actually producing the videos.

Through my conversations, I learned that the common denominator was the "foot fetish." They spoke about their fetishes and how they developed. For many of them the fetish developed as a result of something they saw at a very early age, and it usually occurred before the age of five. Most of these men saw a woman step on something. She was usually someone who was significantly in their lives. They were excited by the experience and somehow attached their sexuality to it.

As these men grew older, the woman's foot became a part of their sexuality. The power and dominance of the woman using her foot was significant to them. They began to fantasize about the thought of being the subject under the woman's foot. They fantasized about the power of the woman, and how she would be able to crush the life out of them if she chose to do so. Many of these men love to be trampled by women. Some like to be trampled by a woman wearing shoes or high heels. Others like to be trampled by women who are barefoot. They prefer to be hurt and the more indifferent the woman is to their pain, the more exciting it is for them.

I have learned that the extreme fantasy for these men is to be trampled or crushed to death under the foot of a powerful woman. Because they would only be able to experience this one time, these men have found a way to transfer their fantasy and excitement. They have learned that if they watch a woman crush an animal or live creature to his death, they can fantasize that they are that animal experiencing death at the foot of this woman.

Many videos are produced wherein defenseless animals are tortured and crushed to death, for the sole purpose of sexually exciting men. The animals are tortured in a slow, cruel and deliberate way. The women torturing the animals talk to them as if they are human. The women play the part of the dominatrix.

These videos are usually sold for fifty to two hundred dollars a piece. Special orders are made at the request of the buyer. He merely E-mails his request in detail to the producer. The fantasy is then acted out by the actress while being filmed by the producer.

During my chats, I have learned that many of these videos are being produced in the United States. Several of the producers live in California. However, I have learned that there are producers living in Texas and Ohio as well.

The animals being crushed include, but are not limited to, mice, pinkies (baby mice), guinea pigs, rats, squirrels, rabbits, birds, chickens, cats, dogs and monkeys. I have been personally asked to make a video of a dog being crushed. I was also approached on the Internet by an individual that asked how big an animal I was willing to crush. I was once instructed on how to torture a dog on video, step by step. I was told to purchase the dog at a place that would not check on the animal at a later date. I was told to make the video immediately after purchasing the animal to avoid the risk of becoming attached. I was told to make the crushing incident last ninety minutes before the animal actually died.

In May 1999, I was contacted through the INTERNET by Gary Thomason, known to the crush community as "Getsmart." Thomason sent me a clip of a mouse and rat crush video he filmed with "Diane." Thomason told me he would much rather produce a video with me, and he asked me to consider making a video with him. I agreed and we made arrangements to meet at his apartment on June 19, 1999.

With the assistance of Long Beach Police and investigators from the Ventura County District Attorney's Office, I went under cover with a second police officer

from Long Beach. After we arrived at Thomason's residence, he went to the local pet store and purchased five large rats. Thomason arranged for a second cameraman to video tape the crushing event from a different angle. After Thomason taped one of the rats to a table and both camera men had the cameras running and ready to film, the arrests were made. At that point the Long Beach Police Department took over the investigation. Mr. Thomason awaits trial on Felony Animal Cruelty charges.

During my conversations in the different chat rooms, individuals have sent me samples or clips of these videos to add to my collection. Many photos of animal crush and trampling have also been sent to me over the Internet through the chat rooms similar to the ones you have seen today. Tom and I will be happy to answer any questions you may have.

Mr. McCOLLUM. Thank you very much, Ms. Creede.

I will say this is shocking and that is not a word we use too often because the subcommittee sees a lot of pretty horrible things, being the Crime Subcommittee, but as I said in my opening statement, until Elton Gallegly called it to my attention I was not aware such kind of thing existed. I know there is a dominiatrix type of fetish, but I had no idea anybody would do something like this.

You described this, Mr. Connors, first. How did this come to your attention, it was—somebody walked into your office or what?

Mr. CONNORS. No, the United States Humane Society purchased a videotape. In fact, the one that you saw a clip of today over the Internet from the person in Ventura County, Steponit. They then sent that videotape to our local Ventura County Humane Society who passed it on to our Department as well as the Sheriff's Department.

Mr. McCOLLUM. What I am kind of curious about is how long has this type of depiction and videotaping been going on? Do we figure in other words is this an Internet phenomena since Ms. Creede went on there and found it and it has proliferated or is this something that has been going on underground perhaps years before this came to your attention? Do we have any way of knowing?

Mr. CONNORS. I like yourself never heard of before May 1998. Since then Mr. Paul LeBarron, who is here from the Long Beach Police Department, has informed me that it has been going on, that he has heard about years ago. Fortunately, I was spared that, so I know it has been going on for years, but I do not know how long.

Mr. McCOLLUM. Apparently, the Internet itself though is an extraordinary proliferation tool for this type of crime, I would think, or this type of cruelty. I do not know, but it makes common sense that that would be the case. I just assume that one would not have nearly the kind of contact to proliferate this material until we had the Internet. Is that a fair assumption?

Do you think that, Ms. Swit? And do you think that too, Mr. Connors?

Mr. CONNORS. Yes, Your Honor—Your Honor, I am used to being in Court.

Mr. McCOLLUM. I understand. I have done that too. We are all attorneys up here pretty much, except Mr. Gallegly. He is not.

Mr. CONNORS. It is absolutely true. Able to be anonymous when you are on the Internet and to be able to talk without anybody knowing that it is you that is saying it, allows these people to reach out and find others of similar desires and passions, shall we say? I think it now allows them to get together as a group and to

expand what they had silently played with on their own, perhaps for years, but now they have got friends who they can do it with.

Mr. MCCOLLUM. Apparently on this "The Practice" television show they used insects being crushed as opposed to animals. Is that common too or is that just their way of trying to be more modest about it or do you know? Do any of you know?

Mr. CONNORS. I think it is reasonably common in that like a lot of perversions people start off small and they get desensitized and then they need something bigger and something bigger. As Ms. Creede said, one of the questions asked her is how big are you willing to go?

Mr. MCCOLLUM. What did you find, Ms. Creede, in that? Did you find people wanting insects crushed too, is that common?

Ms. CREEDE. Yes. There are preferences. Some people prefer animals. Some people actually prefer inanimate objects and others insects or crayfish, fish.

Mr. MCCOLLUM. What is amazing to me is it seems to be that many people you found on the Internet. This is not just one or two people or a dozen. It is lots of folks.

Ms. CREEDE. It is worldwide.

Mr. MCCOLLUM. Okay. Well, I have learned a lot today I wish I did not know, to be honest with you. We need to know it. It needs to be in the light of day, but I had no idea that that was the case.

What I am curious about too is do we have other forms of this being sold? Do they sell the sound tracks like we were hearing something awfully strong here or do they sell separately individual photographs or are there other ways of doing this or is it all just videos? Ms. Creede?

Ms. CREEDE. They also sell photographs. There are numerous websites on the Internet with these type photos and also trampling.

Mr. MCCOLLUM. Did you find, and you named a particular person who was engaged that you now—is under prosecution currently that you have found in your undercover activity, did he or did anyone else to your knowledge who produces these videos, do they do other kinds of videos? Is this unique in that business? Are they producing other pornographic materials and things like that? Or is this the one line, we are making money, deal for these folks?

Ms. CREEDE. The ones I have come in contact with pretty much produce some type of trampling or crushing videos. Now one of them operates under the guise of being of making wedding videos and that is how he sends his videos through a P.O. box using a company named Wedding Videos. But the others that I have come in contact with are actually on the Internet. They give you e-mail addresses. They have catalogs.

Mr. MCCOLLUM. This is what they do? They do not produce other things.

Ms. CREEDE. Yes.

Mr. MCCOLLUM. This is what they produce, so this is their product line.

Ms. CREEDE. This is what they do.

Mr. MCCOLLUM. I do not mean in any way to diminish the animal cruelty which obviously is what we are here about today, but that reminds me of the fact of the movie that was out last year, "8 millimeter" dealing with, a snuff film, a person being tortured

and obviously in a similar way. There has got to be a relationship here?

Ms. SWIT. Yes, this is the next step. Absolutely. It is how big will you go? How much can we get away with? That is why it is so crucial to stop it now, if we are really serious about diminishing violence in the community. This is a great way to start.

Mr. MCCOLLUM. I thank you. I think the point has been well made and very obvious.

Mr. SCOTT, you are recognized for 5 minutes.

Mr. SCOTT. Mr. Connors, you prosecute in the county, on a county level?

Mr. CONNORS. Yes, Your Honor. Again, I am a little nervous.

Mr. SCOTT. I think we can all acknowledge this is sick and we just cannot imagine people that we would want anywhere close to us actually who enjoy these, but the selling of depictions of illegal activity is not illegal.

Mr. CONNORS. Not currently.

Mr. SCOTT. Pictures of people robbing banks or depictions of people robbing banks, movies about people robbing banks are not illegal.

Mr. CONNORS. No. There is, I think a closer analogy would be child pornography. There are laws against buying, selling or even possessing child pornography which is basically an illegal conduct.

Mr. SCOTT. And the compelling state interest there is protection of children.

Mr. CONNORS. That is correct. And certainly here it would be the protection of the animal.

Mr. SCOTT. The bill requires the activity to be illegal in the jurisdiction that it is occurring in? Do I understand that right?

Mr. CONNORS. That is correct.

Mr. SCOTT. If you get a video, how do you know where it was made?

Mr. CONNORS. That is the good part about this legislation is that it does not matter where it was made. It matters where it is sold or where it is possessed to be sold.

Mr. SCOTT. So if you sell it in an area where the depiction, where you depict activity, if it is made in Colorado and sold in New York, if it depicts something illegal in New York—

Mr. CONNORS. That is correct.

Mr. SCOTT. It would be illegal. It would be an illegal tape.

Mr. CONNORS. What our investigation so far has shown is that animal cruelty laws are all across the nation, every State has them. And this definition to what I have been able to discover so far fits under animal cruelty in every one of those jurisdictions.

Mr. SCOTT. What if it is clearly made outside of the country?

Mr. CONNORS. Then it would still be illegal.

Mr. SCOTT. It would still be illegal.

Mr. CONNORS. To possess or to sell in the United States, yes.

Mr. SCOTT. Under the bill, if you make—if it is clearly made in France, and imported and sold, it would be illegal under this bill?

Mr. CONNORS. If it fits under the guidelines of animal cruelty, yes. There has been some question as far as say a bullfight. However, a bullfight is not animal cruelty. There are separate sections—

Mr. SCOTT. But it may be animal cruelty in Virginia.

Mr. CONNORS. From my investigation with the U.S. Humane Society, all States have separate animal fighting laws. In fact, the Federal Government has an animal fighting venture.

Mr. SCOTT. We cannot have bullfights in Virginia?

Mr. CONNORS. You cannot.

Mr. SCOTT. I do not know if we can or we cannot. We do not have bullfights in Virginia.

Mr. CONNORS. Normally, those are separate laws, not under the auspices of animal cruelty. They are under dog fights, cock fights, bull fights are illegal.

Mr. SCOTT. You do not title it, but if it is illegal in Virginia to have bullfighting, then would a bullfighting video be illegal to be sold in Virginia?

Mr. CONNORS. Only if it is illegal under the animal cruelty sections, not if it is just illegal.

Mr. GALLEGLY. Would the gentleman yield?

Mr. SCOTT. I will yield.

Mr. GALLEGLY. Bobby, one of the things that we have realized going through this process and we have taken a lot of time, more time than you normally would in drafting what seems to be a very straightforward piece of legislation. But, for instance, if a bullfight was being shown in a classroom for educational purposes, talking about culture in a Latin American country or something, if you take a look at the manager's amendment, you will see that we try to even narrow down what we have already had to specifically exempt all of those types of activities, it will eliminate a lot of gray area.

Mr. SCOTT. So if you have illegal activity that has serious political, scientific, educational, historic or artistic value, notwithstanding the fact that it is illegal, it would be okay?

Mr. GALLEGLY. That is correct.

Mr. SCOTT. I am just reading the definitions where it says that if such conduct is illegal under Federal law or the law of the State in which the creation, sale, possession takes place, it does not say under the specific section animal cruelty, it just says the conduct is illegal.

Are you familiar with the Hialeah case?

Mr. CONNORS. I am sorry?

Mr. SCOTT. The Hialeah case, Church of Lekumi, City of Hialeah which involved animal sacrifices?

Mr. CONNORS. No, I am not.

Mr. SCOTT. In that case, the Court held that the free exercise clause trumped the animal cruelty laws. They were I think killing chickens and it was, they passed a law said you could not kill chickens in a religious sacrifice and they felt that the free exercise clause trumped the animal cruelty laws. Why would not the free speech clause trump animal cruelty laws?

Mr. CONNORS. Sir, I do not believe that this would be in violation of the first amendment of free speech in that you have mentioned a case, Osborn versus Ohio, which I have placed in this issue sheet, clearly indicates that the first amendment does not protect illegal conduct. That is a case that talks about child pornography, but it also talks about the distribution of it and the production of it and

how it, those parts of it are integral to the illegal conduct itself and therefore the first amendment does not protect it.

Mr. SCOTT. Other than child pornography are you aware of any illegal activity, depiction of any other illegal activity, just the distribution of the depiction of the activity, not the activity itself being illegal?

Mr. CONNORS. No, I am not.

Mr. SCOTT. The Son of Sam laws were ruled unconstitutional because there was a depiction of illegal activity could not be proscribed by the government. They were selling books describing illegal activity and those Son of Sam laws were ruled unconstitutional. Why would not this law follow the same situation? Because you have animal cruelty being depicted that could be clearly made—I mean you could have a picture of the Eiffel Tower in the background showing where the picture was made, why would not that have—suffer the similar fate?

These are some of the core questions that we are going to have to deal with.

Mr. CONNORS. I understand that.

Mr. SCOTT. Are we catching you cold on it? Obviously, you would like to, in response to a question like that, like to prepare—

Mr. CONNORS. Research it.

