In this country, we have a profound respect for certain types of relationships. These important relationships are often protected by the law for several reasons. First, because of their value. Many of these relationships, like the doctor-patient, the attorney-client, the priest-penitent and the spousal privilege, are important not only because they are woven from the very fabric of our society, but also because they represent relationships which are necessary for our social institutions to function effectively. It is a rationale well accepted by our courts, for instance, in the case of United States v. United Shoe Machine Corporation, where the court shared its thoughts on the worth of the attorney-client privilege when it said ''the social good derived from the proper performance of the functions of lawyers acting on [behalf of] their clients is believed to outweigh the harm that may come from the suppression of the evidence in specific cases.'' 89 F. Supp. 347 (D. Mass. 1950).

As another example, we rely on the doctor-patient privilege to protect the privacy of medical patients. Without assurances that a Doctor will discuss the medical condition of his clients with others, a patient would be hesitant to seek necessary medical attention. Our institution of medicine would be shaken to its very foundation as a result, and for that reason, we legally protect communications between a patient and their health care professional.

I do not believe that anyone doubts the importance of the relationship between the President and his protectors. I this day and age, we must remember that these people are responsible for protecting the most powerful person on the face of the planet. I do not think any Member of this Congress can, in good faith, state that this is not as important a relationship as that between an attorney and their client, or a doctor and their patient. We have already mourned the death of enough Presidents and civil rights leaders. Assassinations are cataclysmic events. We must do our best to spare the people of this great country, from tragic events reminiscent of the deaths of Presidents Kennedy and Lincoln.

The second reason that we protect these ''special relationships'' under the law, is because of their nature. We protect them because of their fragility when exposed to the eye of the unyielding public. We fear the susceptibility of these relationships to the harsh conditions of the public courtroom. For instance, one of the reasons that we so vehemently protect the attorney-client privilege is because we must protect a client from having their attorney testify against them at trial. That is not only commonsensical, but necessary to promote candor between a lawyer and the client seeking protection. The Supreme Court, in the case of *Upjohn* v. *United States,* 449 U.S. 383 (1981) emphasized that point when it declared that the purpose of the attorney-client privilege is ''to encourage full and frank communications between attorneys and their clients.'' This is a long-established cornerstone of the common law, developed as far back as the reign of Elizabeth I, and is inscribed in one of the most authoritative treatises of law currently published in the United States, Wigmore's ''Evidence.''

The relationship between the President and the Secret Service is equally delicate. The ''cover and evacuate'' strategy developed by the Secret Service over the last few decades specifically requires that agents remain in extremely close proximity to the President. Lewis Merletti, Director of the Secret Service, in his declaration on behalf of his agency's position on this matter, has concluded, that both the McKinley and the Kennedy assassination attempts could have been averted had the agents stayed within their proscribed proximity of the President.

It is also important to understand the complete level of trust that must exist between the President and his guard. Even Former-President Bush has recently stated ''I can assure you that had I felt [the Secret Service] would be compelled to testify as to what they had seen or heard, no matter what the subject, I would not have felt comfortable having them close in.'' That statement singularly spells out the problem in this case, the President of the United States cannot function effectively, and cannot be safe in his person, if he believes that his actions could later be used against him by someone outside of his close circle of advisors.

Even beyond the issues of trust and confidence, the fact that the President must be accompanied by his escort at all times destroys other privileges he may have, such as the one that should exist between himself and his attorneys. That is because, under our law, a communication is not privileged unless it is confidential in other words, made without other people in attendance. The result is that the President is barred from asserting his attorney-client privilege if the people charged with protecting his life are present when he discusses his legal matters. Therefore, not only must we recognize the ''Protective Function Privilege'' on its own merits, but also to preserve other privileges already recognized by our legal system.

From my perspective, the ''Protective Function Privilege'' that has been asserted by the Secret Service in recent times has both qualities necessary for the application of a limited privilege. First, the Secret Service performs a function that is necessary in this day and age. It was not long ago that an agent named Timothy J. McCarthy took a bullet for then-President Ronald Reagan. Was it not for his willingness to perform this important duty, history may very well have turned out differently.

The special relationship that the President must have with the members of his detail also supports the position that the ''Protective Function Privilege'' exists. The motto of the Secret Service is ''Worthy of Trust and Confidence''. We cannot undermine that essential message by taking away the President's trust and confidence in his faithful protectors. We cannot tolerate any situation where the President will no longer be able to make confidential negotiations in the presence of the people charged with protecting his life. We cannot afford to create the circumstances where our Commander-in-Chief must ask a member of his own security detail to leave the room while he conducts his business. We cannot give any malcontent the slightest opportunity to kill the President of the United States.

We must protect this relationship as we have others. We must protect it, not only for the good of our politicians, but also for the good of the American people.

