SENATE—*Wednesday, June 17, 1992*

(Legislative day of Tuesday, June 16, 1992)

The Senate met at 9 a.m., on the expiration of the recess, and was called to order by the Honorable HERB KOHL, a Senator from the State of Wisconsin.

PRAYER

The guest chaplain, the Reverend Father Carl Beavers, chancellor-moderator of the Catholic Diocese of Cheyenne, WY, offered the following prayer:

Let us pray:

Lord, these quiet moments are more than a brief respite in the proceedings of our day. They are moments of faith and of our desire to connect with You. Our prayer this morning is offered not only because we are servants of people, but because we are Your servants, as well. Our work here today and each day is a response to them and also to You. Aware of our need for You and Your gracious assistance, we implore Your help. Conscious that You are with us and that Your care attends us always, we continue our day pledging the best of ourselves, so that all we do may redound to the glory of You, Lord, the One in whose image and likeness we have been made. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore [Mr. BYRD].

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, June 17, 1992.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable HERB KOHL, a Senator from the State of Wisconsin, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mr. KOHL thereupon assumed the chair as Acting President pro tempore.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Without objection, the time of the majority leader is reserved and the acting minority leader is recognized.

Mr. SIMPSON. Mr. President, I thank you. I thank the occupant of the chair.

RECOGNITION OF THE GUEST CHAPLAIN

Mr. SIMPSON. Mr. President, I thank Reverend Halverson. He was so kind to accommodate my long-time friend, Father Carl Beavers. I want to welcome him and give recognition to this man. He is the rector of St. Mary's Parish in Cheyenne, one of the largest Catholic parishes in the entire State of Wyoming, which is something to say, when there are only 460,000 of us and a few Episcopalians like me are mixed in there, too. St. Mary's Parish has a proud and colorful history. The beautiful parish cathedral sits two blocks from the Wyoming State Capitol.

Father Beavers also serves as the chaplain of the Wyoming Legislature. He is a man who has given tirelessly to the work of the Christian church. His work and spiritual guidance, which he and his staff at St. Mary's provide for Wyoming's many fine citizens, Catholic and non-Catholic, is truly inspirational.

He came to Cheyenne only a few years ago, following in the footsteps of a very effective, amiable, and genuinely good man, Monsignor O'Neill. He served the majority of his life in the priesthood in Wyoming. He was born in Sheridan, WY. His family moved to Powell, WY, my home county, while he was in the fourth grade. In Powell, he excelled in all endeavors—academic and athletic. He was one fine football player, I can tell you that. He was all-State for the State champion, Powell Panthers. It may mean nothing to people here, but when you are from Cody, it does.

Before he arrived at St. Mary's, he served as principal administrator at St. Joseph's Childrens Home in Torrington, WY, a very unique place. St. Joseph's places homeless children with families throughout the State and throughout the country.

He subsequently moved to St. Mary's and quickly grasped the reins of this parish. This remarkable and sincerely humble man made all of Cheyenne's citizens feel they were welcome in his church. He opened the parish to all of the local citizenry, and he also opened up his heart to their needs, experiences, concerns, pains, anxieties, fears, and joys. He expressed a sincere, kind, and devoted love for our fine citizens. He says often that he has the best parishoners a priest could ask for. Well, they have the best priest that ever could be given to them.

He is a special man. He is well known throughout our State. He has earned a reputation for being a fair, concerned, considerate, dedicated, and compassionate priest. I have seen him on many occasions in times of joy, of grief, of healing, and of pain. He is, indeed, very steady, thoughtful, kind, sensitive, earthy, and loving. He is imbued with a kind and gentle humor that serves him well. He is a special man with special gifts, and he uses them as God would have him do. And he is my friend.

He will be here in Washington at the Catholic University for 2 weeks.

I thank again Reverend Halverson for his extraordinary courtesy and accommodation for arranging for Father Beavers to be guest chaplain on rather short notice.

So to Father Carl Beavers we extend truly a warm, hearty welcome to the U.S. Senate.

My good friend and senior colleague from Wyoming, Senator MALCOLM WALLOP, is also here this morning. Both of us have known this remarkable man so many years, just as we came to know each other for over 40 years.

So I am very proud to see Father Carl Beavers here today and have him give the opening prayer in the U.S. Senate.

Mr. President, I yield a portion of the leadership time to my senior colleague from Wyoming.

The ACTING PRESIDENT pro tempore. The Chair recognizes Senator WALLOP, from Wyoming.

Mr. WALLOP. Mr. President, I thank the Chair and I thank my colleague from Wyoming.

I am particularly delighted to welcome our friend Carl Beavers here today. He is, as ALAN has said, a friend to all of us. He is known to an enormous section of Wyoming citizens and known very well and very warmly and known with love.

And I thank him for having come here this day and graced us with that wonderful prayer. The Senate has benefited and each of us, ALAN and I, have benefited by his presence.

RESERVATION OF THE REPUBLICAN LEADER'S TIME

The ACTING PRESIDENT pro tempore. Without objection, the time of the Republican leader is reserved.

Mr. WALLOP. Mr. President, I suggest the absence of a quorum.

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

The legislative clerk proceeded to call the roll.

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

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

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

Mr. PRYOR. Mr. President, while the managers of the pending legislation are negotiating, I have asked and they have consented that I may be allowed to proceed for about 6 minutes. So I ask unanimous consent that I may proceed as if in morning business for 6 minutes.

The ACTING PRESIDENT pro tempore. Without objection, the Senator is recognized for up to 6 minutes.

Mr. PRYOR. Mr. President, if the managers of the bill would like to interrupt me and continue with their legislation, I will be glad to yield them the floor.

May I inquire, Mr. President, are they ready to proceed now?.

Mr. HEFLIN. No; go ahead.

Mr. PRYOR. Mr. President, I thank the managers.

THE ELECTORAL COLLEGE

Mr. PRYOR. Mr. President, in 1823, one of our Nation's Founding Fathers and great constitutional scholars, Thomas Jefferson, wrote about the 12th amendment to the Constitution. He wrote this, Mr. President:

> I have ever considered the constitutional mode of election ultimately by the legislature voting by the States as the most dangerous blot on our Constitution and one which by some unlikely chance will someday hit.

Thomas Jefferson in 1823, and the subject, the 12th amendment to the Constitution, discussing how we may someday elect our President, not by the popular vote, but conceivably in the House of Representatives.

Mr. President, I have long admired Thomas Jefferson's penetrating logic. His assessment of the 12th amendment is yet another example of his wisdom and foresight. Eighteen months after he wrote these prophetic words, the United States underwent the wrenching process of selecting a President in the House; the infamous "corrupt bargain" election of 1824 that we all read about in school.

I hope and pray we will never again have to undergo that ordeal in our country.

I would like to speak for a few moments, Mr. President, this morning, to address a couple of concerns I share with our Nation's third President, Thomas Jefferson, about our constitutional system of selecting our country's two highest leaders.

As we now move into the summer months, and we prepare for this fall's Presidential election, it is becoming more and more apparent that we have three viable Presidential candidates. We must prepare the American public for the complications and the possibilities that our electoral college system presents in the context of a three-candidate race.

On May 20, I spoke to this body about one of those complications: The possibility that Senators in this body, in this room, might filibuster the selection of the Vice President if no candidate achieves an electoral college majority. That predicament is feasible, and it is feasible because the 12th amendment, which lays out the contingency plan if no candidate receives an electoral majority, is inadequate and antiquated, and as Thomas Jefferson pointed out, "a dangerous blot" on our Constitution.

Today, let us continue to outline the strange scenarios made possible by the Presidential selection process covered by the 12th, the 20th, and the 25th amendments to the Constitution.

As we all know, if none of the three candidates receives an electoral vote majority when the electoral votes are counted on January 6, 1993, the House of Representatives is mandated by the 12th amendment to immediately proceed to select a President. Each State delegation receives one vote. The delegations may only choose from the top three Presidential electoral vote-getters, and it takes a majority of the States' votes—26 of 50—to select a President.

At the same time, Mr. President—this is where it gets interesting—the 12th amendment also dictates that the Senate select a Vice President, with each Senator casting one vote for either of the top two Vice Presidential electoral vote-getters. In that vote, 51 votes are necessary in this room to select a Vice President of the United States. As I outlined in May, because of the two-thirds quorum requirement, it is very possible that vote could be indefinitely put off.

The President's 4-year term expires at noon, January 20, 1993, as specified in the 20th amendment. If the House has not been able to select a President at that time, the Vice President, as selected by the Senate, is sworn in as acting President. If the Senate has not selected a Vice President, the Constitution then allows the Congress, by law, to stipulate a Presidential succession order. Congress passed such a law in 1948, the Presidential Succession Act of 1948.

That law states that next in line—assuming he or she would be willing to resign from their current office—would come Speaker of the House, then the Senate President pro tempore, then the Cabinet Secretaries, starting with the Secretary of State and moving down in chronological order of each Department's founding year.

Mr. President, I apologize for this lengthy recitation of the Presidential succession process. In this area the Constitution and the law are anything but simple and straightforward.

Mr. President, many columnists and political pundits have given various scenarios for a variety of people to become President because of the intricacies of this process. But all the scenarios I have read have forgotten one very important possibility. And that possibility, Mr. President—and that is the purpose of my taking the floor today—is to remind our colleagues that the Speaker of the House does not have to be a Member of Congress.

Mr. President, I repeat that point. The Speaker of the House of Representatives does not have to be a Member of Congress, of the House of Representatives. Curious as it may seem, unbelievable as it may seem, the House may select anyone to be Speaker next January, including, if they wish, any of the candidates for President.

Actually, Mr. President, the Members of the House do not have to choose an elected official. They could choose Lee Iacocca as Speaker of the House, who would then next be in line to be President. They could choose Walter Cronkite to be Speaker of the House, who would then be in line to be our next President.

It is also important to bear in mind that the vote for Speaker is only a vote, Mr. President, that requires a majority—a majority—of those House Members voting. That also means you do not have to vote by States, as you do if you are voting for President, under the 12th amendment guidelines. That type of majority—for Speaker—is much easier to attain than the majority of the State delegations, stipulated, as I have stated, by the 12th amendment for the selection of President.

Mr. President, let us assume this reasonable scenario in this fall of 1992. Governor Clinton, President Bush, and Ross Perot all run well in both the electoral college and the popular vote.

No candidate receives 40 percent of either the electoral or the popular vote. Because no one had received an electoral majority, the election would then be thrown into the House. Let us assume that none of the three candidates received the votes of 25 States, which can happen for any number of political and procedural reasons.

In addition, assume whichever party is a minority in this body refuses to allow the other party's Vice President to assume the Presidency, by refusing to assemble the necessary two-thirds quorum.

If that deadlock occurs, Mr. President, a bare majority of the House of Representatives could select one of the Presidential candidates as Speaker, so that he or she might assume the Presidency on January 20—serving for a brief moment as Speaker, and then being sworn in as acting President. This might even be used as a means to select a compromise candidate, someone who is not even on the ballot in November, thereby avoiding the 12th amendment requirement that the House choose the President from the top three electoral vote-getters.

Mr. President, we must realize it is not necessary to change the Constitu-

tion for any of these possibilities to happen, nor is it necessary to pass or change any law. I am talking about the prospects completely within the constraints of current law and current rules.

Mr. President, let me be the first to say this scenario is very unlikely, but the point is that our electoral system allows for possibilities such as these. The American people deserve to have a system to select their Nation's highest two leaders that guarantees that we will never be confronted with the constitutional hazards which face us this election.