Mr. SCOTT. But those are some of the questions and the compelling—I know I am going over, if I could just have 30 more seconds. In the compelling State interest, you have some that are clearly made outside of the country.

Some, those made inside of the country I think you would have a compelling State interest, but there is some question as to whether the sale of material clearly made outside of the country and stopping that exchange of speech, whether or not the State of Virginia or the Federal Government has a compelling State interest to stop that exchange and that is the kind of thing, in light of the Son of Sam laws and some of the others. These are some of the things that we are going to have to be dealing with.

Mr. CONNORS. I am not familiar with the case, so I am not able to speak too well on it, however, it would depend on the way the film is produced. If it is produced with some type of criminal activity with the intent of putting it in commercial interstate commerce, then I do not think the first amendment would cover it.

Mr. MCCOLLUM. Ms. Swit, you wanted to respond in some way to that? And then I am going to recognize Ms. Jackson Lee.

Ms. SWIT. I actually had a question. If this was not an animal, if it were an infant, a baby, would it make a difference?

Mr. SCOTT. Well, you have news stories now, you have the video clips of—

Ms. SWIT. They are reporting the news. This is made for the sole purpose of making money and let me ask a question. Would you want this—

Mr. SCOTT. I would not want this garbage transferred at all, let us just put that on the table. I think it is shocking and anybody who would actually pay money for a video, in my view, is sick.

Ms. SWIT. Would it be something that a school teacher would bring into the classroom to show? Is there is any educational value here or I mean all it teaches is cruelty and if we do not get on top

of that, I do not know where it is going to lead, but just dealing with it now, if we do not stop this, we are saying subliminally that this is okay. This is all right to exist and people can look at it and get whatever feelings they want from it to go out and do this. We are saying it is okay.

Mr. MCCOLLUM. I think what, if I may reclaim, since the gentleman's time has run, Ms. Swit's answer to her question is a pregnant one and posed properly. I believe what Mr. Scott is trying to do here is to raise the possible constitutional law question.

Ms. SWIT. Yes.

Mr. MCCOLLUM. So we can draft this and make sure it passes constitutional muster.

Ms. SWIT. Yes.

Mr. MCCOLLUM. Because I do not think there is a soul up here who wants this repugnant stuff to continue to be sold, produced, or otherwise transmitted. So your question is right. It is great argument material for us to carry to court, but somewhere along the way that is what is going to happen to whatever law we pass. Somebody is going to test this and we want to make it as test proof as possible. I think that is the purpose. But you are absolutely right, you made the points that need to be made in arguing why whatever we do needs to be upheld.

Ms. Jackson Lee, you are recognized for 5 minutes.

Ms. JACKSON LEE. I thank the Chairman very much. Let me apologize for being delayed because of another subcommittee hearing that was held with the markup in Immigration and Claims so I thank the gentlemen and I do apologize to the witnesses by not hearing your earlier testimony, but I am going to be able to follow a line of questioning that I have just heard, but more importantly, join the unanimous posture, I believe, of all of us is to be horrifically and disgustingly outraged about these disgusting acts.

I had the opportunity to participate in a hearing on juvenile justice and it was the complete opposite, I guess, of a brochure that you had in the pamphlet or in the packet that I just saw which is the suggestion that a child did something violent to an animal and then ultimately became either a child molester or a killer.

This was a story by a child psychologist of a child that watched his mother be brutalized in domestic violence and the child came to their attention because he had strangled his hamster. He had thrown one out the window. He had stomped on a hamster and what he had done is translated the terrible things being done to his mother, he did them to the animals. So we know that there is certainly some sort of nexus or psychological connection.

But let me also follow a line of questioning, Mr. Connors, and then Ms. Creede and I want to thank Ms. Swit for her leadership on this and her passion, and forgive me if you have already answered, I think you were answering as I was coming in, but why the present animal cruelty laws does not give you enough scope to be able to prosecute the crush videos?

Mr. CONNORS. The reason is because it is multi-faceted, first of all, we have to be able to show who did it. On one we had, we had the defendant telling us that he produced these videos, so we felt we could accomplish that goal, but what we could not do is show where it was made in order to show jurisdiction or venue and then

we could not show when it was made, within the last 3 years to satisfy the statute of limitations.

Without being able to do that, even if we could show where it was made and we could get past jurisdiction, he could come into Court and say yes, I made it. I did that. I did it in 1995 and our case flies out the window because it is past the statute of limitations.

Ms. JACKSON LEE. On the animal cruelty?

Mr. CONNORS. On the animal cruelty. On the actual selling or distribution of the video, it is not illegal, so he could do it all day long.

Ms. JACKSON LEE. And revising or fixing State animal cruelty laws would not fix the statute of limitation problem or expand the—or define the point of production problem?

Mr. CONNORS. Without a law outlining the straight possession of it, indeed, in California we could perhaps pass a law saying that you could not sell or distribute these videos, but that does not mean they could not buy them from somebody in Nevada. It would be a hodge podge of laws trying to attack a problem that is nationwide, worldwide, actually.

Ms. JACKSON LEE. Let me ask Ms. Creede, because I have been reading some of the materials that have come out of the Office of District Attorney and it appears obviously by you, your testimony, but tell me what kind of individuals are you, did you come across that was actively involved in this unmentionable?

Ms. CREEDE. Well, I found that they are of all ages. I have talked with 18 year olds, 20 year olds up to 50. They are high ranking individuals. One of the people that we worked was in management in an oil company. They claim that this fetish is—most of the people in it are intelligent, highly intelligent beings. They brag about that.

Ms. JACKSON LEE. How often a week do they engage in—I know they can look at the videos, but are there groups beyond the chatrooms that are actually doing this? This is film production, but are there actually groups participating in this in actuality, killing animals besides a producing the film?

Ms. CREEDE. From what I know, they meet, some of them that live in the same areas, meet and talk and they meet in the chatrooms on a daily basis and leave messages, but as far as killing the animals, there is no way of knowing. I know that a lot of them do it privately in their own homes. There are a lot of couples involved in this that work together and make these videos and some of them are for private use only.

Ms. JACKSON LEE. So it is individuals and it may be, there may be fan clubs being built upon around the nation, but this can be individuals as well?

Ms. CREEDE. Yes.

Ms. JACKSON LEE. Ms. Swit, in terms of your view of other animal cruelty laws, you think there is a great need to pass legislation like this in addition to animal cruelty laws?

Ms. SWIT. Oh yes, very much so. And if it does not fit in properly then we have to set a precedent. I think this is scary. I think it is really scary. It means kids are going to see this and they are going to say oh, what fun.

And if one is sensitive and says that it's horrible, the peer pressure will get him. And they will go out, crush animals and then the next step will be to kick an old lady when she is walking across the street and when they are adolescents they will mug her when she is leaving with her Social Security check. I mean it is just a natural progression. We all know that.

Ms. JACKSON LEE. Thank you, Ms. Swit. Mr. Connors, when did this first come to your attention as a criminal activity?

Mr. CONNORS. I first learned of it in May 1998 when the U.S. Humane Society sent us a video that they had purchased over the Internet. It is interesting also that a month later, the Animal Defense League in Oregon sent us another video that they had purchased from the same company over the Internet.

Ms. JACKSON LEE. Do you know whether, I think they are called snuff videos, have we been able to do something—that is with human beings. Have you heard of those? Have you found prosecution on those or any relief dealing with—

Mr. CONNORS. From what I have been informed of is that every time the FBI has investigated a snuff video it has turned out to be staged which is exactly the opposite case here. These animals are certainly not staged.

Ms. JACKSON LEE. So we do have a decidedly different problem possibly.

Mr. CONNORS. Very different.

Ms. JACKSON LEE. And they have had no prosecutions to your knowledge or no discovery that it is alive or that it results in the death of someone in actuality?

Mr. CONNORS. No.

Ms. JACKSON LEE. But here we have cases where these animals are easily destroyed frankly.

Mr. CONNORS. They are purchased and destroyed for one purpose and that is sexual gratification.

Ms. JACKSON LEE. I thank the Chairman.

Mr. MCCOLLUM. Thank you, Ms. Jackson Lee. Mr. Gallegly, as member of the Full Committee, I did not think I had to ask for consent to recognize you, but if not, I will ask unanimous consent. I do not think anybody is going to object.

Mr. GALLEGLY. Again, I want to thank you, Mr. Chairman, for allowing me to participate at the Subcommittee level and I have to say to start with, watching Ms. Swit, you can sense the frustration when you are looking up at attorneys trying to find issues with issues. As the first nonattorney ever to serve on the Judiciary Committee, believe me, I have a great deal of empathy for those frustrations.

But I would like to say that my view after having sat on this Committee for many years is what Mr. Scott was trying to do was to find those holes or gaps that some attorney is going to try to wiggle through and it is very helpful because part of the purpose or the principal purpose of holding these hearings are to find where there is a potential loophole and that is what we are doing here today. And one of the things that I said right at the offset is one of the purposes of the manager's amendment that I will be offering at the markup will be closing the gap even more and when we have folks as sharp as Bobby Scott who knows just about every angle

there is, in a case like this, I look at him as a real resource. So I do not want anyone to misconstrue.

I would rather be aggravated to find these problems so we can resolve them at this point, rather than having something that we think we have only to find that someone is going to challenge it and we are back to Square One.

So that is what we have been going through here today and will be going through until we get this hopefully passed into law.

Tom, thank you again for being here, but one of the things that you did not bring out is really how widespread this is. We know it is international, it is over the Internet or at least it is across the continental United States and I think we even mentioned England, but I think it even goes beyond that to countries all around the world. Do you have evidence of that?

Mr. CONNORS. Yes, we do. Susan here has talked to people all over the globe and in fact, has been invited to come to Italy and be supported while she made these crush videos. We have had people from Japan, Italy, Netherlands, England, Hawaii, of course, all over our continental United States. They are all getting together on the Internet here and exchanging their desires and how they are going to accomplish in getting what they want. So it definitely is worldwide.

Mr. GALLEGLY. Ms. Creede, during your investigations did you discover any organizations or groups that were promoting these, either over the Internet or through other means?

Ms. CREEDE. No, I did not.

Mr. GALLEGLY. But you were dealing mainly with just individuals that you were able to find on the worldwide web?

Ms. CREEDE. Yes.

Mr. GALLEGLY. And I appreciate the work that all of you are doing and I appreciate you being here today and Mr. Chairman, I yield back.

Mr. MCCOLLUM. Thank you, Mr. Gallegly and again, I want to thank the entire panel.

Mr. Scott?

Mr. SCOTT. Can I ask Mr. Connors if he would, if he wants to, respond to the question of why Simon and Shuster v. Crime Victims Act, 1991 case that threw out the Son of Sam law—

Mr. CONNORS. I am sorry, I cannot—

Mr. SCOTT. I will give you the citation, why that case would not apply to this situation where the conduct is not illegal in America, for example, it occurred somewhere else and what is being sold is the depiction of that criminal activity, unless you get into the discussion using a standard that we have in obscenity where there is no redeeming social value and that kind of thing, unless we are going to use that kind of standard, it just seems to me that that case would be right on point and would seriously jeopardize the legislation. So we will give you the citation.

Mr. CONNORS. I will research that.

Mr. SCOTT. And if you want to and if you do not—

Mr. CONNORS. I certainly will.

Mr. MCCOLLUM. It would be nice to have the extra added research, if you do not mind giving us a letter back, the Committee would appreciate it.

Mr. CONNORS. Absolutely.

Mr. MCCOLLUM. It would be very good to have and anybody who can get to help you with that research would help us, but not that we are not going to do our own, but again, I want to thank the entire Panel for coming today, I know you have come at some expense and some length to be here, but it is a very important subject. It is the intent of the Subcommittee to produce and mark this bill up within the month and we will get it right, if we possibly can, Mr. Scott.

Thank you, Ms. Swit and Mr. Connors and Ms. Creede, thank you very much.

Mr. CONNORS. Thank you.

Mr. MCCOLLUM. We will move on to the second panel and the second bill today. Congressman Matt Salmon was first elected to the United States House of Representatives in November 1994 to represent Arizona's first congressional district and he is our first witness in the second panel. Prior to his election in the House, Congressman Salmon served 4 years in the Arizona State Senate and 13 years as a telecommunications executive with U.S. West Communications.

As a Congressman, Mr. Salmon has been recognized as a leader in the fight against high taxes, corporate welfare and government waste. He also has taken an interest in a number of crime related issues. He is a 1981 graduate of Arizona State University. He earned his Master of Public Administration from Brigham Young University in 1986.

The second witness on the Panel is Phillip Wise, the Assistant Director of the Federal Bureau of Prisons where he heads the Health Services Division of BOP. Mr. Wise began his career with the Bureau of Prisons in 1977 and has served in various positions of increasing responsibility of prisons in Atlanta, Reno, Fort Worth and the Staff Training Academy and the North Central Regional Office. He has served as a warden at the Federal Prison Camp in Alderson and most recently as warden of the Federal Medical Center at Rochester, Minnesota. Mr. Wise received his bachelor's degree in psychology from Emery University in 1972 and his master's in counseling and psychological services at Georgia State University in 1977.

Our third witness is Jean Williams Auldrige, a member of the National Board of Directors for the Citizens United for the Rehabilitation of Errants. CURE is a national organization devoted to issues concerning rehabilitation and the rights of prisoners. For 30 years, Ms. Auldrige worked as a staff member in the United States Congress, predominantly for Congressmen and later United States Senator Robert T. Stafford of Vermont. We welcome you here. She is a lifetime resident of Northern Virginia.

Our final witness in the Panel is Robert Cohen, a physician in private practice in New York City. Dr. Cohen has served as the Director of Health Care at Rikers Island Facility in New York which houses over 14,000 prisoners. He has also served as Vice President for Medical Operations of the New York City Health and Hospitals Corporation. He is also a member of the board of the National Commission on the Corrections of Health. So we have a fine panel and with that in mind—

Mr. SCOTT. Mr. Chairman?