TOWARD A RENEWED FRIENDSHIP WITH INDIA

HON. ROD R. BLAGOJEVICH

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, July 22, 1998

Mr. BLAGOJEVICH. Mr. Speaker, I rise today to speak about India, particularly the relationship of the United States with that country. Over the course of 3 days this May, India conducted five nuclear weapons tests. In response, United States law brought about the imposition of punitive sanctions on India. Those tests changed the world's political landscape in ways we cannot yet hope to understand. Naturally, the relationship between India and the United States has also been changed, and, like most change, this change has raised many fears. Some fear that the tests and the resulting sanctions have caused hard feelings that will be difficult to erase. Others fear that India's emergence as a nuclear power makes it difficult for the United States to have anything but an adversarial relationship with India.

These fears are to be expected, but we cannot permit our fears to prevent us from taking the steps we need to take to build a more solid relationship with India. The challenge for America will be wheather we can use this opportunity to redefine the relationship between the United States and India for the 21st Century. Even before these tests, Indo-American relations were in need of a reassessment. A decade ago, the end of the Cold War called for unprecedented change in U.S. foreign policy. Elsewhere, American policy planners responded with new ideas of how to work with other nations, even former adversaries, to build a better world. Yet our relationship with India remained locked in a Cold War mind set, too rigid to respond to new geopolitical realities. This must change.

India is the world's largest democracy. Within our lifetimes, it is expected to become the world's largest country. A strong relationship with India is a benefit to the United States not only geopolitically, but commercially as well. The vastness of its potential wealth is only now being discovered by the world. The people of India have known of that wealth for centuries. That wealth is woven into India's history, land, and culture. But the true source of India's wealth is its people. The people of India share the values of freedom and democracy with the people of our own country. As proud, established democracies, the United States and India have more that unites us than divides us. The United States should make clear that we oppose the proliferation of weapons of mass destruction as the number one threat to global peace and security. But we must also concentrate our efforts on reducing the threats that cause governments to turn to these weapons as a deterrent.

Like many of my colleagues, I am optimistic about the planned meeting between the Prime Ministers of India and Pakistan in Sri Lanka later this month. I am hopeful that this meeting will further reduce tensions in the region by contributing to an atmosphere of dialogue and open minds.

Clearly, tensions in the region have to be solved through bilateral negotiations. Difficult issues like the Kashmir question must not be allowed to lead to further armed conflict.

Agreements that call for continued dialogue and peace like the Shimla agreement could provide an ideal framework for this purpose.

With or without nuclear weapons, India is and will be a world power. The question for America is whether we can build a relationship that permits the United States and India to begin the next century as partners. America must acknowledge the reality of a strong, modern India. We must voice our disagreements, but in the context of celebrating our shared values and vision. Close to 1 million Americans of Indian origin live in the United States and contribute greatly to the economic, cultural and technical development of our country. I have full confidence that America can and will embrace this challenge.

TO COMMEMORATE THE CONTRIBUTIONS OF HORACE C. DOWNING

HON. ROBERT C. SCOTT

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, July 22, 1998

Mr. SCOTT. Mr. Speaker, I rise today to pay tribute to Horace C. Downing, my good friend and long-term community leader in the Third Congressional District of Virginia.

Mr. Downing was born on February 26, 1917. He has amassed a commendable record of community leadership based on a tradition of leading by example. It began with the example he set as a dedicated family man, who, along with his wife Beryl, raised four children who have given them eight grandchildren.

At the age of 81, Mr. Downing remains active in his community as he has been for all of his adult life, including the period of his service to the greater community while in the US Army from 1949 to 1952. He served during the Korean War with the Quartermaster Battalion and the 24th Infantry Combat Team as a non-commissioned officer.

After leaving active duty in the military Mr. Downing threw himself into the community serving first as a supervisor for the Housing Improvement Program of Norfolk, Virginia where he was quickly promoted to Community Relations Officer as a result of his diligent and effective leadership. While in his position with these Housing programs, he became involved in the most important community service endeavor of his career—his work on behalf of the children of his community. As a founder and past president of a number of youth and civic organizations in the Berkley community, Mr. Downing has more than earned the honor of being known affectionately as the ''Mayor of Berkley''.

Mr. Downing went on to found or hold membership in thirty-five different organizations. These memberships range from community parent/teacher associations, human resource and business groups, the NAACP and youth groups to city-wide and state-wide organizations.

Mr. Downing demonstrated to the students that surrounded him the value of the concept of life-long learning by continuing his education into his sixties. At a time when students and young people are inundated with negative images and lack role models who show true care for them and the problems they face, he has been a beacon of light for them. While many in our community have written young people off as apathetic and uninvolved, Mr. Downing has founded organizations that promote political and civic responsibility in young people.