Mr. President, I hope the Congress will act today. I hope the Congress will study the proposed constitutional amendments that are now before the Senate, that will be before the House, and even conceivably, Mr. President, think about the possibility of fast-tracking one of these amendments and sending one to the State legislatures of our respective States.

Yes, even before November 3, it is possible, just possible, that we could change this system and give to our people this opportunity to select their President in a direct election by a popular vote of the people.

Mr. President, it was James Mason, at the Constitutional Convention, who said that States should not vote; people should vote. I hope we will adhere to that admonition. I hope we allow the people to vote directly for President.

Mr. President, I thank, once again, the managers of the pending legislation for allowing me to speak at this time.

TODAY'S BOXSCORE OF THE NATIONAL DEBT

Mr. CRAIG. Mr. President, Senator HELMS is in North Carolina recuperating following heart surgery, and he has asked me to submit for the RECORD each day the Senate is in session what the Senator calls the "Congressional Irresponsibility Boxscore."

The information is provided to me by the staff of Senator HELMS. The Senator from North Carolina instituted this daily report on February 26.

The Federal debt run up by the U.S. Congress stood at $3,943,941,930,864.83, as of the close of business on Monday, June 15, 1992.

On a per capita basis, every man, woman, and child owes $15,354.50—thanks to the big spenders in Congress for the past half century. Paying the interest on this massive debt, averaged out, amounts to $1,127.85 per year for each man, woman, and child in America—or, to look at it another way, for each family of four, the tab—to pay the interest alone—comes to $4,511.40 per year.

JOSEPH BUMBLEBURG RECEIVES HIGHEST RECOGNITION

Mr. LUGAR. Mr. President, it is with great pleasure that I rise today to salute Joseph Bumbleburg, an attorney from Lafayette, IN, who has received the National American Red Cross' highest recognition, the Harriman Award for Distinguished Volunteer Service. The award was presented on May 31, 1992, at the American Red Cross National Convention in Baltimore, MD.

The Harriman Award for Distinguished Volunteer Service was established in recognition of the services of E. Roland and Gladys Harriman. They provided unprecedented leadership to the organization through their extraordinary commitment and public relations achievements.

This award is designed to promote superior performance among all volunteers. It is not an annual award but is given only when the nominee's level of performance and caliber of contribution exceed those of the average Red Cross volunteer. It requires extraordinary accomplishments rather than merely length of service and must be merited under strict regulations.

Joe Bumbleburg began his service as a Red Cross youth volunteer in 1958. He has served as board chairman for 4 terms, and as First Division Council chairman, regional chairman, and a member of the board of governors on the national level. He currently chairs the Council of Former Governors and is a member of the Red Cross Board of Directors.

Mr. Bumbleburg is dedicated to preserving, managing, and utilizing the historical and archival collections of the American Red Cross organization and encourages the preservation and use of collections of the various chapters. His selfless devotion to the goals of the American Red Cross is an example for us all.

I ask my colleagues to join me today in saluting this outstanding Hoosier.

NATIONAL BANKRUPTCY REVIEW COMMISSION ACT

The Senate resumed consideration of the bill.

The PRESIDING OFFICER (Mr. BRYAN). The Senate will now resume consideration of S. 1985, which the clerk will now report.

The assistant legislative clerk read as follows:

A bill (S. 1985) to establish a commission to review the Bankruptcy Code, to amend the Bankruptcy Code in certain aspects of its application to cases involving commerce and credit and individual debtors and add a temporary chapter to govern reorganization of small businesses, and for other purposes.

The Senate resumed consideration of the bill.

Pending:

Danforth Modified Amendment No. 2426, to express the sense of the Senate that public officials and candidates for public office make proposals and engage in discussion on reducing the deficit, and that the candidates for President agree to a formal discussion that focuses entirely on the Federal budget deficit.

Mr. PACKWOOD. The Internal Revenue Code and ERISA require ongoing pension plans to make minimum funding contributions, paid on a quarterly basis. Plans covered by PBGC's insurance program must meet these requirements until they are properly terminated in accordance with the provisions of title IV of ERISA. The required contributions are calculated under the minimum funding rules set out in the Internal Revenue Code, ERISA, and the rules and regulations issued under those provisions, as are the due dates for payment of those contributions.

Until recently, companies, even those in bankruptcy, paid the required contributions as ordinary, necessary business expenses. A recent court decision questioned the amount and priority of these contributions under bankruptcy law.

It is my understanding that this amendment would clarify the Bankruptcy Code to assure that minimum funding contributions for which a company and its affiliates are responsible under the Internal Revenue Code and ERISA are again consistently treated as ordinary and necessary expenses of a debtor in a bankruptcy case, payable in the ordinary course of the debtor's business. This clarification would remove any doubt that the minimum funding rules shall apply to companies in bankruptcy in the same manner as they apply to nonbankrupt companies, and that the entire amount of the minimum contribution calculated under the Internal Revenue Code and ERISA must be paid. It is also my understanding that the required contributions of an affiliate of the debtor meeting the Internal Revenue Code and ERISA controlled group tests are to receive the same treatment under bankruptcy law. Is my understanding correct?

Mr. HEFLIN. Yes, this clarification to the Bankruptcy Code would assure that minimum funding contributions are, like wages, treated as ordinary and necessary expenses of a debtor payable in the ordinary course of the debtor's business; that the obligation to meet minimum funding standards is not affected by bankruptcy. This is true for the company sponsoring the plan as well as for affiliates in the sponsor's controlled group. This clarification does not upset any minimum funding arrangement already worked out between a company and the IRS and the PBGC.

Mr. PACKWOOD. It is my understanding that under current law, minimum funding contributions for which a company and its affiliates are responsible under the Internal Revenue Code and ERISA are not recoverable as pref-

erence payments under bankruptcy law. Is my understanding correct?

Mr. HEFLIN. The Senator is correct. Payments made to a company's pension plan, or to that of an affiliate, are not recoverable as preference payments because they are payments required by law and are paid by the company in the ordinary course of its business. Under the Internal Revenue Code and ERISA, money in a pension trust is never to be used for the benefit of the company sponsoring the pension plan, or an affiliate of that company. Consistent with the mandate of the Internal Revenue Code and ERISA, and as stated in the Judiciary Committee report, the preference rules were never intended to apply to payments made to a pension fund. If there were a question as to the application of the insider preference rules to pension contributions made by a debtor company with affiliates who were also liable as controlled group members under the Internal Revenue Code and ERISA, section 204 of the bill, which overrules the Deprizio case, makes clear that neither the pension plan nor the PBGC, if the plan subsequently terminates, may be required to return those payments.

Mr. President, at this time, I want to spend a moment to carry on a colloquy between myself and the Republican manager of the bill, Senator GRASSLEY. Our remarks are directed at section 308 of the bill concerning the interpretation of the substantial abuse provisions.

At the Judiciary Committee meeting on March 12, 1992, when the language of section 308(2) was offered as an amendment, I made the following statement:

This amendment, as I read it, "The court shall find that a petition constitutes a substantial abuse of this chapter if the petition was filed in bad faith, or if the debtor, without substantial hardship, has the ability to pay the debtor's debts as they become due."

Now, really, that is not an inclusive finding about substantial abuse, but just two instances of substantial abuse.

As to whether or not this language is exclusive or nonexclusive, I want to point out that the above-quoted language pertaining to the nonexclusiveness of the two instances of substantial abuse was not disputed during committee deliberations. Throughout the entire legislative history before the committee, no one contended that the two instances of substantial abuse set forth in section 308(2) were to be the only and exclusive instances of substantial abuse that could be found by a court. It is true that the amendment was offered by another Senator, but the language was drafted by my staff, and certainly the drafters never intended that these two instances be exclusive.

The discussion on March 12, 1992, before the committee, as well as at other times, indicate that there was a desire on my part to further work on language and reach an understanding on the import of this subsection. However, the only part of the language that I wanted to further refine were the words, "as they [the debts] become due." Nothing contained in the transcript of the committee deliberations indicates the desire to refine language regarding the exclusiveness or nonexclusiveness of this provision. At no time during the committee's consideration was the issue of exclusiveness raised and the transcript of those proceedings bear this fact out.

The specific language of the provision supports the position that the two instances are not exclusive. Certainly a court could find that a substantial abuse could occur if the conduct of the debtor was exercised in bad faith after the petition was filed. Under this provision, a court certainly has the right to find substantial abuse based on a totality of circumstances. These tests, outlined by the language of the bill, certain point to a nonexclusiveness interpretation.

Mr. GRASSLEY. I think that Senator HEFLIN has correctly recited the legislative history before the Judiciary Committee, as well as given valid reasons why the two instances cited in section 308(2) should not be interpreted to be exclusive. I agree that these two instances of substantial abuse, set forth in this subsection, were not intended to be all inclusive and that a court would have the right to find other instances of substantial abuse.

The PRESIDING OFFICER. Who yields time?

Mr. HEFLIN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 2427

Mr. SANFORD. Mr. President, under the previous order, I have time reserved for three amendments. I would like to send forward now an amendment to section 205, which has been approved by both sides.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from North Carolina [Mr. SANFORD] proposes an amendment numbered 2427.

Mr. SANFORD. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

Amend the pending business in section 205 in the following manner:

(1) Delete subsection (b)(1) on page 16, line 15–line 21, and renumber subsections "(b)(2)" and "(b)(3)" as "(b)(1)" and "(b)(2)" accordingly.

(2) On page 18, line 23, add after "debtor" the following, "including, but not limited to, the proper use of disposable income".

(3) On page 19, line 9, add after "chapter" the number "11".

(4) On page 20, line 15, delete the word "shall" and insert the word "may".

(5) On page 20, lines 16–17, delete the sentence "Any waiver of the right to dismiss under this section is unenforceable.".

(6) On page 29, paragraph (B) found at lines 3–14, and insert the following:

"(B) with respect to a class of claims of a kind described in section 507(a) (3), (4), (5), or (6), each holder of a claim of the class will receive cash or deferred cash payments of a value, as of the effective date of the plan, equal to the allowed amount of such claims; and".

The PRESIDING OFFICER. Is there further debate on the amendment?

Mr. HEFLIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. HEFLIN. This side, and also Senator GRASSLEY, has reviewed these technical amendments to section 205, and they are acceptable on our side, and it is our understanding that it is acceptable by Senator GRASSLEY.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 2427) was agreed to.

Mr. HEFLIN. Mr. President, I move to reconsider the vote.

Mr. SANFORD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HEFLIN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. GRASSLEY. Mr. President, I ask unanimous consent to speak for 5 minutes as in morning business.

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

The Senator from Iowa is recognized for 5 minutes.

ARMS CONTROL

Mr. GRASSLEY. Mr. President, I want to discuss with the Members of this body a topic which I think is of paramount importance to this country and, more importantly, to the entire world, and it deals with the capability of preserving peace, and that issue is arms control.

Over the last few years, we have witnessed the collapse of the Berlin wall, what we hope is the end of communism, and a dramatic change in the political climate of the Middle East. The end of superpower rivalries gives us historic opportunities, I believe, to

make further strides in easing tension and promoting peace.

Despite our victory in the gulf war, the Middle East remains a flash point, and a very volatile region. It is the one region of the world where the appetite for more arms never seems to be satisfied. That is why, Mr. President, the United States must take the lead in a multilateral effort to stop the flow of arms and weapons into the region.