Mr. MCCOLLUM. Yes, Mr. Scott?

Mr. SCOTT. Mr. Chairman, the gentlelady from Texas will have to leave and I was wondering if she could, out of order, make a brief statement at this time?

Mr. MCCOLLUM. Certainly, I would be glad to recognize you for a brief statement.

Ms. JACKSON LEE. Thank you very much, Mr. Chairman, and what I would ask if my entire statement could be submitted into the record, I thank the Ranking Member for his kindness as well.

Let me first note a great deal of respect that I have for Mr. Salmon. In fact, I know that we have worked together on legislation. Our children, I believe, have played together and I guess I could go on and on and we are going to miss him. This legislation, I believe, has many good intentions, but I have to offer at this juncture vigorous concern and maybe I would say opposition, but I am going to be reading the testimony of those who are presenting it and let me just share a few brief points and thank again the Chairman for his yielding.

This hits my community or hits the minority community particularly hard. We have a prison system that is dominated by African Americans and Hispanics across the nation. In addition to that, this country has promoted the privatizing of the prison system so in fact, it has gotten to be such a prosperous business that it is now one of the most valued stocks on the Wall Street and Dow Jones.

If we are put in a co-payment, the heaviest burden will come on the grandmothers and mothers of those young men who are incarcerated, who get their pennies together every week to get on a bus to go visit them. Frankly, I believe that the one thing I do not want to deny is an inmate's decided need for medical care, mental health care, to insure in a closed population that there is not the spread of hepatitis or the spread of AIDS.

Where do they get this co-payment money from? Do they get it from the little grandmother which raised them and wished to God that they had not gone the errant way? What is the responsibility of the prison system that cannot make determination of who has a bogus request for health care and who does not?

I know that there are probably many parts of the testimony that I need to review more extensively, but as I looked at this legislation all I could think of was increased number of individuals with contagious diseases not being able to be seen because maybe they are a troublemaker and maybe the punitive situation will be you do not have a co-payment, you do not get to see a physician, and the fact that the prison system is dominated in large numbers by the minority community and I could not in good conscience suffer the added insult to injury.

They are criminals, they are incarcerated, have been convicted, if that is the case. I certainly do believe you do the crime, you are incarcerated, but I certainly think that we are stretching our punitive measures where they are not only impacting that inmate, but they are impacted the larger population of inmates.

They are impacting that family member and they are impacting society if they are ultimately released with some condition that was

denied treatment, including mental health treatment just because they do not have the co-payment.

With that, Mr. Chairman, let me indicate that I am grateful for you holding this hearing because maybe we will get more information about this and I would simply say that what you are supposed to say in a hearing is that I remain open, but I express enormous concerns about the direction of this legislation. I thank you for your kindness. I yield back.

Mr. MCCOLLUM. Thank you. Mr. Salmon, you are recognized to explain your bill and to give us some enlightenment.

Mr. SALMON. Thank you, Mr Chairman, and I appreciate the opportunity to speak in support of the Federal Prisoner Health Care Co-payment Act, H.R. 1349 which has almost 50 bipartisan cosponsors. Companion legislation sponsored by Senator John Kyl passed the other chamber unanimously earlier this year.

I think first of all, I think that obviously many of the issues that have been raised by the honorable gentlewoman from Texas who I know has heartfelt concerns about the legislation and the impact that it may have upon the minority community across the country, but I would ask her to consider this: many of the victims of those individuals are also minorities and the proceeds from this legislation go to a victims fund and I guess it depends on whose side you come down on ultimately, those minorities who are victims or those minorities who are in the prisons.

Also, it is an extremely nominal fee that we are talking about and maybe after we talk about the genesis, the idea, what it has accomplished, maybe I can sway the gentlewoman.

H.R. 1349 would require Federal prisoners to pay a nominal fee when they initiate certain visits for medical attention. Seventy-five percent of the fee would be deposited in the Federal Crime Victims Fund and the remainder would be used by the Federal Bureau of Prisons and the U.S. Marshals Service for administrative expenses incurred in carrying out this act.

Each time a prisoner pays to heal himself, he will be paying to heal a victim. The U.S. Department of Justice not only supports the legislation, but its Bureau of Prisons and Marshals Services offered suggestions that I incorporated into the bill.

Most law abiding Americans pay a co-payment when they seek medical attention. Why should Federal prisoners be exempted from this responsibility? This reform on the Federal level is long overdue. Health care costs for Federal prisoners continue to rise, totaling \$354 million last fiscal year, up from \$138 million in fiscal year 1990. That is almost three times the amount over a very short time span.

A portion of the increase can be attributed to a growing Federal prison population, but a more significant factor is rising health care costs. The inmate medical daily cost has increased from \$6.80 in 1990 to \$9.21 in 1998. Today, only a handful of States exceed the Federal system in the cost of care per inmate. Establishing a co-payment requirement would exert an immediate downward pressure on prison health care costs.

States recognize the value of co-payment programs. At least 36 State prison systems charge inmates such a fee. That is 36 out of 50. Additional States are considering implementing co-payment

payments. Moreover, at least half of the States, some of which have not enacted this health care reform on a statewide basis, have jail systems that impose a co-payment on inmates seeking certain types of health care.

Co-payment programs have an outstanding record of success at the State level. In June 1996, the National Commission on Correctional Health Care held a conference that examined statewide fee for service programs. Dr. Ron Waldron of the Bureau of Prisons concluded that inmate user fee programs appear to reduce utilization and do generate modest revenues.

Evidence of the effectiveness of co-payment programs continues to surface. Tennessee, which began requiring \$3 co-payments in January 1996 reported in late 1997 that the number of infirmary visits per inmate had been cut almost in half. In August, prison officials in Ohio discovered the number of prisoners seeing a doctor had dropped 55 percent and that between March and August the co-payment fee generated \$89,500. In my home state of Arizona, there has been a reduction of about 30 percent in the number of requests for health care services.

Co-payment programs reduce the overutilization of health care services without denying the indigent necessary care. Many prisoners use a health care visit as an excuse to escape the monotony of daily prison life. In discouraging the overuse of health care, prisoners in true need of attention will receive better care.

Health care resources are, after all, limited. Tax-payers benefit through reduction in the expense of an operating prison health care system and the burden of corrections officers to escort prisoners faking illness to health care facilities is reduced.

The Federal Prison Healthcare Co-payment Act instructs the Director of the Bureau of Prisons to assess a fee of \$2 which can be administratively increased upwards for each health care visit that he or she, consistent with the Act, determines should be covered. This provides some flexibility for them to interpret what should and should not be covered.

The legislation also allows State and local facilities to collect health care co-payment fees when housing Federal prisoners. The fees collected will be deposited into the Federal Crime Victims Fund. Enactment of the Act could add about a million dollars annually into the fund. Prisoners with a conscience may even experience satisfaction for contributing to an account assisting those who they have harmed.

The Federal Prisoner Health Care Co-payment Act prohibits the refusal of treatment for financial reasons or appropriate preventive care. Let me reiterate that. This act prohibits the refusal of treatment for financial reasons, so there is no reason a person with legitimate concerns can still not get appropriate health care.

The Senate passed bill expands the exclusions in H.R. 1349 to include emergency services, prenatal care, diagnosis or treatment of contagious diseases, mental health care and substance abuse treatment.

I support these changes, as well as the modification to the restitution provision suggested by the Bureau of Prisons.

Finally, the Act requires that the Director report to Congress the amount collected under the legislation and an analysis of the ef-

fects of the implementation of this legislation on the nature and extent of health care visits by prisoners. The Federal Prisoner Health Care Co-payment Act saves taxpayers' money, relieves stress on already overburdened corrections officers, improves access to care for genuinely sick prisoners, requires prisoners just like most other Americans to pay a co-payment when they seek health care and it increases resources available to victims of crime.

I hope this sensible, good government legislation will be enacted into law in the very near future. Again, I thank the Subcommittee for holding a hearing on this bill. I must apologize, I need to go to another hearing myself so I leave you in very able hands.

[The prepared statement of Mr. Salmon follows:]

PREPARED STATEMENT OF HON. MATT SALMON, A REPRESENTATIVE IN CONGRESS  
FROM THE STATE OF ARIZONA

Mr. Chairman, I appreciate the opportunity to testify in support of the Federal Prisoner Health Care Co-payment Act (H.R. 1349), which enjoys almost 50 bipartisan cosponsors. Companion legislation sponsored by Senator Jon Kyl passed the other Chamber unanimously earlier in the year.

H.R. 1349 would require Federal prisoners to pay a nominal fee when they initiate certain visits for medical attention. Seventy-five percent of the fee would be deposited in the Federal Crime Victims' Fund and the remainder would remain with the Federal Bureau of Prisons and the U.S. Marshals Service for administrative expenses incurred in carrying out this Act.

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This reform on the Federal level is long overdue. Health care costs for Federal prisoners continue to rise, totaling \$354 million last fiscal year, up from \$138 million in fiscal year 1990. In fact, only a handful of states exceed the Federal system in the cost of care per inmate. Establishing a co-payment requirement would exert an immediate downward pressure on prison health care costs.

States have recognized the value of co-payment programs and they have proliferated in recent times. Now, well over half of the states (at last count 34) have co-payment programs on a statewide basis, including Alabama, Arizona, California, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Minnesota, Mississippi, Nevada, New Hampshire, New Jersey, North Carolina, Ohio, Oklahoma, Rhode Island, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, and Wisconsin. Additional states are considering implementing co-payment programs. Moreover, at least half of the states "some of which have not enacted this health care reform on a statewide basis" have jail systems that impose a co-payment on inmates seeking certain types of health care.

Co-payment programs have an outstanding record of success on the State level. In June 1996, the National Commission on Correctional Health Care held a conference that examined statewide fee-for-service programs. Dr. Ron Waldron of the Bureau of Prisons concluded that "inmate user fees programs appear to reduce utilization, and do generate modest revenues."

Evidence of the effectiveness of co-payment programs continues to surface. Tennessee, which began requiring \$3 co-payments in January 1996, reported in late 1997 that the number of infirmary visits per inmate had been cut almost in half. In August, prison officials in Ohio evaluated the nascent State co-payment law, finding that the number of prisoners seeing a doctor had dropped 55 percent and that between March and August the co-payment fee generated \$89,500. And in my home state of Arizona, there has been a reduction of about 30 percent in the number of requests for health care services.

Co-payment programs reduce the overutilization of health care services without denying the indigent of necessary care. Many prisoners use a health care visit as an excuse to the escape the monotony of daily prison life. In discouraging the overuse of health care, prisoners in true need of attention will receive better care. Taxpayers benefit through a reduction in the expense of operating a prison health care

system. And the burden of corrections officers to escort prisoners feigning illness to health care facilities is reduced.

The Federal Prisoner Health Care Co-payment Act instructs the Director of the Bureau of Prisons to assess a fee of \$2 (which can be administratively increased upwards) for each health care visit that he or she—consistent with the Act—determines should be covered. The legislation also allows state and local facilities to collect health care co-payment fees when housing federal prisoners. The fees collected will be deposited into the Federal crime victims—fund. Enactment of the Act could add about \$1 million annually to this fund. Prisoners with a conscience may even experience satisfaction for contributing to an account assisting those they have harmed.

The Federal Prisoner Health Care Co-payment Act prohibits the refusal of treatment for financial reasons or appropriate preventative care. The Senate-passed bill expanded the exclusions in H.R. 1349 to include emergency services, prenatal care, diagnosis or treatment of contagious diseases, mental health care, and substance abuse treatment. I support these changes as well as the modification to the restitution provision suggested by the Bureau of Prisons.

Finally, the Act requires that the Director report to Congress the amount collected under the legislation and an analysis of the effects of the implementation of this legislation on the nature and extent of health care visits by prisoners.

The Federal Prisoner Health Care Co-payment Act saves taxpayers money, relieves stress on already over-burdened corrections officers, improves access of care for genuinely sick prisoners, requires prisoners—just like most other Americans—to pay a co-payment when they seek health care, and increases resources available to victims of crime. I hope that this sensible, good government legislation will be enacted expeditiously. Again, I thank the Subcommittee for holding a hearing on the bill.



FOR IMMEDIATE RELEASE  
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## Salmon Bill Requires Nominal Prisoner Copay for Medical Visits – Money to Benefit Victims of Crime

*Law Abiding Americans Must Pay for Medical Services, Shouldn't Federal Prisoners?*

WASHINGTON, DC — Today, the House Judiciary's Crime Subcommittee held a hearing on Arizona Congressman Matt Salmon's Federal Prisoner Health Care Copayment Act (H.R. 1349). Salmon's bill has almost 50 bipartisan cosponsors in the House. The Senate companion bill sponsored by Senator Jon Kyl passed unanimously earlier this year. A markup of H.R. 1349 is expected in the next two weeks.

"Most law-abiding Americans must pay a copayment when they visit their doctors. Certainly, those who violate the law should do the same," he continued. "This bill saves taxpayers money by reducing frivolous abuse of health care services, while improving access of care for prisoners who genuinely need it," Salmon continued.

Under Salmon's legislation, when a federal prisoner visits a prison doctor (excluding those for preventative health care), the criminal will pay a copayment of at least \$2. Of the fees collected, 75% would be deposited into the Crime Victims Fund and 25% would remain with the Federal Bureau of Prisons and the U.S. Marshals Service to defray the costs of implementing the copayment.

"Every time a criminal goes to a doctor to heal himself, he will be taking a step to heal his victims," said Salmon. "Additionally, under this bill more than \$1 million will be donated to victims nationwide. This is common sense legislation and I look forward to seeing it become law," Salmon concluded.

Health care costs for Federal prisoners continue to rise, totaling \$354 million last fiscal year, up from \$138 million in fiscal year 1990. The U.S. Department of Justice supports the legislation. Additionally, thirty four states already have copayment programs on a statewide basis where they have an outstanding record of reducing utilization and generating revenues.