Mr. Downing has been honored by the VA Extension Service, Norfolk Public Schools, Norfolk Model City Commission, Virginia Federation of Parent Teachers Associations and other organizations in his community and across the state. So, it is with honor that I call attention to his contributions before the Congress and the nation and I ask that these remarks be made a part of the permanent records of this body. Thank you, Mr. Speaker.

SECURITIES LITIGATION UNIFORM STANDARDS ACT OF 1998

SPEECH OF

HON. ANNA G. ESHOO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, July 21, 1998

Ms. ESHOO. Mr. Speaker, it is with great pride that I rise in support of H.R. 1689, the Securities Litigation Uniform Standards Act of 1998. Over a year ago Representative WHITE and I introduced this legislation. Since then there has been a groundswell of support for this legislation. The Senate approved the companion bill, S. 1260, by a vote of 79–21. The Securities and Exchange Commission and the Clinton Administration have endorsed the legislation. The House bill we are considering today has 232 cosponsors. Today, under Suspension of the Rules, the House will pass this important piece of legislation.

I want to thank you Chairman BLILEY for the open way you have worked to bring this bill to the floor. In the past few months both the majority and minority side have worked to tighten and clean up the bill language before us today. I believe it is a much improved product.

As the primary Democratic sponsor, let me briefly discuss the need for this bill.

In 1995, Congress passed the Private Securities Litigation Reform Act. This law represented a bipartisan attempt to deal with the problem of meritless ''strike suits'' filed against high-growth companies. In most instances, these cases were settled out of court because companies made the calculation that it was cheaper to pay off the strike suit lawyer than become engaged in a protracted legal fight.

These class actions have had a considerable impact on the high technology industry, especially those in Silicon Valley which I have the privilege to represent. High technology companies account for 34% of all the securities issuers sued last year, and 62% of all cases are filed in California. It's ironic that the very companies that have contributed disproportionately to the economic health of our nation and have been a great source of wealth for investors are the ones being harassed. They are being penalized for success.

The 1995 reforms are now being undermined by a shift to state courts of cases involving nationally traded securities, which prior to 1995 were heard in federal courts. Analysis shows a clear motivation for this shift to state courts. The SEC staff report found that 53% of the cases filed cited claims based on forward-looking statements. Also, as Chairman Levitt pointed out in testimony last year before the House Commerce Committee, 55% of the cases filed at the state level are essentially identical to those brought by the same law firm in federal court.

Migration to state courts is not a minor problem. It represents an undermining of core reforms implemented in the 1995 Reform Act, because the Reform Act relies on uniform application and enforcement of the law to be effective. Without this uniform standard, the law is undermined, the strike suits continue, and companies and investors are held hostage. This is particularly true for two key elements of the 1995 Reform Act: Safe Harbor and Stay of Discovery.

When companies refrain from disclosing information about their projected performance, investors are unable to make informed decisions. Most companies are eager to talk about what they are doing. But the threat of meritless suits places a chill on disclosure. This is because any Wall Street analyst's expectation can cause a company's stock to fluctuate, even if the company is growing at a rate of 20% or 30%. Those filing the strike suit then claim that any forward-looking statement, even if it was clearly an estimate and not a promise of stock performance, is grounds for a civil action.

Companies responded by ceasing to make forward-looking statements. The 1995 Reform Act instituted a safe harbor for companies making forward-looking statements as long as those statements were not false or misleading. However, because of the threat of actions in state courts where there is no safe harbor, this provision still has yet to be implemented. I've received letters from hundreds of business leaders who say they will continue to refrain from making forward looking statements as long as the threat of litigation not covered by safe harbor remains. As a result the most investor and consumer-friendly portion of the 1995 Reform Act is not being used.

The second key element of reform is the stay of discovery pending motions to dismiss. Discovery is often the most costly part of the litigation process. It's especially burdensome when plaintiff lawyers tie up executives' time and request, literally, millions of pages of documents. As long as this threat is present, companies will have a greater incentive to settle early and avoid the cost of discovery than fight—even if the case has no merit. To counter this problem we enacted a stay of discovery in the 1995 Act. This does not prohibit plaintiffs from filing their cases, nor does it prohibit cases that have merit from moving forward. It merely delays the discovery process until a judge can rule on a motion to dismiss.

Because of the shift to state courts, the stay of discovery is not in place. The threat of huge legal costs remains and the incentive to settle meritless cases continues. Even worse, plaintiff lawyers are able to file a case in state courts, go through a process of discovery—basically a fishing expedition—and then take those documents into federal court.

It is this undermining of the federal law that prompted Representative WHITE and I to introduce our bill. I would like to make clear that the bill is not a federal power grab. We are returning to federal courts cases which until the 1995 Reform Act had always been heard in federal courts. It is limited in scope, and only extends to private class action lawsuits involving nationally-traded securities. State regulators and law enforcement officials maintain