I recently endorsed the conclusions of a bipartisan study group involving legislators and scholars brought together by the Henry L. Stimpson Center. The 20 member study group included Senator BIDEN, Representatives WEBER and BERMAN, representatives of major defense industries as well as think-tank experts on arms control.

Those of us who make up this diverse group agreed that regional stability would be improved with a U.S.-led initiative to curb the spread of dangerous weapons in the Middle East. The United States is uniquely situated to lead the permanent members of the U.N. Security Council in a multilateral arms control effort. Our prestige and influence stands at an all-time high following our triumph in the gulf war.

We have already seen a great example of our leadership capability. The United States has succeeded in bringing Israel, her Arab neighbors, including Palestinians, to the peace table. And the United States led the effort to repeal that outrageous stain on the United Nations, the "Zionism is Racism" resolution.

The gulf war demonstrated many important lessons. First, the magnitude of the damage done using only conventional weapons was a wake-up call to the world, reminding us of the disastrous effects of war. The possibility of an increase in conventional, and worse yet, unconventional weapons in an area should strike fear into the most dauntless of hearts.

Second, the area is currently dependent on outside sources for these advanced weapons systems, but an infusion of scientists and technicians into the area from the Commonwealth of Independent States and from the five or six countries of Eastern Europe could provide indigenous capabilities to some of these countries. Last, the region has meager resources to commit to more weapons now.

The humanitarian thing to do is for these nations to help themselves first before expecting the rest of the world to help them with their humanitarian needs. And, it can be done if they, themselves, spent less of their own resources upon weapons systems and spent more of those resources upon their domestic needs.

Our group, the Stimpson Center Study Group, has come up with four specific short-term proposals aimed at the five permanent members of the U.N. Security Council.

First there should be a registry of arms sales to the Middle East. Under this proposal, a detailed analysis of proposed weapons sales would be divulged to a tribunal which would determine compliance with agreed upon guidelines.

Second, a blanket ban on sale of certain weapons and technologies should be imposed upon Middle Eastern countries. They should not receive: First, weapons of mass destruction—nuclear, biological, and chemical or their components; second, all types of surface-to-surface missles; and third, any advanced technology such as stealth technology. In the near future it may even be possible to negotiate an outright ban on all weapons of mass destruction in this area.

The third recommendation of the Stimpson Center Study Group is the institution of a one-in and one-out requirement. This proposal would work in conjunction with a ban on new weapons systems and would cover armored combat vehicles, artillery, fighter attack aircraft, helicopters, and tanks. For every new piece of weaponry bought by a country, one piece of similar weaponry would be taken out of use.

Finally, economic incentives should be established to encourage Middle East nations to spend less on arms and weapons. Following the gulf war, the United States convened the permanent five to discuss arms control in the Middle East. There have been three meetings in the last year. These meetings are historic and without precedent but they need to produce results. The Stimpson Center study lays out a blueprint for action.

Finally, Mr. President, we may have the best of intentions regarding arms control in the Middle East, but I have concerns that we may be practicing business as usual. Earlier this year the Pentagon notified Congress of $23 billion in potential arms sales to this region. Gulf nations have already bought some $10 billion in weapons in the year following the gulf war.

Before unilaterally moving ahead with arms sales, I think we need to sit down with leading arms sellers and hammer out a multilateral agreement limiting arms to this region.

We cannot expect other nations to follow what we say if we act otherwise. We have to lead by example. If we do not succeed in establishing an arms control regime in the Middle East, we will have squandered our victory in the gulf.

These proposals will not solve all the problems of the Middle East, but they will provide a stable environment for the peace process that is going on now for it to continue.

It is difficult to get along with a neighbor if you think that neighbor is going to rob your house. In the long term these proposals will not only provide security to the countries of the Middle East, but hopefully will prevent the need for United States troops to be introduced into that region ever again.

I yield the floor.

NATIONAL BANKRUPTCY REVIEW COMMISSION ACT

The Senate continued with the consideration of the bill.

The PRESIDING OFFICER. Who yields time?

The Senator from South Carolina.

Mr. HOLLINGS. Mr. President I will take just a few minutes from the time of the distinguished Senator from Alabama, the manager of the bill.

Momentarily we will be debating, of course, the sense-of-the-Senate resolution proposed by the distinguished Senator from Missouri. And on that particular score I want to, once and for all, reiterate exactly what has happened.

Gramm-Rudman-Hollings worked. I will object to anyone saying it did not work. Indeed, it worked so well, reducing the deficit $71 billion in its first full year, that Congress and the President conspired to dilute it and finally repeal it lest they be required to enact even deeper cuts. The enactment of Gramm-Rudman-Hollings was the culmination of a long struggle, trying to put in budget freezes in a bipartisan fashion. Finally, in 1985 the majority of the Republicans, the majority of the Democrats supported Gramm-Rudman-Hollings. It was a bipartisan initiative. And it was subsequently reaffirmed by another 13 votes, up or down, in the Senate.

We voted up and down and put it in. It provided for cuts across the board, and it mandated truth in budgeting. Whatever we budget we have to live by. Gramm-Rudman-Hollings did not dillydally. It did not say so much more for this, and so much for that, and a wall here, and a wall there, and all the economic or budgetary gimmickry.

It said whatever deficit target you agree to, you appropriate that much and no more, and if you try to do more there will be cuts right straight across the board.

It worked in 1986; it worked in 1987. We reduced the deficit from $221 billion down to $150 billion in the first full year. But then with the 1988 election, we began playing games, diluting the discipline, and moving back the deficit-reduction targets from 1991 to 1993. And then, 1990 summit agreement, Gramm-Rudman-Hollings was effectively repealed. So to those who talk about gridlock, I say let us praise gridlock because it is when Republicans and Democrats get together to connive and conspire that the country loses ground in this town, I can tell you.

Washington got together in a sweetheart deal in 1990, the White House leadership and the Democratic congres-

sional leadership and the Republican leadership. They got together, and on page 1156 of the Omnibus Budget Reconciliation Act of 1990, you will see the words that encapsule their conspiracy to denature Gramm-Rudman-Hollings:

The conference agreement incorporates the procedures proposed by the House under which the President must adjust the deficit targets for fiscal years 1991 through 1993 and may adjust the target for fiscal years 1994 and 1995. The deficit targets established reflect current economic projections and the removal of Social Security trust fund balances from the deficit calculation. These deficit targets will be adjusted for further updated economic and technical factors through fiscal year 1993.

So they vested in the President the power to set targets.

So in a surreptitious, very clever way they repealed the targets and thereby repealed the targets and thereby repealed Gramm-Rudman-Hollings. They mutilated the measure. Now they have the shamelessness to bring to the floor this sense of the Senate resolution. They voted for Gramm-Rudman-Hollings, and then they voted to strip it of its teeth and claws. And now they dare to put forth this flowery sense of the Senate that public officials and candidates should make proposals and engage in discussion on reducing the deficit.

Man, come on. Why not just do the job? We made a proposal to do the job last fall. We made it again this year in the Budget Committee. We have succeeded, to some extent, with finally agreeing to a budget freeze.

Point 2 of the resolution says the candidates should agree to a discussion of the deficits. Discussion? Discussion is all we're had for years. Why talk, when we can act?

And then finally the resolution states: All candidates for office should affirm their support for principles and resolve "to seek a mandate from the electorate." "Seek a mandate from the electorate." Heavens above, Mr. President, we already have a mandate to act responsibly on the deficit. What are we waiting for?

You could not get away with this in the Legislature of Alabama. You could not get away with it in the Legislature of South Carolina or North Carolina. We all know that. In the States, they do not run around trying to find a mandate to balance their budgets. They just do it. They pay the bills.

I am going to vote against this nonsense of the Senate. We absolved ourselves after having committed the dastardly deed of mutilating Gramm-Rudman-Hollings when it was working. We got rid of the targets, and then we had the audacity to give ourselves the good-government award for an alleged $500 billion savings.

The President of the United States last year said, and I will quote, "We are headed in the right direction. We will reduce the deficit $500 billion over 5 years."

Absolutely false. We are headed in exactly the wrong direction, which of course is one reason for this resolution. We are increasing the deficit $500 billion in a single year—this year. You look at the numbers in September or right after—of course, they will not give you the real figures until after the election in November. But if you do not count the billions borrowed from the trust funds, the true deficit will be up to $500 billion. So we here, and the President too ought to be embarrassed, running around saying he is for a balanced budget amendment to the Constitution.

I supported that amendment, as I described on yesterday, to try to restore our fear of deficits and debt. As old Tom Jefferson said, "public debt is the greatest danger to be feared." On that score, as Roosevelt said, "the only thing we have to fear is fear itself," today the thing we must fear most is our very lack of fear, our shamelessness about running up deficits and debt. Instead of action, we have debate and discussion. We get on TV and we run around in circles with "I said," and "I introduced" and "I took the floor." Heavens above, all we have to do is do it.

The President of the United States is saying don't worry. He says we are headed in the right direction; you do not need revenues or steep cuts.

And the President is not alone in leading in the wrong direction. A majority of Senators voted to do away with the targets; they voted for the summit agreement in 1990. And they ought to admit to it. They led the way.

That is, incidentally, why I said at that time in 1990, after the summit, "Leave my name off of Gramm-Rudman-Hollings." Gramm-Rudman-Hollings was supposed to be a spear to good fiscal responsibility, but the 1990 summit turned it into a shield to hide behind and create fiscal irresponsibility.

So I thank the distinguished Senator from North Carolina and the Senator from Alabama on allowing me the few moments here to clarify why I am going to vote against this shenanigan. Instead of a sense of the Senate about slashing deficits, why don't we just do it. It is within our power. The mandate is already there.

As the distinguished Governor of the State of Connecticut, our former colleague, Senator Weicker, said not long ago. It is like in a football game, with players down on the gridiron rushing up into the grandstand and hollering, "We want a touchdown. We want a touchdown." Why not get back down to the field and score the blooming touchdown? Likewise, why not get down on this Senate floor and let us start fiscal responsibility? Do not presume to admonish the Presidential candidates about what they ought to be doing and trying to get mandates from the people.

The President of the United States is in a responsible position. But he has not acted on that responsibility, and that message is coming through loud and clear to the American people. As long as he says we are headed in the right direction when we are headed in the wrong direction, as long as he engages in the shenanigans of alleged savings rather than sticking to actual, hard targets for eliminating the deficit, then all is lost. Incidentally, last year he said the target for the budget we are now working on this year, for 1993, is $285 billion. Do you know what he said earlier this year? He amended, he moved the target. He moved the goalpost. He now says the target is $407 billion.

What kind of fiscal shenanigan is that? No, no. No discussion, no mandates, no telling Presidential candidates what they ought to do and everything else. They know where to go. Get on the President of the United States and say, "Get real." Quit running around patting little children on the head, going to all these social engagements. Let us go to work. Let us go to work and start cutting spending, freezing spending; all the above in order to work our way out of this situation. We are going to have to work our way out.

I am going to oppose this misleading sense of the Senate. It tells the American public that we can wait until after the election and if the candidates speak out and if the candidates get a mandate, then we can do something. Always next year, never this year. We are hired up here to do the job. It's time to do it.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. HEFLIN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The absence of a quorum having been suggested, the clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. HEFLIN. Mr. President, I ask unanimous consent that any time allotted to me, which I understand has been running on this, which is now down to about 4 minutes—that those 4 minutes be reserved until later and that the quorum call time running will not be counted against my time.