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Mr. MCCOLLUM. Thank you, Mr. Salmon and thank you for producing the bill for us to consider today. I might add that your entire statement will be admitted into the record without objection and so will the entire statements of all the witness panel, if you wish to summarize, you are certainly welcome to do so.

Mr. MCCOLLUM. Mr. Wise, you are recognized.

**STATEMENT OF PHILLIP S. WISE, ASSISTANT DIRECTOR, FEDERAL BUREAU OF PRISONS, UNITED STATES DEPARTMENT OF JUSTICE**

Mr. WISE. Thank you, sir. Mr. Chairman and Members of the Committee, I appear before you today on behalf of the Federal Bureau of Prisons in regards to H.R. 1349, Federal Prisoner Health Care Co-payment Act of 1999. This bill provides the BOP with the authority to charge inmates a minimal co-payment fee for certain self-initiated health care visits. We view this initiative as a necessary and invaluable tool in the BOP's overall strategy to teach inmates personal responsibility and feel that it further assists us in maintaining quality health care in a cost effective manner.

The Health Services Division of the Federal Bureau of Prisons oversees the provision of health care for over 117,000 inmates housed within the 94 Federal prisons. Services are provided for inmates housed in general population institutions as well as those housed in medical referral centers.

Inmates have access to sick call 4 days per week, chronic care clinics, physical examinations and dental services. Ancillary services including laboratory testing and radiology are also available. This care is provided by physicians, physician assistants, nurse practitioners, registered nurses, licensed practical nurses and consulting specialists on a contractual basis from the community.

Emergency medical care is provided 24 hours per day either by institution staff or by transferring the inmate to a community hospital emergency room.

In order to assist inmates in achieving a successful transition into the community upon their release, the Bureau of Prisons strives to teach inmates in our custody personal responsibility. All medically able inmates are required to work and to demonstrate good work habits. They are provided with various self-development program opportunities that allow them to prepare for crime free productive return to the community after they are released including education, drug treatment, vocational training, parenting, anger management and other programs.

Inmates are generally required to manage their own finances, choosing how to allot their inmate pay for such personal expenses as telephone calls and commissary items. Implementation of a modest medical co-payment fee would be consistent with the personal responsibility objective. Moreover, the BOP urges inmates to take personal responsibility for physical and mental well being through disease prevention and wellness enhancement education programs.

Most working, law abiding citizens are required to pay a co-payment fee when they seek medical care. Minimal co-payment fees for inmate populations have been adopted in 36 States and have been shown to be extremely effective in decreasing inappropriate requests for health services. Among the States and localities utilizing

co-payment fees, average reductions and sick call visits of 16 to 50 percent have been realized, allowing them to more effectively use their valuable health services resources.

H.R. 1349 provides that inmates will be charged for inmate-initiated sick call visits. Similar legislation which passed the Senate as 704, provides that inmates will not be charged a co-payment fee for emergency visits, mental health visits, obstetric care, BOP scheduled physical examinations and initial workups, BOP scheduled follow up visits or chronic care clinics, for example, for diabetes, hypertension or asthma.

The BOP fully supports these exemptions from the co-payment fee. H.R. 1439 further provides that no inmate will be denied health services due to a lack of funds. The BOP will develop policy to administer the inmate co-payment program to insure that indigent inmates will not be denied access to needed medical services.

Finally, H.R. 1439 provides that any co-payment fees collected would be used for victim restitution and to offset administrative costs of the program. Specifically, Section 2(g)(1) of the bill states that amounts collected by the Director under this section from a prisoner subject to an order of restitution issued pursuant to Section 3663 or 3663(a) should be paid to victims in accordance with the order of restitution. Section 2(g)(2)(A) provides that for prisoners not subject to restitution order. Seventy-five percent shall be deposited in the Crime Victims Fund established under Section 1402 of the Victim of Crimes Act of 1984.

The BOP strongly concurs that that co-payment proceeds should be used for victim restitution. However, in practical terms, Section 2(g)(1) would result in forwarding a minimal, for example, \$2 check to the specific victim identified in the inmate's restitution order. In the event that restitution order listed more than one victim, the small co-payment fee would have to be divided among the identified victims. It might be more practical and more beneficial to victims to eliminate Section 2(g)(1) and instead forward 75 percent of all co-payment fees to the Crime Victims Fund as outlined in Section 2(g)(2)(A).

In conclusion, a health care co-payment would benefit inmates by increasing the level of personal responsible they assume and correctional management by reducing the abuse of sick call services by malingering prisoners. Therefore, assuming that Section 2(g)(1) would be eliminated as proposed, the Bureau of Prisons strongly supports H.R. 1349 as a legislative vehicle to implement a prisoner health care co-payment program.

I hope this information is helpful to the Committee. I would be happy to answer any questions you might have at this time.

[The prepared statement of Mr. Wise follows:]

PREPARED STATEMENT OF PHILLIP S. WISE, ASSISTANT DIRECTOR, FEDERAL BUREAU OF PRISONS, UNITED STATES DEPARTMENT OF JUSTICE

Mr. Chairman and Members of the Committee, I appear before you today on behalf of the Federal Bureau of Prisons (BOP), in regards to H.R. 1349, the Federal Prisoner Health Care Co-payment Act of 1999. This bill provides the BOP with the authority to charge inmates a minimal co-payment fee for certain self-initiated health care visits. We view this initiative as a necessary and invaluable tool in the BOP's overall strategy to teach inmates personal responsibility, and feel that it further assists us in maintaining quality health care in a cost effective manner.

The Health Services Division of the Federal Bureau of Prisons oversees the provision of health care for over 117,000 inmates housed within the 94 federal prisons. Services are provided for inmates housed in general population institutions, as well as those housed in Medical Referral Centers. Inmates have access to sick call (four days per week), chronic care clinics, physical examinations, and dental services. Ancillary services including laboratory testing and radiology are also available. This care is provided by physicians, physician assistants, nurse practitioners, registered nurses, licensed practical nurses, and consulting specialists on a contractual basis from the community. Emergency medical care is provided 24 hours per day either by institution staff or by transferring the inmate to a community hospital emergency room.

In order to assist inmates in achieving a successful transition into the community upon their release, the BOP strives to teach inmates in our custody personal responsibility. All medically-able inmates are required to work and to demonstrate good work habits. They are provided with various self development program opportunities that allow them to prepare for a crime-free, productive return to the community after they are released, including education, drug treatment, vocational training, parenting, anger management and other programs. Inmates are generally required to manage their own finances, choosing how to allot their inmate pay for such personal expenses as telephone calls and commissary items. Implementation of a modest medical co-payment fee would be consistent with this personal responsibility objective. Moreover, the BOP urges inmates to take responsibility for physical and mental well-being through disease prevention and wellness enhancement education programs.

Although the BOP requires all medically able inmates to attend education or work assignments, signing up for sick call excuses them from these requirements for the duration of their Health Services appointment. Consistent with the community standard for medical care, any inmate presenting with a medical symptom or complaint must be evaluated. Thus, inmates without legitimate medical complaints may sign up for sick call knowing that while they wait to be seen they will be excused from mandatory programming. As a result, genuinely ill inmates are forced to wait longer than necessary to be seen, and the work hours of valuable staff are wasted. While the BOP currently employs strategies to reduce sick call abuse (triaging inmates for appointments later in the week; scheduling sick call hours during inmate leisure time rather than during mandatory programming time), sick call abuse still occurs. By eliminating unnecessary sick call appointments, medical staff can more appropriately spend their time evaluating and treating those inmates who have legitimate medical complaints and require treatment.

Most working, law-abiding citizens are required to pay a co-payment fee when they seek medical care. Minimal co-payment fees for inmate populations have been adopted in 36 states, and have been shown to be extremely effective in decreasing inappropriate requests for health services. Among the states and localities utilizing co-payment fees, average reductions in sick call visits of 16 to 50 percent have been realized.

H.R. 1349 provides that inmates will be charged for inmate initiated sick call visits. Similar legislation which passed the Senate, S. 704, provides that inmates will not be charged a co-payment for emergency visits, mental health visits, obstetric care, BOP-scheduled intake physical examinations and initial work-ups, BOP-scheduled follow-up visits, or chronic care clinic visits (e.g., diabetes, hypertension, asthma). The BOP fully supports these exemptions from the co-payment fee.

H.R. 1349 further provides that no inmate will be denied health services due to a lack of funds. The BOP will develop policy to administer the inmate co-payment program to ensure that indigent inmates will not be denied access to needed medical services.

Finally, H.R. 1349 provides that any co-payment fees collected would be used for victim restitution and to offset administrative costs of the program. Specifically, section 2(g)(1) of the bill states that, "Amounts collected by the Director under this section from a prisoner subject to an order of restitution issued pursuant to section 3663 or 3663A shall be paid to victims in accordance with the order of restitution." Section 2(g)(2)(A) provides that, for prisoners not subject to a restitution order, "75 percent shall be deposited in the Crime Victim's Fund established under section 1402 of the Victims of Crime Act of 1984." The BOP strongly concurs that co-payment proceeds should be used for victim restitution. However, in practical terms, section 2(g)(1) would result in forwarding a minimal (e.g., \$2.00) check to the specific victim identified in the inmate's restitution order. In the event that a restitution order listed more than one victim, the small co-payment fee would have to be divided among the identified victims. It might be more practical and more beneficial to victims to eliminate section 2(g)(1), and instead forward 75 percent of all co-pay-

ment fees to the Crime Victim's Fund as outlined in section 2(g)(2)(A). In conclusion, a health care co-payment would benefit inmates by increasing the level of personal responsibility they assume and correctional management by reducing the abuse of sick call services by malingering prisoners. Therefore, assuming that section 2(g)(1) would be eliminated as proposed, the BOP strongly supports H.R. 1349 as a legislative vehicle to implement a prisoner health care co-payment program.

I hope that this information is helpful to the Committee.

I would be happy to answer any questions you may have at this time.

Mr. McCOLLUM. Thank you very much, Mr. Wise.

Ms. Auldridge, I think you may either move to the other chair Mr. Salmon vacated or bring that microphone over. That would be great. It should not have been put all the way down there. I apologize for that. Our arrangements were not that good for the hearing, I am afraid. And you have been a staffer, so you know, we will get onto Mr. Schmitt over here.

Please, Ms. Auldridge.

**STATEMENT JEAN WILLIAMS AULDRIDGE, VICE CHAIRMAN,  
NATIONAL BOARD OF DIRECTORS, CITIZENS UNITED FOR  
THE REHABILITATION OF ERRANTS (CURE)**

Ms. AULDRIDGE. Mr. Chairman, Congressman Scott, thank you for this opportunity to bring to you observations in connection with medical co-payments to prisoners. My name is Jean Auldridge. I live in Fairfax County, Virginia. I am Director of Virginia CURE which is a chapter of National CURE. We are a nonprofit organization that supports prisoner's families and advocates for policies that give prisoners a fair chance and the tools needed to build a positive foundation for success when they are released.

We do not want to lose sight of the fact that prisoners are family members and many are much loved members of their family circle. It important that incarcerated men and women have access to adequate medical care.

My experience is based upon implementation of a 1995 Virginia statute that required Department of Corrections Health Services to provide an appropriate means by which prisoners receiving non-emergency medical services would pay fees based upon a portion of the cost of the services. Under the statute, no prisoner would be denied necessary medical care solely upon the inability to pay.

The Department of Corrections set fees at \$5 for each medical visit and \$2 for prescription and nonprescription medicine. I read thousands of letters from prisoners and I have talked to almost that many family members over the last 12 years. Jobs are not readily available to most prisoners. There are in-house jobs that pay less than 50 cents an hour, and working hours are limited. Prisoners who work in prison industry are paid a higher amount, but there are stipulations as to how that money is spent. A working prisoner would have to put in 15 to 30 hours to earn enough money to pay a \$5 co-payment to see a nurse or a doctor and \$2 for medicine.

If a prisoner has no money, medical fees stay on the inmate's account to be deducted at such time as any money goes into the account. Consequently, like it or not, medical copay is deducted from any gift of money sent by a family member or friend.

Prisoners write that they often forego medical attention when faced with the choice of extras such as shampoo, toothpaste, writ-

ing paper, pens, stamps, female items, over the counter medications, coffee, cigarettes, newspapers, magazines, everything that we want outside for ourselves. These items become very important to men and women who are locked behind bars.

By the time an offender reaches the prison door, all too often innocent families have already spent available funds or have gone into debt to pay lawyers. This is soon followed by the cost of traveling long distances for prison visits and the high rates and surcharges paid for telephone calls to stay in touch.

If medical care is needed and a co-payment is enacted, you can bet it will be these same struggling citizens who will work extra jobs just to stay in touch with their incarcerated loved one who will pay the medical fees.

When diseases go untreated, prison staff, visitors and the prisoners who live in crowded prisons are often put at great risk. Prisoners who do not seek medical treatment before symptoms are exacerbated cost the system unlimited dollars for extra care for hospital and surgical needs. Women prisoners require special medical procedures and treatment. Testing is imperative to detect diseases that affect women. Many women write of the importance of their health care because they are often the principal caretaker of their children when they go home. They also try to save money to help regain custody of their children.

We are often reminded that cost to a prison system soar when a prisoner forgoes medical treatment until a condition reaches a dangerous level. When this happens hospital and surgical care can run into thousands of dollars and unnecessary disabilities and even death can occur. In the end, the medical copay can cost our prisons far more because adequate care was not given when symptoms appeared.

A prison staff person wrote to me that inmates are hesitant to get the medical treatment that they need because of the medical co-payment. "This law puts staff and other inmates in danger when it comes to contagious and infectious diseases. If an inmate catches a cold or flu the entire housing unit is affected. One inmate had several boils on his body. During a month's time several inmates also became infected because one man did not get medical treatment in time to know that what he had was contagious. It is not prudent to put prisoners and prison staff at risk when a communicable disease could be detected in time to protect them."