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

Who yields time?

Mr. SANFORD. May I inquire what the order was?

The PRESIDING OFFICER. The Senator from Alabama secured unanimous consent that 4 minutes be retained and reserved by him, and that with respect

to any quorum call, that the quorum call will not be chargeable to the time allocated.

Mr. SANFORD. May I inquire if now the order is to proceed with amendments?

Mr. HEFLIN. We are still trying to clear it.

The PRESIDING OFFICER. The Chair will inform the Senator from North Carolina that amendments are in order, pursuant to the unanimous-consent order of yesterday.

The Chair will further inform the Senator that there is a standing order that at the hour of 10:40 the Senate will stand in recess until the hour of 2 this afternoon.

Who yields time?

Mr. MITCHELL. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. HEFLIN. Mr. President, I ask unanimous consent that any time in quorum calls during the pendency of this bill not run against the time allocated to the managers of the bill.

The PRESIDING OFFICER. The Chair understands the request is that the time not be charged?

Mr. HEFLIN. Without objection, the unanimous-consent proposal by the Senator from Alabama is agreed to.

The Chair will inquire of the Senate, what is the will of the Senate?

Mr. MITCHELL. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

If the Senator would suspend for a moment, the Senate is not in order.

The Senator may proceed.

Mr. SANFORD. Mr. President, I will take just a couple of minutes because we have been delayed an hour and a half here. I will offer an amendment to section 206.

The PRESIDING OFFICER. Will the Senator suspend for a moment? I believe the majority leader seeks recognition.

Mr. MITCHELL. It was my understanding the Senate would go into recess at 10:40. So as to permit us to complete action on this amendment, Mr. President, I ask unanimous consent that the recess previously ordered be postponed until 10:45.

The PRESIDING OFFICER. The unanimous-consent request of the Senator from Maine is agreed to.

The Senator from North Carolina is recognized.

AMENDMENT NO. 2428

Mr. SANFORD. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from North Carolina [Mr. SANFORD] proposes an amendment numbered 2428.

At the end of section 206(g)(1)(A), add the following sentence: "Nothing in the subsection (g) shall affect the court's existing authority to issue an injunction pursuant to an order approving a plan of reorganization".

Mr. SANFORD. Mr. President, I offer an amendment to section 206. Section 206 was drafted to solve a specific problem in a case involving mass tort litigation claims. My concern is that this particular solution may preclude others which may work just as well, and I just want to make sure that does not happen.

We all know that the Bankruptcy Court is faced with resolving very difficult issues. In fact, because of its virtually unlimited jurisdiction and because insolvency is not a requirement for filing bankruptcy, the Bankruptcy Court is more and more often becoming the forum where large, complex cases often involving social issues are being handled. We are seeing large judgments, mass tort claims, pension shortages, labor disputes, and a host of other problems being played out in the Bankruptcy Court. We in Congress must make it clear to the bankruptcy bench that they have the widest degree of latitude in crafting responsible reorganizations that fit the specific needs of each case.

The amendment that I am proposing does just that. It does not prejudice those who wish to utilize the specialized trust arrangements laid out in section 206. It simply clarifies the fact that this is not the only alternative, that other companies in similar situations are not bound to that single resolution, and that the parties and the courts may continue to use their imagination and skill to look at the facts and circumstances in each case to determine what is in the best interests of all parties.

There are those who will contend that the court could do that anyway without this amendment. I do not disagree with them, but few of us can guess what any judge under particular circumstances will do. Judges are different. Some place great weight on congressional intent. Others rely exclusively upon a strict construction of the wording of the statute. Some will follow the lead of others while some will chart their own course. Therefore, this amendment is offered simply to avoid the possibility of any confusion in the court's possible interpretation of this statute.

I have been contacted by several companies who are concerned that a court's narrow reading of section 206 as drafted could be detrimental both to companies currently in bankruptcy and companies not in bankruptcy.

I hope that my colleagues will recognize that this is not intended to be a controversial amendment. In fact, I cannot imagine any disagreement. It is simply a clarification of what the law is, so that we will not be back here in a few years trying to fix something we broke.

Mr. President, I thank the distinguished Senator from Alabama for his work on the omnibus bankruptcy reform bill and engage in a colloquy regarding section 206 of the bankruptcy bill.

Mr. HEFLIN. I will gladly engage in a colloquy with the Senator from North Carolina.

Mr. SANFORD. It is my understanding that the purpose of section 206 is to set out circumstances in which a bankruptcy judge can issue permanent injunctive relief in addition to its existing authority under section 524 with respect to tort claims against the debtor in certain circumstances where the debtor establishes a trust to be used to compensate both past and future claimants.

Mr. HEFLIN. The Senator from North Carolina is correct.

Mr. SANFORD. I understand that this provision will be of particular assistance to a company currently in a bankruptcy proceeding which anticipates a plan of reorganization, in certain circumstances, in which the court can grant supplemental permanent injunctive relief against the debtor which creates a trust for those to whom it is or may be liable.

Mr. HEFLIN. The Senator from North Carolina is correct.

Mr. SANFORD. Among my constituents is a North Carolina company which is also in chapter 11 facing similar mass tort liability claims as Johns-Manville which used the procedure in section 206. This company has advised me that it has proposed a plan of reorganization using a different strategy for compensating those to whom it is or may be liable which would not fit within the language of section 206. If this section were strictly interpreted by its judge, the result would be catastrophic to this company's efforts to reorganize. I just want to be sure that when the chairman prepared this section, it was his intent and interpretation that section 206 not provide an exclusive remedy.

Mr. HEFLIN. The Senator from North Carolina is correct.

Mr. SANFORD. In other words, section 206 should in no way be interpreted to tie judges' hands from issuing supplemental permanent injunctive relief in other cases involving current and future tort claims where appro-

priate. Therefore, section 206 is not the only alternative for handling cases involving mass tort claims so that other companies in similar situations are not bound to that single resolution and that the parties and the courts may continue to use their imagination and skill to look at the facts and circumstances in each case to determine what is in the best interests of all parties.

Mr. HEFLIN. The Senator from North Carolina is correct. Section 206 is not intended to prohibit bankruptcy courts from issuing supplemental permanent injunctive relief as deemed necessary. Section 206 is not an exclusive remedy, though it is a safe harbor. Other courts may certainly craft other remedies in cases involving mass tort claim litigation.

I appreciate the Senator raising this issue so that we could clarify the meaning of section 206 to prevent any future misunderstanding.

Mr. SANFORD. I would like to thank the chairman for this important clarification.

The PRESIDING OFFICER. Is there further debate?

Mr. HEFLIN. Mr. President, the managers of the bill are agreeable to this amendment. It has been cleared by both sides.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 2428) was agreed to.

Mr. HEFLIN. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. SANFORD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. SANFORD. Mr. President, I do not have a third amendment as the previous order noted. I have concluded my business.

AMENDMENT NO. 2429

Mr. HEFLIN. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Alabama [Mr. HEFLIN] proposes an amendment numbered 2429.

Mr. HEFLIN. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

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

The amendment is as follows:

(1) On page 57, line 15, delete "unusual", and insert "extraordinary".

(2) In section 206, strike all of section (g)(9) on page 49, line 21, through page 51, line 2.

(3) In section 408, on page 90, line 8, add after "attorney", add the following "in conformance with guidelines adopted by the Executive Office for United States Trustees pursuant to section 586(3)(A) of title 28".

(4) In section 210, on page 55, line 3, delete "120-day", and insert "180-day".

(5) In section 205, on page 19, line 9, delete "this".

Mr. HEFLIN. Mr. President, this strikes the section pertaining to the Johns-Manville trust. It has been agreed to on both sides. I urge its adoption.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 2429) was agreed to.

Mr. HEFLIN. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. GRASSLEY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HEFLIN. Mr. President, as I understand it, there only remains the issue pertaining to the Danforth amendment. I yield back all time in regards to all amendments but reserve the full minutes I have after the Danforth amendment.

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

Mr. HEFLIN. Do I understand that is the only thing that remains?

The PRESIDING OFFICER. The Senator is correct. The Senator from Iowa [Mr. GRASSLEY] is recognized.

Mr. GRASSLEY. Mr. President, if I have time remaining, I yield back in conformance with the same condition as the Senator from Alabama.

The PRESIDING OFFICER. Without objection, it is so ordered. The majority leader is recognized.

ORDER OF PROCEDURE

Mr. MITCHELL. Mr. President, at 2 p.m., the Senate will return to the Danforth amendment under the order entered yesterday. That will be the only remaining amendment on the bill under the order.

JOINT MEETING OF THE TWO HOUSES—ADDRESS BY THE PRESIDENT OF THE RUSSIAN FEDERATION

RECESS UNTIL 2 P.M.

The PRESIDING OFFICER. Pursuant to a previous order, the Senate now stands in recess until 2 p.m. and assembles as a body to proceed to the House of Representatives to hear an address by Boris Yeltsin, President of the Russian Federation.

Thereupon, the Senate, at 10:44 a.m., took a recess until 2 p.m., and the Senate, preceded by the Secretary of the Senate, Walter J. Stewart; the Sergeant at Arms, Martha S. Pope; the Senator from Delaware [Mr. BIDEN]; the Senator from California [Mr. CRANSTON]; the Senator from Georgia [Mr. FOWLER]; the Senator from Hawaii [Mr. INOUYE]; the Senator from Maine [Mr. MITCHELL]; the Senator from New York [Mr. MOYNIHAN]; the Senator from Georgia [Mr. NUNN]; the Senator from Rhode Island [Mr. PELL]; the Senator from Arkansas [Mr. PRYOR]; and the Senator from Maryland [Mr. SARBANES], proceeded to the Hall of the House of Representatives to hear the address by the President of the Russian Federation.

(The address delivered by the President of the Russian Federation to the joint meeting of the two Houses of Congress, is printed in the proceedings of the House of Representatives in today's RECORD.)

At 2 p.m., the Senate, having returned to its Chamber, reassembled, and was called to order by the Presiding Officer [Mr. KERREY].

NATIONAL BANKRUPTCY REVIEW COMMISSION ACT

The Senate continued with the consideration of the bill.

AMENDMENT NO. 2426, AS MODIFIED

The PRESIDING OFFICER. The pending question is amendment No. 2426, as modified. Debate on the amendment is limited to 1 hour.

The majority leader is recognized.

Mr. MITCHELL. Mr. President, I ask unanimous consent that Senator GORE be recognized to address the Senate as if in morning business for not to exceed 10 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Tennessee is recognized.

NUCLEAR STABILITY

Mr. GORE. Mr. President, first of all let me thank the majority leader for his courtesy and the Republican leader and manager and ranking Republican member managing the bill.

We have just been treated to a rather extraordinary address of the joint meeting of Congress. The news of the arms agreement worked out between the United States and Russia truly merits the term "breakthrough." Agreement to de-MIRV both sides' land-based forces in the context of deep overall reductions is an advance over arms control as it has been practiced in the past. It not only reduces the size of the strategic forces on both sides, but specifically and decisively addresses one of the key elements of the problem of nuclear stability.

I hope it may be excused, Mr. President, if I also say that this outcome is the fulfillment of a long effort on my part, beginning in March 1982 before the Reagan administration announced its first START proposals, to incorporate the idea of strategic stability as a central element of U.S. arms control policy and to do so, specifically, by proposing the de-MIRVing of land-based ICBM's in the context of reduc-

tions. On this occasion I would like to congratulate the President on the achievement this agreement represents.