A prisoner died of lung cancer—I am almost finished, can I finish?

Mr. MCCOLLUM. Certainly. Go ahead.

Ms. AULDRIDGE. Because he received medical treatment too late to save him. Another prisoner had cancer of the mouth which was diagnosed too late and part of the inside of his mouth was removed at greatly increased cost to the prison system and a great deal of suffering.

Diabetics have waited too late for medical care and die or lose eyesight or limbs. A man with a skin disease for 3 years repeatedly saw medical staff with no relief. He has paid over and over for treatment when all he needed was to see a dermatologist.

Today, I have heard several times that prisoners need to take responsibility. Prisoners take responsibility by saving their money

and sending it home to their families. One prisoner has saved money earned in his prison job for the entire 11 years of his incarceration which he sends out to assist his child. He does not seek medical treatment. Family members also tell me about prisoners who save and send money home to help them. This boost in funds has kept a family off the welfare roll. These are responsible acts on the part of the prisoner and we believe they should be encouraged.

I respectfully ask you to give these experiences consideration and do not enact a bill that will burden prisoners, their families and the prison system and is likely to cost taxpayers more in the long run.

Thank you.

[The prepared statement of Ms. Auldridge follows:]

PREPARED STATEMENT OF JEAN WILLIAMS AULDRIDGE, VICE CHAIRMAN, NATIONAL BOARD OF DIRECTORS, CITIZENS UNITED FOR THE REHABILITATION OF ERRANTS (CURE)

Mr. Chairman, members of the Subcommittee, thank you for this opportunity to bring to you observations in connection with medical co-payments for prisoners.

I am Jean Auldridge. I live in Fairfax County, Virginia, and I am director of Virginia CURE, a non-profit, organization that supports prisoner's families and advocates for policies that give offenders a fair chance and the tools needed to build a positive foundation for success when released.

CURE is the acronym for Citizens United for Rehabilitation of Errants, and Virginia CURE is a chapter of National CURE organization, located in Washington, D.C.

We do not want to lose sight of the fact that many men and women who are incarcerated are much loved members of their family circle. They are human just like we are and it is a critical concern that these men and women have access to adequate medical care.

My experience with medical co-payments is based upon implementation of a 1995 Virginia statute<sup>1</sup> that required Department of Corrections health services to provide an appropriate means by which prisoners receiving non-emergency medical services would pay fees based upon a portion of the cost of the services. Under this statute, no prisoner would be denied necessary medical care solely upon the inability to pay. The Department of Corrections set fees at \$5.00 for each medical visit and \$2.00 for medicines.

In my position as director of a grass roots organization that is focused on rehabilitation of offenders and support of their family members, I have read thousands of letters from prisoners and have talked to almost that many family members over the past twelve years.

There are not enough prison jobs for all men and women to earn money and some have no contact with family or friends, and no one to bear the cost of prison needs. These needs are no different than the needs we have in the free world, without the luxuries.

There is no doubt of the importance of family ties and community support throughout the prison experience. It gives offenders a base from which to build a positive foundation for success when released as well as a tool for sound prison management.

As wards of the governing body that incarcerates them, it is the responsibility of that body to provide for the basic needs of the men and women who are dependent upon them for adequate care.

Today, I will briefly discuss three areas of major concern relating to medical care.

#### *Financial burden on families*

Medical co-payments are a financial burden upon Virginia families as well as the families of prisoners from other states who are housed in Virginia. Two (2) Prisoners who do not have jobs are dependent upon family members and friends to cover the cost of their personal needs or they go without. Like it or not, medical co-pay is deducted from any gift of money before a prisoner can make the intended purchase.

Prisoners write that they often forego medical attention when faced with the choice of "extras such as shampoo, toothpaste, writing paper, pens, stamps, female items, over-the-counter medications, coffee, cigarettes, newspapers, magazines, etc.

These items become very important to men and women who are locked inside prisons.

By the time a prisoner reaches the prison door, all too often innocent families have already spent available funds or have gone into debt to pay lawyers. The expense for legal representation for hearings, trial and appeals are soon followed by the costs of traveling long distances for prison visits, and the high rates and surcharges of telephone calls to stay in touch. If medical care is needed and a co-payment is enacted, you can bet these same struggling citizens would work extra jobs and sacrifice even more for their incarcerated loved one.

#### *Health risks*

Prison staff, visitors and prisoners in crowded prisons are at great risk when communicable diseases go untreated. Moreover, prisoners who do not seek medical treatment before symptoms are exacerbated, cost the system unlimited dollars in extra care for hospital and surgical needs.

It is not prudent to put prisoners and prison staff at risk when a communicable disease could be detected in time to protect them.

Women prisoners require special medical procedures. Testing is imperative to prevent diseases that affect women. Many women have written that they must take care of their health because children are at home awaiting their return as their principal caretaker.

#### *Access to medical care*

We are often reminded that costs to a prison system soar when a prisoner forgoes medical treatment until a condition reaches a dangerous level. When this happens, hospital and surgical care can run into thousands of dollars and unnecessary disabilities and even death can occur. In the end, the medical co-pay can cost the prisons far more because adequate care was not given when symptoms appeared.

Letters are pouring into our office about access to medical care which gives us reason to be skeptical. Today, prisoners pay their debt to society by being locked away to serve longer sentences with no parole in federal, and some state systems. At the least, they are punished by living in conditions that none of us want to think about. They are separated from loved ones and the community and all the benefits that entails.

A prison employee advised that . . . inmates are hesitant to get the medical treatment that they need because of the medical co-payment. This law puts staff and other inmates in danger, when it comes to contagious and infectious diseases. If an inmate catches a cold or flu, the entire housing unit is affected. One inmate had several boils on his body—during a month's time several inmates also became infected because he did not get medical treatment in time to know that what he had was contagious."

A prisoner we know died of lung cancer because he waited too long to seek medical attention to his symptoms.

Another prisoner had cancer of the mouth which was diagnosed too late and a part of the inside of his mouth was removed at greatly increased cost to the prison system.

Diabetic prisoners have waited too late for medical care and die or lose eyesight or limbs.

A man with a skin disease for three years has repeatedly seen medical staff with no relief. He has paid over and over for treatment when what he needs is a dermatologist.

A prisoner has saved money earned in his prison job for the entire eleven years of his incarceration to send money monthly to assist his child. He does not seek medical treatment.

Family members tell us that prisoners save to send money home to help them. This boost in funds has kept a family off the welfare roll.

These are responsible acts on the part of the prisoner and should be encouraged. I respectfully ask you to give these observations consideration and do not enact a bill that will burden prisoners, their families, and the prison system. It is likely to cost taxpayers more in the long run.

Mr. McCOLLUM. Thank you.

Dr. Cohen?

#### **STATEMENT OF ROBERT L. COHEN, M.D., NEW YORK, NY**

Mr. COHEN. My name is Robert Cohen. I am a physician. I am in private practice in New York City and I am board certified in

Internal Medicine and I have extensive experience in the care of medical care prisoners. I directed the Medical Services on Rikers Island in New York City for 5 years and I oversaw the prison units and the public hospitals of New York City when I was the Vice President of the Health and Hospitals Corporation.

I have reviewed the medical care of prisoners in many States and jurisdictions, including Florida, Vermont, Philadelphia, Mississippi, Connecticut, Texas, Washington, D.C., Newark and Chicago. I have been a consultant to the Justice Department and I have continued to monitor several prisons for Federal courts.

And for the past 5 years I have been a Board Member of the National Commission on Correctional Health Care which is an organization made up of lots of groups which have an interest in prisons and it represents prosecutors, it represents Sheriffs, it represents American Correctional Association, represents the American Medical Association, the American Bar Association, the American Nurses Association, the American Academy of Physician Assistants and all of the groups—nutritionists, medical records, everybody who works within prisons and although I am not speaking on their behalf, I am a member of their board. I do represent the American Public Health Association on their board and I will be talking about their policy position on fees.

Their position was issued in 1996 and although Mr. Salmon spoke as if the National Commission had endorsed this project, it has not. It specifically has not. It specifically says that the greatest problem in medical care for prisoners is access to care and that it views fee for service systems, co-payment systems as probable barriers to access. It does provide, given that these systems are ongoing on a series of ways to make them less bad and ways to monitor them so that to see if they are actually doing harm or doing good. I will discuss that in my testimony.

I do not believe that there are any published studies showing the benefits of these systems. They obviously reduce access, because that is what they are designed to do and they make money because they charge fees, but I am not familiar with any study showing that they have improved the care of any prisoners and I am sure they have not.

I have not worked in the Federal system, but I have reviewed medical records. I have visited one Federal facility, but I think my experience can be helpful. I hope it is to the Committee.

The main problem with co-payments and other intentional barriers to care is not the problem for healthy individuals with minor complaints. Most colds are colds and they will get better with or without treatment. The question is what happens to people who have more serious medical problems when you pose a financial barrier to their access to care? This has been studied for the Judiciary Committee by the Rand Corporation a number of years ago. They looked at what happens in a natural experiment where one group had co-payments and the others did not. What they found, as I describe in my testimony, is that for healthy people, it does not matter.

For healthy, poor people, it does not matter that much. For healthy middle class people, it does not matter that much. For not healthy middle class people, it does not matter that much if the

payment is nominal. But for poor people with serious medical problems, it does matter. Their blood pressure is not well maintained and their increased rates of death for diseases related to hypertension, heart disease, smoking and these barriers are real.

I must say, I practice medicine in New York and I take care of lots of patients with complicated and simple problems and if I see someone regularly who I have to see often because they have a problem that is complex and I know that they do not have a lot of money, I tell them and I am privileged to be able to do this, I tell them "do not worry about the co-payment" because I know, sitting across from them, that they are worried about that and they are thinking about whether or not they can afford to come to see me again in 2 weeks because I want to make sure their blood pressure is okay and they understand how they have to take their HIV medicine, for example.

And I must also say, in response to recent testimony, that the problem with access to medical care in prisons is not due to malingering prisoners abusing sick call. Does that happen? Yes. Is that the major problem? No. The major problem and this has been shown in every study, is that there is a lack of access for people who need it.

I would like to read briefly from the study done by the GAO for the Judiciary Committee. This was written in 1994. "Inmates with special needs, including women, psychiatric"—this is in the Bureau of Prisons—"Inmates with special needs, including women, psychiatric patients and patients with chronic illnesses were not receiving all of the health care they needed at the three medical referral centers visited. This situation was occurring because there were insufficient numbers of physicians and nursing staff to perform required clinical and other related tasks. For example, physicians did not always have enough time to supervise physician assistants who provided the bulk of primary care given to inmates and nurses and nurses did not have sufficient time to provide individual and group counseling to psychiatric patients. As a result, some patients' conditions were not improving and others were at risk of serious deterioration. Physicians at each of the centers we visited were qualified to perform the work they were assigned. However, many physician assistants did not meet the training and certification requirements of the medical community outside of BOP."

I think this is an important point that I do not know if the Committee is aware of. It is the practice of the Bureau of Prisons to use people that they call physician assistants to deliver the bulk of the care as described by the GAO report, but they are not physician assistants in general.

Some of them are physician assistants which means they were trained in physician assistant programs. They had been certified by the National Academy of Physician Assistants. In the Bureau of Prisons, the individuals who are—many of the individuals who are called physician assistants have no training as physician assistants, are not credentialed in any locality as physician assistants. If the bill were applied to the Federal prison the way it is written to applied to collecting fees in State prisons where fellow prisoners

are housed, the Federal system would not be able to collect the fees because the health care providers are not licensed practitioners.

The National Commission on Correctional Health Care is opposed to the establishment of a co-payment program that restricts patient access to care. I, and this is me speaking personally, believe that the proposed program will significantly restrict patient access to care in the BOP.

Because prisoners are disproportionately poor and disproportionately ill, co-payment barriers to care are bound to increase the morbidity of prisoners. Financial barriers to care will lead to increased epidemics of infectious diseases in prisons and jails and with increased risk of serious illness, especially tuberculosis to staff as well as prisoners. And I guess my time is up. The end of my statement lists a series of exclusions which I would—which any group that does co-payments should have, although fundamentally I would prefer if you did not try out this program right now.

Thank you very much.

[The prepared statement of Dr. Cohen follows:]

PREPARED STATEMENT OF ROBERT L. COHEN, M.D., NEW YORK, NY

Members of the Committee:

My name is Robert Cohen. I am a physician in practice in New York City. I am a graduate of Princeton University and Rush Medical College in Chicago. I trained at Cook County Hospital and I am Board Certified in Internal Medicine. I am an Assistant Professor Epidemiology and Public Health at the Albert Einstein College of Medicine. I have worked in the field of prison health care for almost twenty five years.

I served as the Director of the Montefiore Rikers Island Health Service. In that capacity I was responsible for delivering medical, dental, and mental health services for approximately 14,000 prisoners in the custody of the New York City Department of Correction. I served as the Vice President for Medical Operations of the New York City Health and Hospitals Corporation, and oversaw the delivery of medical services to hospitalized prisoners at Bellevue, Kings County, and Elmhurst Hospitals in New York. I have reviewed medical care services in many states and local jurisdictions, including Florida, Vermont, Philadelphia, Mississippi, Connecticut, Texas, Washington D.C., Newark and Chicago. I have reviewed medical care for prisoners for the Department of Justice, and I have monitored prison health care for state and federal courts.

For the past five years I have been a Board Member of the National Commission on Correctional Health Care, an organization composed of representatives of medical (e.g., AMA, ANA, ADA, National Association of Physician Assistants) and criminal justice organizations (e.g., ACA, National Association of Sheriffs) which has developed Standards for the delivery of health services in prisons and jails, and which accredits correctional health care programs according to these standards. I represent the American Public Health Association on the National Commission Board.

I have not worked in the Federal System. I do have some specific knowledge of medical care in the Bureau of Prisons. I also have a significant body of experience in the field of prison health care which I hope will be relevant to your discussions on the Bill before you.

The main problem with co-payments, and other intentional barriers to care are not for healthy individuals with minor complaints. Most colds are colds, and will get better, with or without treatment. In a comprehensive and carefully designed study, the Rand Corporation, contracted by the Department of Health and Human Services, measured the effects of co-payments on access to care and measured the effect on morbidity. The findings have significant application to your deliberations.

The Rand Health Insurance Experiment found that for middle income healthy people, and poor healthy people, co-payments didn't have any significant effects. However, for poor sick people, co-payments did have a negative effect. They discouraged people from seeking care, and the greater the co-payment the less likely people were to seek care. Patients without co-payments were able to achieve better control of blood pressure. Patients with co-payments had a greater chance of dying from hypertension, elevated cholesterol, and smoking. This effect was greatest in the poorest patients. It should be noted that in the Rand Study, after a certain expenditure,

poor patients had no further co-payments, analogous to the section of the bill which says that lack of funds will not prevent access to care. The Rand Study also showed that the costs of medical care, once care was sought, were independent of whether co-payments were required. The most significant medical costs were driven by physician's through their recommendations for diagnosis and treatment.

The GAO, in a 1994 study requested by the House Judiciary Committee, found that within the BOP:

"Inmates with special needs, including women, psychiatric patients, and patients with chronic illnesses, were not receiving all of the health care they needed at the three medical referral centers [ ] visited. This situation was occurring because there were insufficient numbers of physician and nursing staff to perform required clinical and other related tasks. For example, physicians did not always have enough time to supervise physician assistants who provided the bulk of the primary care given to inmates, and nurses did not have sufficient time to provide individual and group counseling to psychiatric patients. As a result, some patients—conditions were not improving and others were at risk of serious deterioration."

"Physicians at each of the centers we visited were qualified to perform the work they were assigned. However, many physician assistants did not meet the training and certification requirements of the medical community outside of BOP." (GAO/HEHS-94-36 BOP: Inmate's Access to Health Care)

In the proposed Bill, states are allowed to collect fees from federal prisoners housed in state institutions "[i]f the services are provided within or outside of the institution by a person who is licensed or certified under state law provide health care services and who is operating within the scope of such license." (Sec. 3.c.(3)a) Many of the physician assistants of the BOP have not been certified by the Physician Assistants National Board, have not been trained in physician assistant training programs, nor have they been licensed in any state as physician assistants. The BOP utilizes individuals as physician assistants who have no credentials, licensure, or certification to provide medical care in any state of our country. If this bill held the BOP to the same standards that Congress is proposing to hold State or County prison medical care, the BOP would not be allowed to collect fees for the bulk of its medical services to inmates.

The National Commission on Correctional Health Care is opposed to the establishment of a co-payment program that restricts patient access to care. I believe the proposed program will significantly restrict patient access to care in the BOP.

Lack of access to health care remains the most significant characteristic of prison, jail, and juvenile correctional systems in the United States. Because prisoners are disproportionately poor, and disproportionately ill, co-payment barriers to care are bound to increase the morbidity of prisoners. Financial barriers to care will lead to increased epidemics of infectious diseases in prisons and jails, with increased risk of serious illness, especially tuberculosis, among staff as well as prisoners.

Before initiating a co-payment program, the BOP should examine its management of sick call, use of emergency services, system of triage, and other aspects of the health care system for efficiency and efficacy.

The National Commission on Correctional Health Care has proposed the following limitations on fees in order to assure prisoners adequate access to medical care. If a decision is made to initiate the proposed co-payment system, there should be no charges for visits initiated or requested by the health practitioners. Nor should charges should be made for the following:

- admission health screening (medical, dental, and mental health) or any required follow-up to the admission screening;
- the health assessments required by facility policy;
- emergency care and trauma care;
- hospitalizations;
- infirmary care,
- perinatal care,
- in-house lab and diagnostic services;
- pharmacy medications to maintain health;
- diagnosis and treatment of contagious diseases;
- chronic care (e.g. hypertension, diabetes, AIDS, heart disease) or other staff-initiated care, including follow-up and referral visits;
- mental health care including drug abuse and addiction services.

The facility should have a grievance system in place that accurately tracks complaints regarding the co-payment program. Grievances should be reviewed periodically, and a consistently high rate of grievances should draw attention to the need to work with staff to address specific problems that may result from the proposed co-payment program. The continuation of the co-payment policy should be contingent on evidence that it does not impede access to care. Such evidence might consist of increased infection rates, delayed diagnosis and treatment of medical problems, or other adverse outcomes.

Thank you for the opportunity to address your committee. I would be happy to answer any questions you may have about my presentation.

Mr. HUTCHINSON. Thank you, Dr. Cohen. At this time we will entertain questions by the Panel. The Chair recognizes Mr. Scott for 5 minutes.

Mr. SCOTT. Thank you, Mr. Chairman. I guess my first question may be rhetorical, but Mr. Wise, what is the purpose of the legislation?

Mr. WISE. There are two primary—

Mr. SCOTT. Could you use the mike?

Mr. WISE. Thank you. There are two primary purposes here. One, does cause inmates to use the services responsibly and the other is to effectively and efficiently use a very scarce resource and that is health care providers. That is the intent of the—

Mr. SCOTT. If that is the intent, why do you charge a copay for inmates who are clearly sick?

Mr. WISE. We support the changes and in essence, the provisions that Dr. Cohen has moved forward in terms of who should not be charged a copay.

Mr. SCOTT. People who are sick?

Mr. WISE. No, there is a whole long list of folks.

Mr. SCOTT. Well, just people who are sick. So suppose someone is sick, clearly sick, and it is appropriate to get medical attention, should they be charged a copay?

Mr. WISE. Yes, under this provision they would be charged a copay.

Mr. SCOTT. And what is the point of that?

Mr. WISE. Well—

Mr. SCOTT. There is no point to that. If you have an exclusion for emergency treatment, who gets to decide whether or not it was an emergency?

Mr. WISE. Presumably the staff would.

Mr. SCOTT. Okay, is there an appeal to that?

Mr. WISE. We can certainly build one in to policy.

Mr. SCOTT. It is not, in the bill, there is not?

Mr. WISE. Not in the bill, no.

Mr. SCOTT. You indicated that when you imposed these copays that there is a significant reduction in people getting care, is that right? That is what you said.

Mr. WISE. The States have experienced that when they have imposed the copay, yes.

Mr. SCOTT. Do you have any evidence that the only health care that—do you have any evidence to show that the reduction was due to a reduction in inappropriate care as opposed to a reduction in appropriate care?

Mr. WISE. No sir.

Mr. SCOTT. You do not have any evidence to show one way or the other?

Mr. WISE. I cannot speak to that from the States' experience, no.

Mr. SCOTT. I think we do not want any confusion on this point. All you have shown is a reduction in care. You have shown—you do not suggest that inappropriate care not be accessed was the cause of the reduction appropriate care could have been the cause of the reduction?

Mr. WISE. That is correct. I cannot clarify that.

Mr. SCOTT. What is the cost of collecting \$2 per visit?

Mr. WISE. I do not know the administrative costs for doing that, although we do plan, if this is enacted, to automate a very large portion of that.

Mr. SCOTT. Is it possible that the costs may be more than \$2 per visit?

Mr. WISE. It is possible.

Mr. SCOTT. Okay. Which is the greater threat to the prison population, a few people goldbricking or prisoners not receiving appropriate care when they have infectious diseases or when they may, in fact, get sicker as a result of not getting appropriate care?

Mr. WISE. Both are a threat. I would suggest that inmates that are using medical resources when they are not necessary are taking medical resources from those inmates that do need them.

Mr. SCOTT. Well, you have to draw the line somewhere. Either you are going to have a copay or you do not. If you have the copay, are you more likely to have negative effects from inmates with infectious diseases not getting care, other inmates not getting care and getting sicker and running up even more of the precious resource health care or are you—let me ask you another question. Can you deal with the goldbricking better by a triage system where you come in and have someone assess whether or not the person should go further into the system or not? Would that not make more sense?

Mr. WISE. We have that system now.

Mr. SCOTT. What is the average inmate account balance?

Mr. WISE. I am sorry. I do not know that. I can get that for you, if you would like. But I do not know.

Mr. SCOTT. And how much of that comes from working and how much comes from family, because the next question would be whether or not goldbricking is, in fact, affected by those with significant balances in their account, that is to say, someone with a lot of money can continue to goldbrick, whereas someone that is poor, it may have an effect. So whether or not there is a copay may have an effect or it may not on goldbricking.

Mr. WISE. That is correct, that inmates that have money and choose to spend that there, that is—it is not going to stop them from goldbricking or malingering or inappropriately using this system, however you choose to characterize it.

Mr. SCOTT. I guess you are delighted to see that my time has expired.

Mr. WISE. I expected some tough ones.

Mr. HUTCHINSON. The Chair yields itself 5 minutes for questioning. I want to thank each of you for your testimony today and I wanted to ask a couple of questions. I will start off with Mr. Wise.

Where will the inmates get the money to pay for this fee?

Mr. WISE. All of our inmates are required to work, if they are physically and mentally able to work and they earn money through an inmate performance pay program or they work in Federal prison industries. That employs a substantial proportion of our inmates and they earn money there, hourly rates there.

Mr. HUTCHINSON. So if they are not employed the Federal prison industry, they are employed in some other capacity?

Mr. WISE. Correct.

Mr. HUTCHINSON. What is the average daily wage paid to inmates who work in the Bureau of Prisons?

Mr. WISE. I am sorry. I cannot give you the average. I can get that information for you, if you would like, but I do not know the average.

Mr. HUTCHINSON. But the people who work in the prison industries, I would assume, make a little bit more than those who work different assignments for the Bureau of Prisons?

Mr. WISE. That is correct.

Mr. HUTCHINSON. But everyone gets paid something?

Mr. WISE. Yes, everyone has a job and everybody gets paid.

Mr. HUTCHINSON. Mr. Scott asked you some very, very appropriate questions. One of them was if someone is truly sick, then what benefit is there from charging a copay? I think that obviously one of the motivations would not be to prevent goldbricking because they are truly sick, but the other purpose I think I saw or read or heard was that you teach responsibility. Is that part of the motivation for this?

Mr. WISE. Absolutely, that is correct, for folks to use the system, but use it appropriately and responsibly. Health care services, it is a scarce resources and expensive resource and the more they are abused the less services and capability there are for those people who truly do need them. Those that have those serious infectious diseases that we were talking about.

Mr. HUTCHINSON. Of course, obviously, the other rationale is that it would save the taxpayers a small amount of money perhaps as copay.

Dr. Cohen—

Mr. SCOTT. Mr. Chairman, I think that was a statement. I think you might want to respond to that because if the people do not, in fact, get the health care it may be more expensive in the long run and not save the taxpayer any money, so I would not—you kind of made a statement like he was agreeing—

Mr. HUTCHINSON. I was making the statement because I agreed with the statement. I do not know whether anybody else agrees with it. But certainly I will concede the point though to Mr. Scott that there is a legitimate argument as to whether it is cost effective in the long run if you have greater health costs. I will concede that point, but if, in fact, someone who is sick actually goes to the doctor and makes a co-payment, there is a small amount of reimbursement to the taxpayers who would otherwise be footing the bill for this.

Dr. Cohen, explain to me where the problem is here if inmates are actually having some income, you know, if you have made a copay that was reasonably in proportion to whatever limited income they might have, that seems fair to me.

Mr. COHEN. A few things, if I could just—on that last point, the real costs are driven by doctors and when we see a patient who has got problems we order this test and that test and recommend—that is where all of the costs in the system are there. The costs at the—coming to see a doctor because I do not feel well are a very small part of it. So the savings are going to be small. In terms of the cost, I think that relative to wages in prisons which are often very, very low, the dollars are not nominal. I think it is \$2.

Some of the other literature that was described, there was a proposal that it be \$5, rather than \$2. I do not think there is a question that if people have limited resources and are trying to provide support for their families or are trying to pay for telephone calls which are generally very, very expensive, there is a national problem of high rates of calls for prisoners or for other things that they have to buy, simple commissary and toiletry items that the dollars actually will be an impediment. And at any given time, you want to encourage people who are feeling sick to get care. So I do not, I really do not think it will be a benefit and I am sure, as has been described, it does stop people from coming. There is no question that it stops people from coming.

Mr. HUTCHINSON. I guess that is part of it, the balance. I mean if you look at any average family, the issue of copay is a relevant factor in whether they decide to take Johnny to the doctor or not and should not prisoners balance the same responsibilities and costs as someone who is struggling to make a living on the outside? If anyone is in a position to submit to the Committee greater detail on what inmates make and then what their expenses are like, are there some surveys? I would appreciate that information. And I would like to know—you mentioned toiletries, what is the average cost for toiletries? What does the average inmate send back to their family? Just to get an idea as to how much money is floating around, how much they spend on cigarettes. I think that would be helpful information. So if anybody is in a position to submit that, I would be delighted to receive it.

With that, my time is expired.

Mr. SCOTT. Mr. Chairman, as you ask that, I think there is a difference between average and median. We want a median number because if you have one guy with \$1 million in the bank, that would skew everything. Median might be a little more accurate.

Mr. HUTCHINSON. Good point. Obviously, I am interested in the typical ones. That is a good point and I thank you, Mr. Scott.

With that, the Committee will be adjourned and I thank each member of the Panel.

[Whereupon, at 3:26 p.m., the Subcommittee was adjourned.]