However, there are still a number of areas where administration policy lags seriously behind the opportunities and challenges of the day. One of these areas is nuclear testing and production policy. This is a field in which I have always felt that any sitting administration deserves a decent interval of time in which to gather its thoughts. But the contrast between the possibilities available to us and the apparent sterility of thought within the administration in this area makes it increasingly hard to sit quietly in hopes that inspiration will strike the White House. I am therefore rising to offer some background and some thoughts relating to these matters.

On March 31, Senator NUNN, Senator SIMON, and I sent a letter to the National Security Adviser on administration policy regarding nuclear weapons testing. With permission, I submit the text of that letter for publication in the RECORD and ask unanimous consent that it be printed after these remarks.

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

(See exhibit 1.)

Mr. GORE. Up until now, Mr. President, this letter has not received a response from the administration. But in this letter we reminded the President of commitments his administration had made early on to enter into follow-on talks aimed at limiting nuclear tests, with the Soviet—now the Russian—Government.

As noted in our letter, the administration's commitment to early resumption of the nuclear testing talks dates, at the latest, from September 17, 1990, in the form of an explicit exchange between ACDA Director Ron Lehman and Senator NUNN at a hearing before the Senate Armed Services Committee. Ambassador Lehman clearly envisaged resumption of talks within a relatively short period of time, and with an interesting agenda.

Eighteen months after that, however, another administration witness—this time, Robert Barker, Assistant to the Secretary of Defense for Atomic Energy, told me at a hearing that the administration has not yet determined whether "there is any further reduction in nuclear testing that is in the interest of the United States." This was the event that triggered the letter from Senator NUNN, Senator SIMON, and myself. Meanwhile, the administration continues to be in violation of the Simon amendment to the fiscal year 1992 Defense Act, which required the President to submit by February 5, 1992, a report containing the schedule and goals for follow-on talks.

It should be kept in mind that Mr. Barker's response to my inquiry also called into question understandings regarding nuclear testing that have been in place between Congress and the executive branch since the Reagan administration. In 1986, the House of Representatives backed away from a mandatory test ban in the fiscal year 1987 defense authorization bill in response to President Reagan's promise to "immediately engage in negotiations on ways to implement a step-by-step parallel program—in association with a program to reduce and ultimately eliminate all nuclear weapons—of limiting and ultimately ending nuclear testing."

To date, we have received no answer to our letter. Moreover, as the time for President Yeltsin's visit grew near, there were reports in the press to the effect that the administration was gridlocked over this question. There were said to be unreconciled differences between some in the administration who would like to reduce the rate of testing and/or the yields of tests and others who wish to accept no new limits on testing now or any time in the future. Unfortunately, gridlock appears to have prevailed on this issue, and by default the U.S. position on testing will remain unchanged and events will continue to drift.

Indeed, drift is not the only thing that can happen. Policy may actually be pushed in very undesirable directions. After listening to testimony before the Senate Armed Services Committee, my impression was that the Bush administration was entertaining some very strange views as to the future of nuclear weapons after the end of the cold war and the collapse of the Soviet Union. For example, the administration clearly preferred an outcome involving higher weapons totals than those finally agreed to in the present compromise. The administration has also been reflecting upon proposals for novel ideas regarding the applications of nuclear weapons—for example, to deter the use of chemical and biological weapons by Third World governments. I believe that some within the administration are also considering new warhead designs for which extensive test programs would be needed.

The administration's readiness to compromise and go to levels of strategic forces substantially lower than the figure it originally favored is extremely good news. But that step raises a series of further issues about the fundamental long-term objectives we should hope to be pursuing now that we have passed this watershed. The balance of my comments address those issues.

In my opinion, the future of nuclear weapons should be a movement toward drastically lower levels. If the Soviet Union still existed, START would have been a decent enough accomplishment. The total of 3,500 agreed to in the present announcement is a major step forward. However, for years, expert analysis has been suggesting the acceptability of even lower totals.

I have thought at times that the ultimate number might be 1,000 or even lower, but that total raises and reemphasizes the need for continued attention to strategic stability. Moreover, the prospect of a United States-based ABM system with hundreds of interceptors—which holds open the door for, and in due course may encourage, a Russian analog—does not fit well in an effort to reduce nuclear deterrent forces to ultra-low levels. In view of the reductions agreement just announced, and considering the many problems that have surfaced in relation to last year's compromise measure on SDI, I believe Congress should completely reexamine that issue.

New doctrinal justifications for nuclear weapons should be avoided and, on the contrary, their doctrinal role as war-fighting weapons ought to be contracting as their numbers decrease. Our objective should be to reach levels of weapons that are sufficiently low so as to cause the elimination of war-fighting missions. The purpose of nuclear weapons must be to deter the use of nuclear weapons—no more, no less. Their role as general-purpose deterrents should become one more vanished artifact of the cold war. New types of nuclear weapons should be avoided. For this purpose, we also need a nuclear testing regime that inhibits the Russians as well as ourselves from any further proliferation of new types of weapons in support of new types of nuclear missions.

This brings up the question of a comprehensive test ban [CTB] and/or a moratorium to precede it. Having allowed the President time to make progress in this area, and noting that there is none, I believe that Congress should now act. I am therefore pleased to become the 51st cosponsor of the Hatfield amendment for a 1-year nuclear testing moratorium.

However, whether one favors a moratorium or not, the core issue is whether there ought to be a comprehensive test ban. In this connection, I have some concerns and this is the time to mention them.

There are some improvements in nuclear weapons that would promote safer designs, without modifying the military characteristics of existing weapons. Those changes can be made with a relatively small number of associated tests, and I believe they should be made. It is possible, moreover, to believe that such testing could be completed within a very limited period of time, even if carried out at very constrained levels.

This would, of course, disappoint many who believe that we should have an immediate CTB, and who support the idea of a moratorium mainly as a warmup to the main event. I can understand that, but would also like to

ask them to consider a different side of the equation; namely, the safety of Soviet designs. Since Soviet warhead designs are the product of the same disastrous bureaucratic culture that is responsible for other Soviet nuclear disasters, we had better give some thought to the advisability of freezing their designs, as opposed to somehow encouraging their modification for purposes of greater safety.

Second, and independently of testing modifications for safety, there is the question of testing for reliability. If nuclear warheads remain in our inventory for another 10, 20, or 30 years, there may come a moment when we detect a flaw that raises serious doubt about the reliability of a design. If by then we are relying on only a handful of weapons types, and have realized the hope of radically cutting back the total number of weapons, any doubt as to the reliability of a warhead design would be very serious.

I would add that it would be even more serious in the event that at that future time we face an opponent who is both nuclear-armed and equipped with a missile defense and air defense system of some substance. Of course, we might hope that political relations with any such country will be so good as to make the risks flowing from a failure of some element of our nuclear arsenal entirely acceptable. But then again, there is no way to count on that.

Testing for reliability might be possible under a very limited quota, although that would mar the concept of a CTB by creating an exception for nuclear weapons states. Some will argue that this imperfection will be rejected by the nonnuclear weapons states that are parties to the NPT, and will therefore endanger this vital agreement when it comes up for review in 1995. Others may argue that at a time when the two nuclear superpowers are decommissioning weapons by the thousands, a sharp reduction in nuclear testing short of absolute zero might be justified as reasonable on their part.

Therefore, although I continue to give close and respectful attention to the idea of a total and permanent ban on nuclear testing, it would fit my notions of progress were we to emerge in a year's time with agreement to cut testing levels sharply, under conditions that allow for safety improvements and then, minimal reliability testing. I would have been happy if the administration had come to a similar view. Failing that, it is time for Congress to impose a pause for further reflection.

In any event, however, I am convinced that the time has come for a cessation of production of weapons-grade fissionable materials, whether high enriched uranium or plutonium. The time could not be more right for a formal production ban. We are not producing these substances nor do we have plans to resume production, and the decommissioning of warheads assures an ample supply of fissionable materials for future contingencies. This is the moment, therefore, not merely to announce cessation ourselves but to lock it up in the form of a formal agreement with the Government of Russia.

Moreover, I think we would be wise to leave that agreement open-ended for the accession of other parties. I believe that ultimately the civil nuclear energy programs of France and Japan will come under review, as voters in those countries become aware of the reality that they will be living with vast quantities of reprocessed plutonium. The sooner this happens, the better. By leaving a United States-Russian agreement on fissionable materials open for others, we can emphasize the need to block the further accumulation of bomb-grade material anywhere for any reason.

To summarize: The time has come when we are shifting decisively away from a half-century of growing dependency upon nuclear weapons. Consistent with the agreement announced yesterday, our objective should be to curtail nuclear weapons' function in military doctrine; to hold open, rather than seal off, options for further dramatic reductions in numbers of nuclear weapons; to review SDI in light of problems of strategic stability consistent with ultra-low levels of nuclear weapons; to block the development of new designs aimed at new missions and requiring elaborate new test programs; to sharply cut back on testing to a level absolutely consistent with no more than the minimum required for safety and reliability; and to formally suspend the production of bomb-grade fissionable materials under the terms of an international agreement.

I believe that this entire agenda ought to be accessible to President Bush. Certainly, we are now on a course headed in that direction. However, to the extent that the administration may wish to stop short, Congress should consider pushing ahead.

EXHIBIT 1

U.S. SENATE,
COMMITTEE ON ARMED SERVICES,
Washington, DC, March 31, 1992.

Lt. Gen. BRENT SCOWCROFT,
USAF (Retired),
Assistant to the President for National Security Affairs, the White House, Washington, DC.

DEAR BRENT: On October 10, 1986, President Reagan wrote the Congress a letter in which he pledged that once the Threshold Test Ban Treaty and Peaceful Nuclear Explosions Treaty (TTBT/PNET) verification protocols had been achieved and the two treaties had been ratified, the United States and the Soviet Union would "immediately engage in negotiations on ways to implement a step-by-step parallel program—in association with a program to reduce and ultimately eliminate all nuclear weapons—of limiting and ultimately ending nuclear testing." (emphasis added) In return for this pledge, the House of Representatives agreed in the conference on the FY 1987 defense authorization bill to drop a provision that would have mandated a comprehensive test ban (CTB). More importantly, President Reagan's pledge opened the door to House/Senate agreements on a range of strategic issues which the White House felt were absolutely essential if the President was to negotiate from strength at the Reykjavik Summit.

As you know, the first phase of U.S./Soviet Nuclear Testing Talks (NTT) culminated in success on June 1, 1990, when Presidents Bush and Gorbachev, signed the TTBT/PNET verification protocols, thereby breaking the impasse that had blocked ratification of the treaties for over a decade. However, when the Senate conducted ratification hearings on the two treaties later that year, concerns were raised as to when the United States would resume the next round of NTT talks and what further restrictions we would seek in that round. In response to a question from Chairman Nunn at a September 17, 1990 Armed Services Committee hearing, ACDA Director Ronald Lehman promised that the delay in resuming the NTT talks would not be lengthy. Ambassador Lehman said, "We are not talking about years." He also testified that an annual quota on the number of permitted tests and a lowering of the 150-kiloton testing threshold were among the options under study by the Administration for the next round of NTT talks.

That was a year and a half ago. Yet as of today the Administration has made no decisions on when the NTT negotiations will be resumed or what our negotiating objectives will be when they are resumed. This despite the fact that the Simon Amendment to the FY 1992 Defense Authorization Act (sec. 3140) required the President to submit by February 5, 1992 a report to Congress containing the proposed schedule for resuming the talks and identifying the goals the United States will pursue in this next phase.