# APPENDIX

## MATERIAL SUBMITTED FOR THE HEARING RECORD



### FETTERISM

## Congress Stamps Out Animal-Snuff Videos

IT'S NOT JUST THE RICH AND POWERFUL who have advocates in Congress. So do the small and wiggly, including mice, frogs, lizards, fish and hamsters. And they need them, with products like "crush" videos showing up on the Internet. The videos, which sell for up to \$100, show small animals being stomped to death, usually by women wearing high-heeled shoes and boots. Although there are laws against animal cruelty, prosecutors have had trouble winning cases because most of the films don't show the stompers' faces. They also have to prove that the films were made within a three-year statute of limitations.

But their job may soon be easier if

Congress passes a bill proposed by U.S.

Representative **ELTON GALLEGLY**, a California Republican known for his animal-rights legislation.

The bill, which has 32 co-sponsors, ranging from conservative Republicans

to liberal Democrats, would prohibit any profit-making from the films and subject violators to prison terms of up to five years. "This is something so horrible and despicable that it has to end," Gallegly said of films such as *Vicious in Las Vegas* and *Mistress D: Princess of Death*. One site, perhaps anticipating a crackdown, has already moved on to a new fetish: a woman sitting on a Sony Walkman and a toy car. —By David S. Jackson/Los Angeles



Not well heeled



PREPARED STATEMENT OF WILLIAM PAUL LEBARON, DETECTIVE, LONG BEACH POLICE  
DEPARTMENT REGARDING THE "CRUSH VIDEO" LEGISLATION

SUMMARY

- Description of Crush Video
- Recent arrest of 2 suspects for making crush videos
- Reasons for attraction to crushing
  1. Foot fetish
  2. Domination fetish
  3. Crush fetish
- Difficulty in enforcing the law against the producers of crush videos
- Offers experience in enforcing the laws
- Method of production and Distribution
- Crush video industry and the money being made

SUMMARY

On the television screen appears a small guinea pig. The same little guinea pigs that your children might keep as a family pet. This innocent animal on it's back face up, looking nervously from side to side, trying to escape from the unnatural position it is in. it's four small paws are being bound down by wires, that are pulling tightly in four opposite directions. The animal occasionally squeals, and squeaks, possibly from fear, possibly from pain. Then a woman approaches, wearing bright red high heel pumps. The heel is thin and long, with a sharp tip that is covered by a metal sleeve.

The woman paces around the little animal, slamming her foot down just inches from the head of the frightened animal. As she walks she is heard saying, "what's wrong little man? Are you scared?" She asks the animal to worship her feet, she tells the animal to get to know the feet that will kill it, get to love those feet. The woman then swiftly and unprovoked kicks the animal in the head with her foot. The animal screams loudly, the distinct and piercing screech heard only when an animal is suffering. The woman kicks it again, and again, each time with more force, and each time the animal screams, the image is unbearable, blood now running from the animals' eyes and nose. The frightened animal is struggling to escape, wiggling its body, and gnawing to break the cords that hold its arms and legs down.

The woman then steps on one of the paws of the animal, and a distinct crushing of tiny bones can be heard, only to be drowned out by the piercing scream of the helpless animal. As the woman continues to taunt the animal, and order it to beg for mercy, she walks to its head of the animal and stops. She places her metal tipped heel on the face of the animal and presses down. Finally, the screams stop, the animal goes into convulsions, and lies still, dead, and covered in blood.

Now this senseless killing should be sufficient, but there is more. Once the animal is tortured and lifeless the woman then proceeds to smash and crush the tiny corpse. Violently kicking and stomping until every bone is broken. The brutality does not end until this guinea pigs body is turned into a bloody mass of fur. Its intestines are strung across the floor, and its limbs have been torn from its body. This is a "crush video."

During the past year I have become very involved in the investigation and arrests of several people for the making of "crush videos." These videos depict the torturing and killing of animals by women. The women in the videos are commonly bare foot or wearing various forms of footwear. The women are commonly seen from the waist down, and nudity is usually not found in these videos.

During my investigation of crush videos I have watched over 50 videos ranging in length from 10 minutes to 2 hours, depicting various types of crush scenes. I have seen thousands of living creatures tortured, mutilated and killed for nothing more than the sexual gratification of the men and women who watch these videos.

I recently arrested two people for cruelty to animals, involved in the production of these videos made two arrests for cruelty to animals, of people who were involved in the production of these videos and I have also testified in court regarding these cases. The Long Beach Police Department arrested Mr. Gary Thomason after he was found to be making and selling videos depicting the violent torture and killing of rats and mice. One video in particular, "The Tales of Charlie's Ankles" shows 12 mice or rats being killed in a similar fashion to what I have previously described. Ms. Dianne Chaffin was also arrested after she was identified as the model that was crushing the mice in the video.

Both of their court cases have been bound over for trial, and are currently pending for later this month I have interviewed numerous people who are admitted "crush" enthusiasts, and found several motives behind their obsession for these videos. First of all, the people involved all have foot fetishes. They are attracted to women's feet, and the shoes they wear, from flats, to high heels, from tennis shoes to knee high, stiletto style boots.

Secondly, the men who watch these videos have a fascination with being dominated. They often fantasize while watching the videos. They say that they put themselves in place of the animal, and want to be the animal as it is crushed. They desire a woman who will dominate them and make them feel totally inferior. For this reason it is important that the woman speak to the animal in an angry, dominating tone.

Finally the people who view these videos have an obsession with objects being crushed. Many of them have told me that they enjoy seeing, and hearing the bones break, and the animal being flattened by the woman's shoes. They say that the obsession with crushing starts at an early age, usually when a teacher or baby sitter steps on something inadvertently. One person told me that he knew he was turned on sexually when he was six years old and his teacher stepped on a piece of chalk. He said when he heard the crushing of the chalk under her feet, he knew it was sexually stimulating.

The making of crush videos is a relatively new crime that has rarely been heard of, and is almost never investigated by any police agency. There are several reasons why the people who make these videos have been able to freely commit these crimes without fear of enforcement action. The first is the fact that the crush community is an underground, and relatively close knit group of people and outsiders are not allowed in the making and viewing of these videos has been done in private, and the advertising and distribution of such videos has been handled via-the-Internet. There are many sites on the Internet dedicated solely to the display of still photos and videos of crush. There are also chat rooms and message boards where crush enthusiasts can correspond with each other. With these resources available, the crush community has been able to maintain a low profile, and not attract a lot of attention.

The attention of the public has been avoided, due largely to the public's ignorance to the existence of such videos. I can testify, however, that after making the arrests of the two defendants who were charged with animal cruelty, the public has expressed their concern in waves. I have received numerous calls and letters from private citizens as well as animal rights activists who are "sickened" and "shocked" that such cruelty is occurring in their community. Numerous media representatives stretching across the entire country have also interviewed me about the recent arrests. The arrests we made have been featured as the top story on the local news stations in Los Angeles, as have their subsequent court proceedings. The public is now aware of the existence of these crimes; they have expressed their disgust with the making of these videos, and will continue to demand the enforcement against these people, and the crimes they are committing.

The second reason it is difficult to enforce the making of crush videos is due to the laws the police, and other law enforcement agencies have to work with regarding this crime. Because this crime is so new, there are no laws that specifically address the sales, possession for sales, and production of crush videos. In the case of Defendants Thomason and Chaffin, I was only able to arrest them for CA Penal code section, 597(A) cruelty to animals. This is a wobbler law that is primarily filed as a misdemeanor. The misdemeanor filing would not require jail time for the defendants. Because of this, it would not be seen as a worthwhile cause to many law-enforcement agencies, when considering the manpower and hours they would be devoting to the investigation of crush videos.

Furthermore, the Defendant is rarely held to any punishment that is equal to the crime they are engaged in. In my conversations with the public I have found that the common sentiment is, "make sure they get as much time in jail as they can." This is a gruesome crime, and it has no socially redeeming value. The public recognizes this, and has made it very clear to me that this conduct will not be tolerated in the community. A law that addresses these actions would send a powerful, two-fold message. It would tell the public, that yes, this is a violent and gruesome crime, and we will enforce it as such. Secondly it will send a message to the people who make and watch these videos. They will learn that their activities will not be tolerated, and that the violent killing of innocent animals for their sexual gratification is not acceptable in the eyes of the law.

A third reason the prosecution of crush enthusiasts has been so difficult is due to the difficulty in establishing the elements of the crime, cruelty to animals. In order to establish the elements of the crime it is necessary to identify the people

involved, (many of which never show their faces). As I said earlier, they are many times never identified with their face, but only their lower torso, and their voice. It is also necessary to pinpoint the time when the video was made. This is due to the fact that there is 3-year statute of limitations when enforcing the animal cruelty law. Finally we must establish the location the video was made in. This is for jurisdictional purposes. Many times this is difficult to do because the videos are filmed indoors, and there are no identifiable features to help pinpoint the location of production.

The only way to establish these elements, outside of a suspect's admission under Miranda, would be to obtain the information in an undercover capacity. This would require the law enforcement personnel to infiltrate the crush community and gain the confidence of the people who make the videos. Once their confidence is gained the suspect must offer the information needed to establish the element of the crime. Furthermore, the undercover officers run the risk of harm if they are exposed, or meet with the suspects during the investigative period.

As I said earlier, the people who make these videos are a tight community, and are very well connected. If a person is going to be introduced into their community they must be introduced by someone who is already part of the community. Because of this it is extremely difficult for a law enforcement official to infiltrate the group in an undercover capacity. In the case of my investigation, Susan Creede spent approximately one year communicating with the community members before she was finally accepted into it. Now that there has been an arrest made, it will be even more difficult to infiltrate the community in an undercover capacity. Because of this, a law that specifically targets the making and possession for the purpose of selling of crush videos would greatly facilitate law enforcement in the future investigations of such crimes.

I have taken the initiative to study and learn about the crush community, and the videos they make. I have seen many different crush videos. I have seen many animals killed in these videos including insects, crabs, shrimp, lizards, fish, mice, rats, hamsters, guinea pigs, and squirrels. These killings were violent, and many times bloody. The animals were spoken to in a derogatory manner while they were being killed, and many times were told to beg for mercy from the woman holding them. In the videos I've watched there are approximately 20 different females used as models to kill the animals.

I have researched the methods of distribution of these videos and found the following. A typical video is approximately 45 minutes long. It will sell for 40 to 45 dollars. If a person requests a special order video where a special fantasy is acted out it will cost approximately \$300. A distributor will normally sell his videos via the Internet for approximately \$50.

I reviewed the records of Mr. Thomason and found that he had inquiries and orders for specific crush videos from all over the USA, Brazil, Germany, Austria, Switzerland, Cyprus, France and Japan. Mr. Thomason has a list with all of the available videos listed by title and description of the scenes that are in them. These include such titles as, "For the Love of Spiked Heels" and "The agony of the Feet" Mr. Thomason lives alone and was retired at the time of his arrest. Upon reviewing his records, for his video distribution I found that he had orders for videos that would total \$3,349.00. This was the sum of the sales for the pending orders that he had received from his clients. It is obvious that Mr. Thomason and others like him are deriving a lucrative income from the sales and making of these videos.

I have learned of many other people who are making and selling these videos. The money is continuing to roll in as more people are attracted to this type of fetish. One concern that has been discussed is the growing demand for harsher and more serious forms of crushing. As I have interviewed people involved in the crush community I learned that many of them found satisfaction in the crushing of insects, and inanimate objects. However, once the effect of that wore off, like the progression seen in drug use, they want to experience something else. It escalated to Mice, hamsters, cats and dogs. As people continue to explore their fantasies, the possibility that they might use larger animals, and possibly human beings, must be taken as a viable threat.

In conclusion, I would ask that you each consider the senselessness of this crime. Animals are brutally and violently killed simply so that a man or woman who pays \$50 can be sexually gratified. The people who victimize and kill the animals by making these videos must have a message sent to them. We will not tolerate them to make money off of this disgusting fetish! This law would make it easier for law enforcement officials to stop this crime. Furthermore, as elected officials of the people; you would be sending a message to the people that elected you, that their concerns are heard. This will not be tolerated!

CITIZEN UNITED FOR REHABILITATION OF ERRANTS  
DISTRICT OF COLUMBIA CHAPTER,  
Washington, DC, September 30, 1999.

Hon. BILL MCCOLLUM, *Chairman,*  
*Subcommittee on Crime,*  
*House of Representatives, Washington, DC.*

DEAR CONGRESSMAN MCCOLLUM: For the last twelve years I have worked with the prisoners and their families from the District of Columbia. Over these years I have come to realize that many of them are the "working" poor. Having a loved one incarcerated is an added financial burden on households already strapped for funds.

The Revitalization Act passed by Congress transferred jurisdiction over DC Code Offenders from the District government to the Federal Bureau of Prisons. This has resulted in DC prisoners being transferred far away from home making visits and phone costs very difficult, if not impossible.

Many of the DC prisoners will be sent to serve their sentences in Federal Bureau of Prisons institutions all over the country. As of September 19, 1999, one thousand and nineteen DC prisoners were housed in FBP. If the establishment of co-payments is passed by this Subcommittee, it will result in yet another expense for families in DC who just do not have much money.

Not everyone incarcerated in the FBP is able to work at jobs that would cover the costs of the fees required in this legislation. Families are barely able to send a small amount of money to the prisoner. They also must pay for trips to visit and finance expensive phone calls. It is these very families that will have to come up with the funds for co-payments.

I do believe prisoners should be responsible and I support programs that enhance rehabilitation but have very strong reservations that requiring medical co-payments will have any positive results.

Sincerely,

PAULINE SULLIVAN, *DC-CURE Director.*

PREPARED STATEMENT OF SHELIA JACKSON LEE, A REPRESENTATIVE IN CONGRESS  
FROM THE STATE OF ILLINOIS

Mr. Chairman, I thank you for conducting this hearing on the issue of adequate health care for federal prisoners. I understand the sentiment of the proponents of this measure. The U.S. Supreme Court case of *Estelle v. Gamble*, 429 U.S. 97 (1976) enunciated the principle that the government has an obligation to provide medicare to prisoners and this principle has been upheld in subsequent cases. In *DeShaney v. Winnebago County DSS*, 489 U.S. 189 (1989) the court stated:

When the state by affirmative exercise of its power so restrains an individual's liberty that it renders him unable to care for himself, and at the same time fails to provide for his basic human need e.g., food, clothing, shelter, medical care, and reasonable safety it transgresses the substantive limits on state actions set by the Eight Amendment and the due process clause.