Of even greater concern, though, was the testimony presented at an Armed Services Committee hearing Friday by Robert Barker, Assistant to the Secretary of the Defense for Atomic Energy. In response to questions by Senator Gore, Mr. Barker stated that the Simon Amendment report had not been submitted yet because the Administration had not decided whether "there is any further reduction in nuclear testing that is in the interest of the United States."

We would appreciate an immediate clarification of the Administration's position with regard to the timing and goals of the next round of NTT talks. We would also appreciate knowing when, exactly, the overdue Simon Amendment report will be submitted to Congress by the President.

When Congress reached its compromise agreement on nuclear testing with President Reagan on the eve of the Reykjavik Summit in 1986, it believed that it had received a solemn commitment from the President to pursue in good faith a step-by-step series of negotiations resulting in progressively more stringent limitations on underground nuclear tests. We cannot overemphasize the implications for possible legislative action by Congress in the nuclear testing area this year were the Bush Administration to renege on this commitment.

Sincerely,

SAM NUNN,
Chairman.
ALBERT GORE, Jr.,
U.S. Senator.
PAUL SIMON,
U.S. Senator.

The PRESIDING OFFICER. The majority leader.

Mr. MITCHELL. Mr. President, I thank the Senator for his very thoughtful statement. As the coauthor, with Senator HATFIELD, of the testing moratorium, I think his support is significant beyond the fact that he is the 51st cosponsor, because Senator GORE has long been recognized as a national leader and expert on the subject of arms control. So I am very grateful for his thoughtful statement and especially for his support of the testing moratorium.

REDUCTIONS IN STRATEGIC NUCLEAR ARSENALS

Mr. MITCHELL. Mr. President, I am pleased that President Bush and President Yeltsin have agreed upon significant additional reductions in the strategic nuclear arsenals of Russia and the United States. This historic agreement is a tribute to both Presidents during President Yeltsin's historic visit here as President of the Russian Federation.

The new agreement ultimately will lead to reductions of two-thirds of current levels of nuclear warheads. The speed with which the agreement was reached and the import of its reductions are unprecedented. The agreement will achieve another important objective: Eliminating land-based weapons with more than one warhead. By eliminating more destabilizing weapons systems, this agreement will further enhance our mutual security.

The agreement does more than establish a safer and more stable framework within which United States-Russian relations can become closer. It also sets an important example for other nuclear and aspiring nuclear powers. I hope and trust that it will be used as a means to engage other nations in the larger process of arms control. I commend Presidents Bush and Yeltsin for this achievement.

Earlier today, President Yeltsin told a joint meeting of Congress that reason had begun to triumph over madness and that the nightmare of nuclear war between the superpowers is becoming a thing of the past. The new strategic agreement gives credence to those comments. President Yeltsin also urged the United States to join the unilateral moratoriums on nuclear testing now being observed by Russia and France.

Since our countries are reducing nuclear weapons, he asked why the United States wants to continue improving nuclear weapons. I share President Yeltsin's disappointment that President Bush has failed to respond to the Russian initiative. A testing moratorium is an important political symbol of our willingness to finally bring the arms race to an end. We have buried the cold war, we should now bury the arms race with it.

I urge President Bush to join Russia and France in suspending nuclear testing and to renew America's commitment to negotiate a comprehensive test ban. This will help attain the goal expressed by President Yeltsin today that a country be judged not by the number of its nuclear weapons but by its traditions, cultural values, and the living standards of its people.

Mr. SYMMS. Mr. President, I ask unanimous consent to proceed as in morning business for less than 5 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Idaho.

PERSECUTOR RUNS AMOK

Mr. SYMMS. Mr. President, looking at the morning papers today is enough to turn anyone's stomach who has any sense of fairness and justice. To see we have paid some $40 to $50 million to a Special Prosecutor who, I think today, should earn the title the "special persecutor," issued an indictment of a great American, Caspar Weinberger who served this country very ably in two administrations.

To top it off, we heard a wonderful speech today from an elected leader of the Republic of Russia which has not had an elected leader for over a thousand years. He is the first one. Had it not been for individuals like Secretary Weinberger, who is now being persecuted by a bunch of lawyers who have run amok, Mr. President, we would not have seen Mr. Yeltsin addressing our Congress.

I find it, as one Member of the Senate, absolutely obnoxious to think that our Government is running this loose, and that we in the Congress do not have the ability to defund the special persecutor who has wasted now some $40 million of the U.S. taxpayers' money. I call on the President and the leadership of the House and the Senate to stop this nonsensical and continual persecution of people.

Senator HATCH was quoted as saying, what is happening is we are allowing the special persecutors—the prosecutor—to criminalize a difference in policy opinion. It just so happens former Secretary Weinberger happened to be opposed to the whole arms transfer to Iran. That was the issue in the first place. How we in this Senate and in the other body and in the White House can continue to let this go on and expect to have any kind of a justice system which people will have any respect for begs the question.

I urge the President to put a stop to the Special Prosecutor's Office. I urge the President to issue pardons to all people who had any part of Iran-Contra and shut this operation down. I further urge the leaders in the House and the Senate to bring up a resolution to defund Judge Walsh and his crew of persecutors who are working down here under the taxpayers' expense digging back through—it is very obvious to me they are now trying to justify their existence. I find it outrageous, Mr. President.

I say again, I call on my colleagues to join together in a bipartisan coalition to put a stop to this. We will never get the kind of people we want in our Government in the future if we allow these kinds of persecutions to continue to go forward. It is absolutely outrageous. There is no justice to it and it is an absolute disgrace to this country.

I yield the floor.

The PRESIDING OFFICER. The Republican leader.

Mr. DOLE. Mr. President, is the leaders' time reserved?

The PRESIDING OFFICER. The leaders' time is reserved.

OFFICE OF THE SPECIAL PROSECUTOR

Mr. DOLE. Mr. President, first let me join in the comments made by the distinguished Senator from Idaho. It has been 5 years now and somewhere between $30 million and $50 million and they have not got much to show for it, and they keep perpetuating themselves in office hoping they might sooner or later get something on Ronald Reagan, who left this place 4 years ago.

That has been their real target. They will not tell you that, but that is their real target. And all this Weinberger thing in my view is a sideshow. As the Senator from Idaho pointed out, it is certainly stretching every point they could find. It should have been closed up 3 or 4 years ago.

If Congress spent $50 million on this kind of chicanery, the liberal media would be investigating. They do not say a word about this. They criticize the Senator for criticizing the special persecutor, or prosecutor, whatever it is. They will not dig into the $50 million, and how much they pay for office space, and how many lawyers they have, and what their expenses are. No, no, that is off limits for the New York Times, the Washington Post, and all the other liberal media in America.

In any event, the Senator hit it right on the head. It does not mean you are not going to continue prosecution. If somebody violated the law, I do not care who it is; they ought to be prosecuted. But we still have a Justice Department. The last time I checked there were fairly honest men and women in the Justice Department. We do not need a Special Prosecutor to go on forever and ever. Five years. Talk about term limits. Maybe there ought to be a term limit on Special Prosecutors: 1 year, 2 years, 3 years, 4 years, 5 years.

FREEDOM SUPPORT ACT

Mr. DOLE. Mr. President, there is no doubt in my mind today that we heard

a very historic address by President Yeltsin, of the Republic of Russia. He certainly underscored the turning point that has happened between the United States of America and the former Soviet Union. He talked about partnership, he talked about the future, and he talked about no more lies from the Soviet Union. He said himself to Senator JOHN MCCAIN in a private conversation, "I will assure you as the President of the Republic of Russia that I will disclose every bit of evidence in an effort to find any American who might have been a prisoner of war in the Soviet Union at any time in the past."

It seems to me that in response to President Yeltsin's visit we ought to be debating this afternoon, or tomorrow afternoon, or next week at the latest, the Freedom Support Act. It is in our national interest. President Bush supports it. There is bipartisan support in the Senate, bipartisan support in the House.

It seems to me we do a disservice to this relationship that is starting to expand and grow, as it should, and we in effect tell people who want democracy in the former Soviet Union: Well, you have to wait a while because we are not ready to act.

So I hope we can take action. I think it would pass in this Senate by 80 votes or more, because I have talked to my colleagues on the Democratic side, my colleagues on the Republican side. If we want Boris Yeltsin to succeed, if we really believe in democracy, if we want to end the arms race, if we want a decade or generation of peace, then we may have to contribute a little in our national interest and their national interest.

It may cost us a few billion dollars, but I would say to the skeptics who say, "Oh, you can't do that, that is foreign aid," I think it is an investment in democracy.

But ask those same people: What happens if Yeltsin is overthrown, or if there is a coup and a hardliner takes over again in the former Soviet Union and we start back in an arms race that spends billions, and billions, and billions a year, and we threaten the future of our young people, our children, our grandchildren, and those beyond?

So, Mr. President, I urge that we act as quickly as we can. We ought to set a date so that when President Yeltsin leaves the United States of America he knows Congress is going to act on a certain date or in a certain timeframe to make it possible for him to do his job and also to serve our own best interests.

Mr. President, I reserve the remainder of my time.

Mr. METZENBAUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio is recognized.

NATIONAL BANKRUPTCY REVIEW COMMISSION ACT

The Senate continued with the consideration of the bill.

Mr. METZENBAUM. Mr. President, we have been discussing lots of things in the last half-hour or so, but I would like to come back to discussing the bankruptcy bill which is the pending measure before this body.

I rise to indicate my support for the measure and to commend the chairman of the subcommittee having to do with this subject, Senator HEFLIN. It is his bill, and he and I have worked very hard on certain aspects of the bill. I would like to discuss two amendments that I sponsored and that have been adopted and are now a part of S. 1985, a provision on professional fees, and a provision on substantial abuse and a debtor's right to a fresh start.

First I would like to comment on the provision concerning professional fees. The increased number of bankruptcies has created literally a feeding frenzy for the attorneys, accountants, investment bankers, and other professionals who service the unraveling or the restructuring of a bankrupt debtor. Law firm after law firm has added special departments to handle bankruptcy matters. The fact is these professionals get paid first out of the bankrupt's estate, and as a consequence all too often there is nothing or very little left to pay those the bankruptcy system is designed to protect: the creditors, the shareholders, the pension plans, the employees, and the businesses that may emerge from bankruptcy.

Last March, I chaired a hearing on professional fees in bankruptcy. That hearing revealed a number of examples of how professionals literally suck the financial life out of a bankrupt company by charging exorbitant and in many cases unnecessary fees. For example, attorneys get paid as much as $500 per hour for their services.

Recently, on June 8, 1992, the National Law Journal in an article entitled "More Legal Fees From Drexel's Bankruptcy," reported that a total of six New York and national laws firms have received $85 million in fees and expenses for little more than 2 years' work in the Drexel, Burnham, Lambert bankruptcy. One firm got a total of $36.4 million in fees and expenses from February 1990 to April 30, 1992, approximately 26 months. But that is over a million and a quarter a month. That is just unbelievable.

Investment bankers also get paid handsomely for their services. They are generally hired on retainer and are paid a fixed monthly fee regardless of the amount of time or work they put in. For example, a top investment firm can get as much as $135,000 a month plus success fees of 1.5 percent of the price of the assets sold. And the creditors, they get just the dribbles that are left, and the original bankrupt company, they do not get anything.

Bankruptcy consultants can get over $200 an hour for their services—and this is really an interesting one—which may include packing and unpacking boxes.

For example, in the L.J. Hooker bankruptcy, a consultant was paid over $6,074 for packing and unpacking boxes. Professionals also charge hefty fees just for preparing their bills.

I practiced law before I came to the Senate. Until I came to this body and conducted this hearing recently, I had never heard of anybody in any law firm charging just to prepare the fee bill. I thought preparing the fee bill was part of the way you went about collecting the money that was owed to you.

In the Carter, Hawley, Hale bankruptcy, one firm charged $30,724 to prepare its billing, another firm $62,583, and another firm a whopping $177,844 to prepare its billing. And the court approves it? Also, in that case we learned that a law firm submitted a bill, this is a very difficult one, very challenging one, for an impossible 27 hours of work done by one person in 1 day. Figure that one out for yourself.

The abusive billing practices used by these professionals cover the spectrum. For example, in the LTV case, a Boston law firm billed for what it called passive travel, a term the firm used to refer to the time lawyers spent sleeping or reading a magazine while on a plane en route to a bankruptcy meeting. Moreover, it is not uncommon in bankruptcy cases to receive bills for research into irrelevant issues or to find more than one firm charging for the same legal research.

Overstaffing can also be a problem. According to the pension Benefit Guaranty Corporation PBGC an audit of a bill from one accounting firm showed that five partners attended all meetings related to the bankruptcy. Who are they kidding? If they attended they should not have been attending. But I think it is questionable if they ever attended.

Some attorneys even engage in what has become known as "forum shopping." Instead of filing a petition for bankruptcy in the jurisdiction where the corporation has its principle place of business, the petition is filed in a jurisdiction where the attorney is more likely to get the highest fees. Indeed, it is not uncommon for practitioners to scour our country's bankruptcy jurisdictions in search of the highest fee schedule.

Our current bankruptcy system is not doing enough to protect a bankrupt company from those that would drain it of its financial life. While the professional fee meters are running full-blast, those responsible for minding the store sit idly by and do nothing. As a result, the degree to which fees are actually monitored vary from jurisdiction to jurisdiction, and the standards used for such review are often less than

prescribed by law. In many instances, the bankruptcy courts operate more like private clubs for professionals who share the same goal of getting their piece of the action, rather than as the guardian of the bankrupt company and other affected parties. All too often the name of the game is "If you scratch my back, I'll scratch your back."

Bankruptcy is a different kind of area. When you have two normal litigants in a contract case, or two litigants that are perhaps an insurance company and a plaintiff's lawyer, then there is no desire on the part of one side or the other that the other be paid a higher fee. But when you have a bankruptcy case, the only watchdog with respect to the amount of fees paid other than the bankruptcy court itself, are the attorneys for the creditors on one side, attorneys for the bankrupt on the other, attorneys for the trustee. But in this field, one day one is an attorney for the creditor, and tomorrow's case one is an attorney for the bankrupt or for the trustee and switch around.

Almost with no exception they never object to the fees that the others are getting paid because they too have to file fee applications and they do not want any objection made to their fees. As a consequence, it is an end game in the fact that those who are part of the team, those who are part of the operation of the bankruptcy courts, are looking out for each other rather than looking out for the creditors or for the bankrupt.

To curb some of the abuses, some creditors are taking a more active role in the review of fee applications. After our committee hearing on bankruptcy fees, the Secretary of Labor, Lynn Martin, announced June 5 that the PBGC will increase monitoring professional fees in large bankruptcy cases. According to Secretary Martin:

> Part of our responsibility to American workers and retirees—and the American taxpayers—is to see that the scarce remaining resources of bankrupt firms are used to fund pensions and health benefits and not to line the pockets of the bankruptcy bar.

I could not agree more.

In noting the trend toward excessive professional fees in bankruptcy, the PBGC cited several examples. In the Eastern Airlines case, $95 million was awarded in fees while the company's pension fund was underfunded by $700 million. In the Pan American World Airways bankruptcy, pensions were underfunded by $900 million while fees for less than 1 year were nearly $30 million.

While the PBGC's actions are laudable and more creditors should take a more active role in the review of fee applications, this is not enough. A Federal mandate in clear and concise terms is necessary to establish guidelines and to firm up the Bankruptcy Courts and the U.S. trustees responsibility for reviewing fee applications.

This bill contains the amendment that gives the court specific guidance as to what factors to consider when deciding the appropriateness of a fee request.

It is up to the court to look at those new guidelines and to understand that the Congress of the United States has grave reservations about the kinds of fees they are permitted to be paid in the past many years.

It is time for the courts to accept the responsibility to the creditors, and to the bankrupt and to all other parties interested in the case that the case not just be a bonanza for the lawyers but that it be fairly adjudicated, the lawyers properly paid but not overly paid.

In addition, the bill now requires the U.S. trustee a adopt uniform procedural and substantive guidelines for the review of fee applications. The bill makes it clear that the U.S. trustee in addition to the court has the duty and the responsibility to review each fee application and where appropriate file an objection to such application.

I sponsored an amendment to S. 1985 that gives the Bankruptcy Court specific guidance as to what factors to consider when deciding the appropriateness of a fee request.

In addition, the bill requires the U.S. trustee to adopt uniform procedural and substantive guidelines for the review of fee applications. S. 1985 makes it clear that the U.S. trustee has the duty and the responsibility to review each fee application and, where appropriate, file an objection to such application.

Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. Eight minutes.

Mr. METZENBAUM. I reserve the remainder of my time.

Mr. SIMON. Mr. President, I ask unanimous consent to speak for not to exceed 10 minutes on the bill.

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

Mr. SIMON. Mr. President, I rise in support of the amendment Senator DANFORTH will be introducing very shortly saying we have to pay attention to this deficit.

I recognize a balanced budget amendment was defeated in the House. That does not mean we are not going to have to face this issue.

In the first 175 years of this Nation's history 60 percent of the time we balanced the budget, and if we did not, it was by small amounts. In the last 25 years of this Nation's history, 4 percent of the time we have balanced the budget, and when we did not, it has been by huge amounts. Let me give you one other figure.

For the deficits we have run in the last 12 years, we have spent over $1.4 trillion on interest—interest. What do we get for it? Not one thing other than an eroding industrial base and higher interest rates in this country.

The General Accounting Office, Mr. President, sent out a report that I think is the most significant report in the history of the GAO. What astounded me, frankly—I say this as a former journalist—I thought what the GAO had to say was going to be on the front page of the Washington Post, the New York Times, and every other newspaper in the leadoff item in the TV news that evening. It has been, believe it or not, ignored.

I am sending around an extra copy to every Senate office, just in case Senators and their staffs for some reason have missed it. It is devastating.

Among other things, this report says, if we get ahold of and balance the budget by the year 2001, compared to doing what we are doing now, the difference is 39.7 percent in GNP. In per capita income, if we balance the budget by the year 2001, it means an increase in per capita income of 36 percent, for every man, woman, and child in this country, compared to just going downhill. The report is just devastating, and it says why the Danforth amendment ought to be adopted.

Frankly, there is particularly one word in the Danforth amendment that I would just as soon not have in there referring to the candidates as being irresponsible for not discussing this. I note that the Presiding Officer and I have both gone through the experience of being unsuccessful candidates for our party's nomination, and we have also both gone through the experience of saying things that no one pays any attention to, particularly if they are significant. The trivia gets the attention.

But, for example, in the GAO report, listen to this: During the 1960's, the budget deficit absorbed approximately 2 percent of net national savings generated by the private sector in State and local governments. During the 1970's, the Federal deficit absorbed 19 percent of the net savings of other sectors. By the 1980's, nearly one-half, 48 percent, of that savings was needed to finance the budget deficit. This trend continues. In 1990, the deficit absorbed 58 percent of net national savings, and one estimate I have seen—this is just an estimate, because we do not have the figures in—is that this year it will be 75 percent, going from 2 percent to 75 percent.

Let me read another little item from this staggering report here.

> The budget deficit is projected to reach 20.6 percent of GNP by 2020, and the economy is on a path that is clearly unsustainable.

That is powerful language. I note, in working on my balanced budget amendment, frankly, that some of the groups whose causes I have and will continue to advocate, who are for social programs—I regret to say they have taken a very short-term look at this deficit situation. Under the optimistic scenario that interest rates will

not rise—and that is an optimistic scenario in the view of the capital needs of the world—this GAO report, on page 61, says that social programs, the discretionary nondefense programs, domestic programs, as well as foreign programs, will drop from 29.3 percent of the budget to 20.9 percent, or roughly a one-third drop, if we do not do anything about it.

Obviously, with the deficit is a massive redistribution factor. We will spend next year, for the first time in the Nation's history, more money on interest than on any single item. We will spend 10 times as much on interest as we do on education. We will spend twice as much on interest as for all of the poverty programs. Talk about welfare. We take from those of limited incomes and give to those who are more fortunate.

This next fiscal year, the current estimate is that we will spend about $316 billion on interest, and the total domestic discretionary nondefense—that is education, agriculture, space, everything—domestic discretionary nondefense will be $235 billion. In other words, we are going to spend $80 billion more on interest than we will on all the domestic discretionary nondefense items.

To those few who say, well, the deficit really is not that bad because we do not have capital budget and an operating budget, my friends, the report also makes clear—and GAO suggests that we talk about investments versus consumption—that the creation of explicit categories for governmental capital and developmental expenditures should not be viewed as a license to run deficits to finance these categories.

The greatest capital project in the history of humanity is the Interstate Highway System. It costs us about $345 billion. President Eisenhower suggested we issue bonds for that, and the father of one of our colleagues, Senator Albert Gore, Sr., got up and said that we should not issue bonds for the highway system; we ought to pay for it on a pay-as-you-go basis and increase the gas tax. Fortunately, Albert Gore won, and we paid for that on a pay-as-you-go basis, and we saved hundreds of billions of dollars.

I could go on and on, but I shall not. One of the things in the American Revolution they talked against was taxation without representation. That is what we are giving our children in future generations. We are the first generation of Americans to live on a credit card and say, "Send the bill to our children." We are taxing them. We have to stop it. We are eroding the base of this country. The New York Federal Reserve Bank study shows that the deficit has already caused about a 5-percent loss in the growth of GNP. We just cannot keep that up.

Mr. President, I hope we will support the Danforth amendment not just as empty words, just some gesture, but I hope we will take the words seriously and that we will follow through and really do something for this country in future generations.

I yield whatever time I have left.

Mr. BROWN addressed the Chair.

The PRESIDING OFFICER. The Senator from Colorado is recognized.

Mr. BROWN. Mr. President, I ask unanimous consent to speak on the bill for 10 minutes.

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

Mr. BROWN. Mr. President, I want to address the Danforth amendment that will be debated shortly. It is a sense-of-the-Senate amendment that addresses the single greatest issue this country has to face and the single most important issue that anybody who runs for office this fall must address. That issue is the exploding Federal debt.

Pictured here on my left is a simple chart of the amount of money this country has borrowed and continues to borrow to finance the continuing operations of this Government. No one can look at this chart and look at the record of this Congress and not be stricken by what has been done to the taxpayers, the working men and women of this country. The truth is that the mountain of debt that has grown threatens the very future of our country and the future of our children.