I appreciate the zeal with which Proponents of H.R. 1349 attempt to comply with both the letter and spirit of these two seminal Supreme Court cases. They contend that a health care co-pay will prevent inmates from abusing sick call requests, reduce costs and instill a sense of fiscal responsibility among inmates in how to prioritize their funds.

I must confess that I am less optimistic that this measure as drafted can achieve the goals of its drafters. Given the meager funds in most inmates accounts, a fee for service will impede access to needed health care, particularly the all important preventative care which sick call availability should be emphasizing to prevent the spread of infectious diseases and minor problems becoming major problems due to lack of early treatment.

Most inmates have such limited funds that even a minor co-pay would constitute a large percentage to them. Many are from low income families and rely on these families for funds to buy personal hygiene items like toothpaste and shampoo. This minor co-pay would compel impoverished inmates to forego medical needs in order to purchase these items. Avoidance of minor medical problems can lead to dangerous health situations not only for the prisoners, but for the prison employees contractors as well.

Moreover, a co-pay would set up a 2-tiered system of inmates who have funds for a co-pay and items for from the commissary and inmates who have to choose between the two. And such a system will not impact on abuse of sick call by inmates who can afford to pay the co-pay. Further, the administrative costs of assessing, col-

lecting managing, distributing and accounting for co-pays per inmate sick call visit may very well exceed the amounts collected. If abuse of the prisoner health care is the problem, then it seems to me that the solution would be a properly administered sick call program whereby qualified lower level staff respond quickly to inmate complaints first and only referring on those warranting higher levels of attention. This would practically eliminate abuse and provide more efficient care for those who do need it.

While the co-pay approach may produce short term reductions in medical care costs, I am uncertain whether these short term gains will prevent inadequate preventative care. Further, only time will tell if the co-payment program as envisioned by H.R. 1349 will reduce the incidence of missed detection of serious, but curable health conditions. For these reasons, notwithstanding the informative testimony of today's witnesses, I am reluctant to urge my Colleagues to support this measure.

I thank you.



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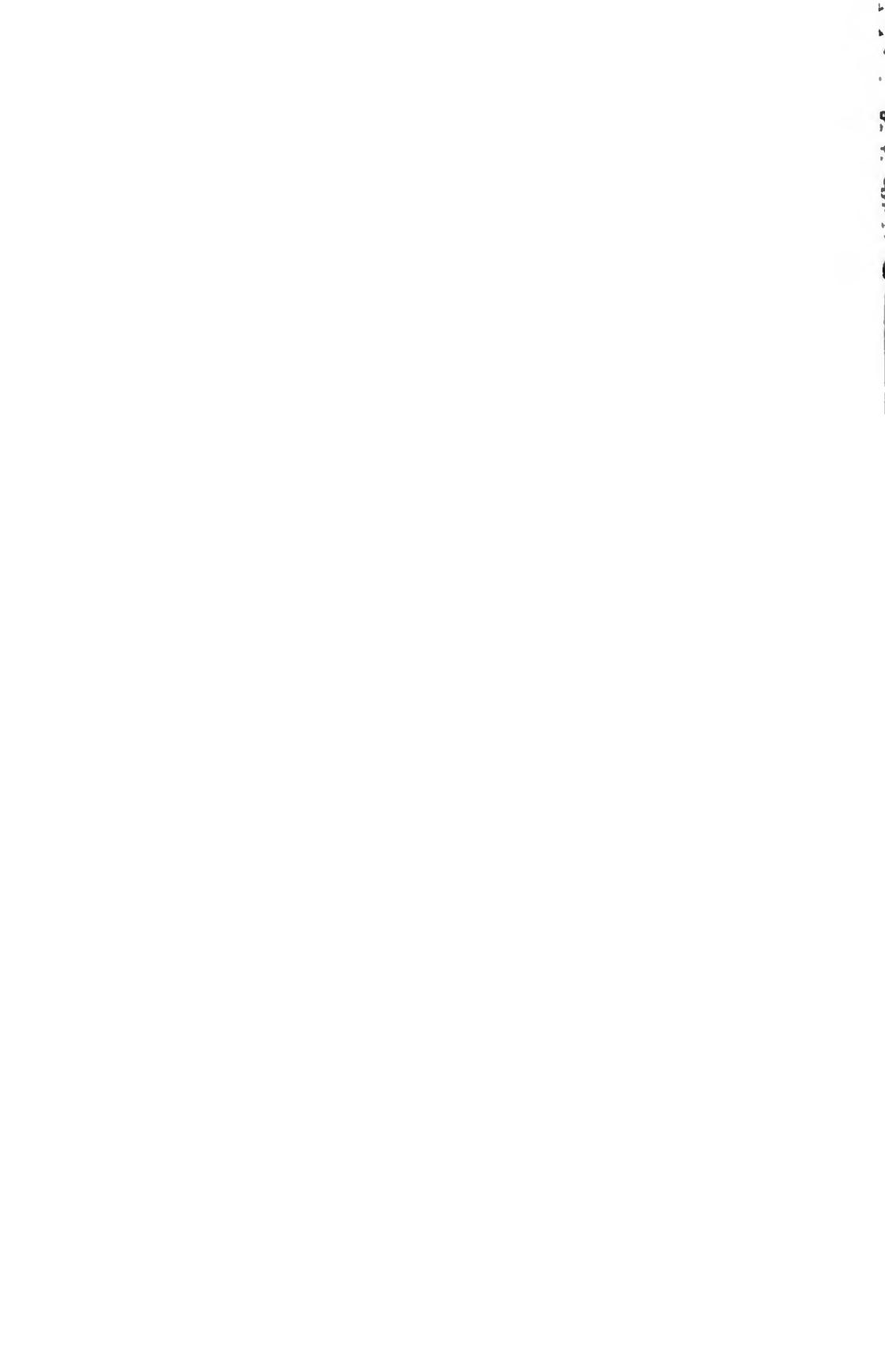
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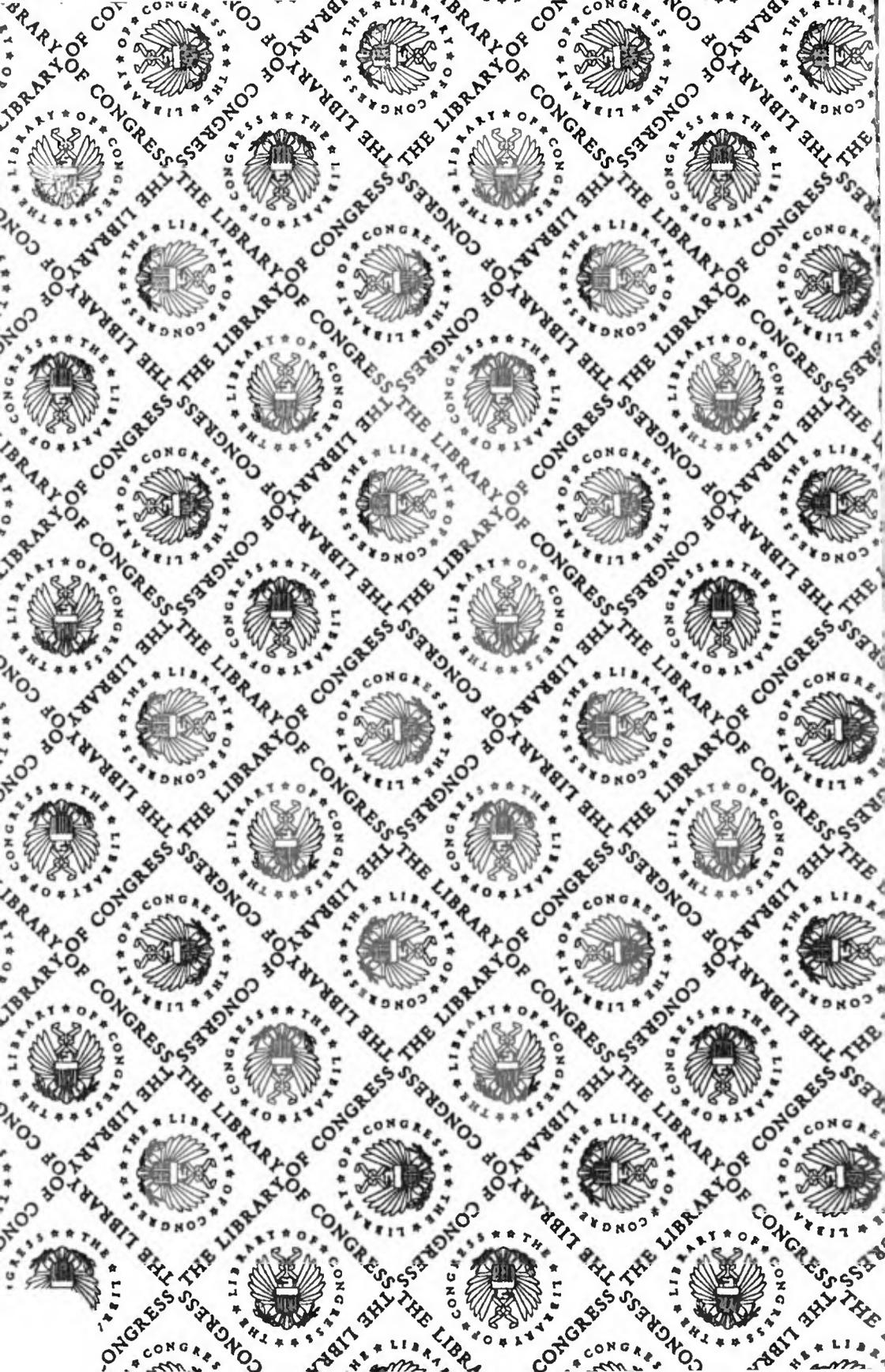


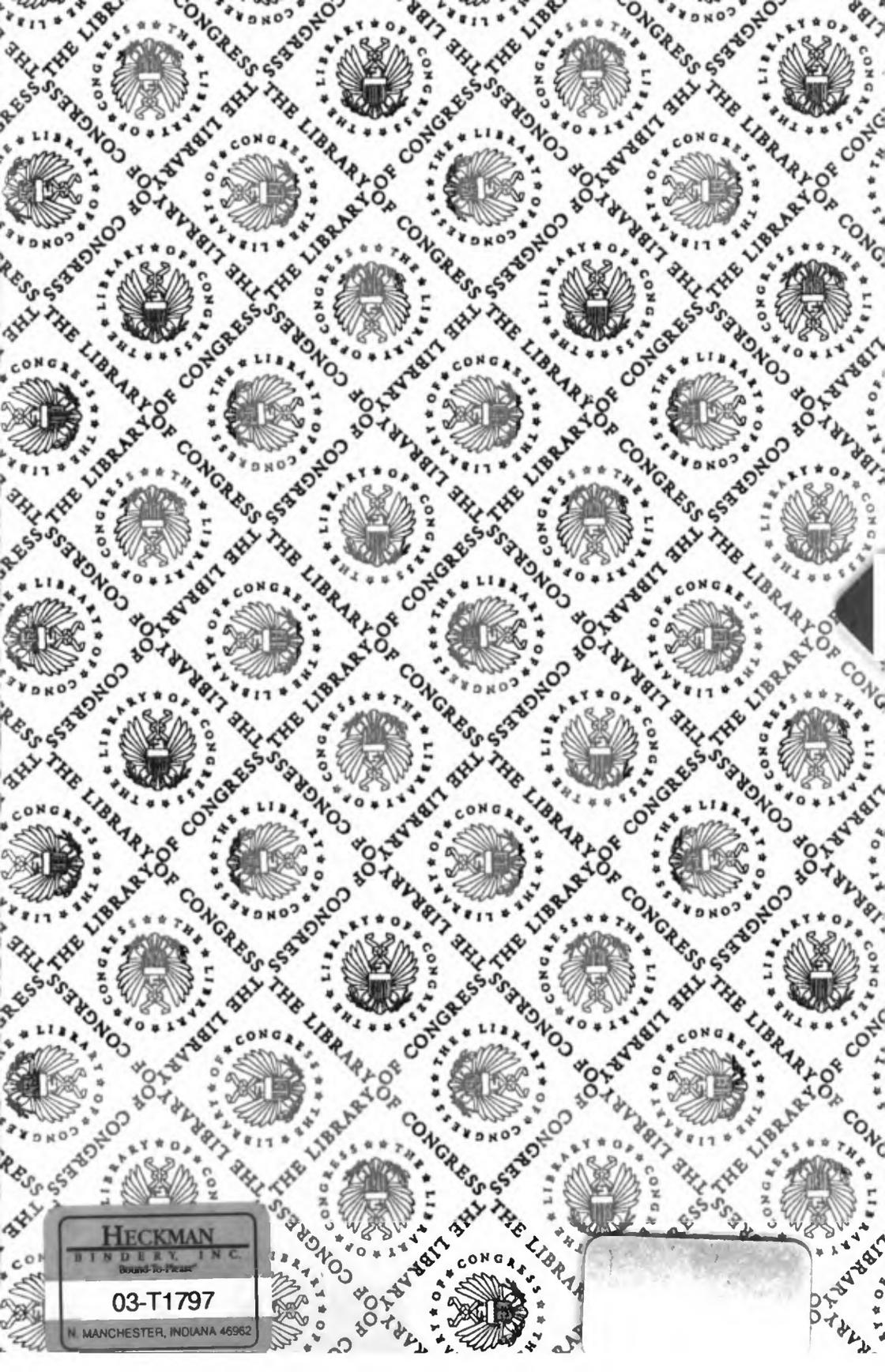
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