Mr. President, the chart shows a rising debt that is almost a vertical line. The 1 year in the last 25, that the budget has been balanced, as the distinguished Senator from Illinois mentioned, was 1969. Every year since 1969, the deficit has continued to grow. What is alarming is that it continues to escalate at an even greater rate. This year, the deficit will not only reach an all-time high of nearly $400 billion, but the deficit will be approximately $130 billion more than what this very Congress approved when the budget resolution was passed.

If one looks at the record we find a pattern. Each year the Congress promises to reduce the deficit. Each year a budget is passed that reduces the deficit. Each year that budget is ignored. Each year this body spends more money than what it said it would. Each year the interest cost of this Nation grows higher, higher, and higher. It is no secret why the American people are disgusted with the performance of this Congress. It is because Congress has mortgaged the future of this Nation to finance a series of programs that simply do not stand up in the light of day.

The Danforth sense-of-the-Senate amendment would recognize the budget as the most important problem that faces our Nation and would call on the Presidential candidates as well as others to address this issue when they run for office. Most importantly, it calls for these individuals to lay out their specific plans and proposals to deal with it.

Yesterday, on the floor of the Senate, I outlined in specifics the programs I believe we ought to cut to bring this deficit into line. At the appropriate point I will offer an amendment to the Danforth amendment which will replace the narrow language in one of the findings that proposes increasing taxes as one of the keys to solving this deficit problem.

We have increased taxes. The 1990 budget agreement included a huge tax increase. That tax increase imposed on the working men and women of this country last year did not solve the deficit problem. As a matter of fact, the deficit escalated.

I will offer an amendment that will replace language which prescribes a narrow number of proposals with language that states we ought to look at all aspects of the Federal budget in addressing the problem.

The key point is this: Year after year after year, Congress has promised to do something about the deficit. Year after year after year they have offered budget resolutions that commit this country to reducing the deficit. And year after year after year they continue to appropriate more money than what was agreed to in the budget. This cycle has caused the deficit to explode and burden all of our children.

Mr. President, this could be the most irresponsible Congress in the history of our Nation. It is my belief the American people are not going to put up with this kind of nonsense anymore. The Danforth amendment pinpoints the No. 1 issue and calls for the candidates to address this issue directly in the coming election of the President.

I think the Danforth amendment is sound policy. I hope that my amendment will make it clear that we should look at more than just tax increases as a solution. But whether or not my amendment is passed, the will of the American people to turn this fiscal nightmare around, this flood tide of red ink. I believe is going to be made clear in the coming November.

Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Ohio is recognized.

Mr. METZENBAUM. Mr. President, I rise to address myself further to the bankruptcy question, but I would like to point out to my colleague from Colorado in case somebody misunderstands the fact, the deficits about which he has been speaking come about by reason of the failure or ability of the President of the United States and the Congress. All of us have the responsibility and all of us need to carry the burden and the sense of embarrassment.

But no President in recent years has sent up to the Congress a balanced budget, and the President is where the problem starts, and it is time for the President and the Congress to work together.

I understand exactly what the Senator from Missouri is doing and have no quarrel with that. But when the Senator from Colorado rises and attempts to make the point that the Congress is to blame, I must take strong issue with him.

Let me say that the American people or a portion of them who may happen to be listening to this at the moment have to be very confused. Somehow they thought we were considering the bankruptcy bill and intertwined with the bankruptcy bill we now find ourselves on this question of dealing with the balancing of the budget. And let no one misunderstand: Bankruptcy is not contemplated for the United States nor do I think it will be contemplated any time in the future.

That does not mean that we do not have a strong sense of responsibility and an obligation to find a way to balance the budget, and each of our Presidential candidates has a special sense of responsibility to provide such leadership in that area.

While we were considering the bankruptcy bill coming back to that, I want to point out that I sponsored an amendment to S. 1985 that clarifies the bankruptcy court judge's power to pay retiree benefits.

In 1988, Congress enacted the Retiree Benefits Bankruptcy Protection Act which created a new section 1114 of the Bankruptcy Code. The act was the result of 2 years of congressional consideration of the need for special protection for retiree benefits in bankruptcy situations.

In creating section 1114, Congress sought to provide an important level of protection to retiree benefits in recognition of the unique position of retirees in bankruptcy situations. These are the men and women who had worked for the company, who had helped the company grow to a certain point, and then at some later point the company found that it had to go into bankruptcy. Because the retirees generally are no longer employed and almost by definition they are not employed, their ability to retire is totally dependent on the receipt of promised benefits. For many retirees, the loss of promised benefits would result in impoverishment.

Health benefits are especially crucial to retirees. Older individuals, who are not yet eligible for Medicare, would not be able to obtain private health insurance were they to lose their employer-promised benefits. Particularly, in these times of skyrocketing health care costs, it is imperative that individuals be covered by health insurance.

For these reasons, Congress unanimously enacted section 1114 of the Bankruptcy Code.

Section 1114, unfortunately, has had mixed results as far as interpretation in the courts is concerned. In numerous cases, the enactment of section 1114 has worked well to continue and protect retirees' benefits.

But in other cases, the results have been troubling. Some courts and creditors continue to oppose the payment of retiree benefits. A particular area of concern involves cases in which the debtor or the court has agreed to pay retiree benefits but all of the debtor's assets are subject to secured interests. Some creditors have refused to permit use of the assets in which they have a security interest to pay retiree benefits and some courts have held that they do not have the authority to require payment of retiree benefits from secured assets.

The amendment that I offered to S. 1985 and that is accepted makes clear that retiree benefits are to be paid if necessary from secured assets. Congress was aware of this issue prior to the enactment of section 1114 and believed it had addressed the issue in the act's final language. Because some courts have found the revised language insufficient, my amendment which is now part of the bill clarifies this issue.

Under my amendment, any court order approving the use, sale or lease of cash collateral or the obtaining of credit or incurring of debt shall require the debtor to use such cash collateral, credit or debt to pay retiree benefits.

It is my hope and expectation that with this clarification, retiree benefits will be paid in bankruptcy cases. Retirees are uniquely vulnerable in bankruptcy cases. They have nowhere else to turn and no way to protect the benefits promised to them. For these reasons, it is imperative that retiree benefits receive priority treatment in bankruptcy.

SUBSTANTIAL ABUSE AND A FRESH START

Mr. President, I also sponsored an amendment to S. 1985 that clarifies the meaning of substantial abuse as was originally intended by Congress in 1984 when section 707(b) was enacted. Under S. 1985 two specific and exclusive tests may be used to determine whether substantial abuse has occurred. Substantial abuse can be found if the debtor acted in bad faith or if the debtor without substantial hardship has the ability to pay his or her debts as they become due. The phrase "ability to pay his or her debts" means the debtor's ability to pay all of his or her debts at the time of filing. The debtor's ability to pay part of his or her debts at the time of filing shall not constitute substantial abuse. The phrase "as they become due" means at the time the debtor files a petition for bankruptcy. It does not include or contemplate a future income or earnings test or whether the debtor would be able to fund a chapter 13 plan. My provision overrules cases such as in re walton where a chapter 7 case was dismissed for substantial abuse even though the debtor was unable to pay his or her debts as they became due.

Since the passage of the Bankruptcy Reform Act of 1978, a debtor's right to a fresh start has been under constant attack by the consumer credit industry. The consumer credit industry would have us believe that all debtors are deadbeats, unworthy of the chapter 7 fresh start provided by law and confirmed by the Supreme Court. In their view, debtors should have limited access to a chapter 7 fresh start. In fact, in their efforts to curtail a debtor's right to a fresh start, they would have us enact a future income test to be used in determining whether substantial abuse of chapter 7 has occurred.

A future income test was specifically rejected by Congress in 1984 when section 707(b) was enacted and was again rejected by the Judiciary Committee when considering S. 1985. In fact, for almost 100 years our laws have recognized the right of an individual to file for bankruptcy, and upon discharge of his or her debts, be able to have a fresh start, unencumbered by debt.

A future income test would deny a debtor a fresh start. It would force the debtor to mortgage his or her future in order to get bankruptcy relief. Moreover, bankruptcy relief would become hostage to a judge's guesses about how much an individual would earn, what his or her financial burdens would be, and whether the debtor would become sick, unemployed, or disabled. Such determinations are far too speculative, especially given today's economy. In the end, debtors would not be treated fairly or equitably.

Contrary to what the credit industry would have us believe, recent studies have shown that the vast majority of debtors are conscientious, hardworking people who have suffered unemployment, disability, basic bad luck, and yes, sometimes poor judgment, too. Often they have struggled to pay their bills for years and filing for bankruptcy relief is the very last thing they want to do but simply have no choice. Elizabeth Warren, coauthor of a book entitled "As We Forgive Our Debtors," which documents a study on consumer bankruptcy, noted in testimony before the Judiciary Committee on June 27, 1991 that:

> More than three out of four debtors in bankruptcy could sell everything they own—the house, the furniture, the clothes, the kitchen utensils, and the cat—and not have enough to pay off their outstanding debt.

Crushing debts place enormous stress on individuals and their families. Often bankruptcy relief and a financial fresh start is the only answer for many honest good faith debtors facing financial collapse. They seek bankruptcy relief not to deceive their creditors but to survive.

In fact, it is important to note that section 707(b) as amended does not protect those who would abuse and undermine the integrity of out bankruptcy system. The doctors, lawyers, and oth-

ers who attempt to shuck their debts in order to later resume a lavish lifestyle should be prevented from thumbing their noses at those of us who believe in living up to our responsibilities. Section 707(b) as now amended gives the court the flexibility it needs to weed-out those who would abuse our bankruptcy laws. Creditors' interests should be and will be protected.

Section 707(b) as amended by S. 1985 safeguards the debtor's right to a fresh start and provides a clearly defined safety valve to eliminate those abusive chapter 7 filings that would undermine confidence in our bankruptcy system. It gives the Bankruptcy Court the discretion it needs to provide both the creditor and the debtor with equitable and just treatment.

Mr. President, I rise in support of section 206 of the Heflin-Grassley bankruptcy bill. This section would codify a court's authority to issue a permanent injunction channeling claims to an independent trust established as part of a chapter 11 proceeding.

Section 206 plays the simple, but important, role of providing certainty with regard to the permanence of the injunction. Without a clear statement in the Bankruptcy Code as to a court's authority to issue such an injunction, the financial markets tend to discount the securities of the reorganized debtor.

This is critical where, as in the Manville reorganization, the trust created to pay injured workers has as its principal assets the common stock and future earnings of the reorganized debtor. Obviously, how the marketplace values those securities dictates the amount of money available in total to pay claims.

In fact, in the Manville case, the company estimates that for each $1 discount in stock value imposed because of this uncertainty, the trust created to pay asbestos claims loses $96 million.

Enactment of section 206 of this bill is thus critical to hundreds of thousands of asbestos victims, whose payments have been delayed for years because the assets of the Manville Trust have been depleted. The provision confirms for the financial markets, the lending community, and others that the debtor will not at some future time be exposed to liability beyond that defined in or by the reorganization plan. Section 206 will enable the marketplace to value the reorganized debtor's ongoing business operations fairly, thus ensuring that the trust—and thereby the claimants—will receive the maximum value for the assets it holds. Based on court records, this certainty has the potential of creating hundreds of millions of dollars in value for a trust such as the Manville Trust to use in paying injured workers.

Mr. President, further let me conclude my remarks in connection with this bankruptcy matter by expressing publicly my appreciation for the untiring work and effort of a lady on my staff by the name of Pam Banks. She has given of herself to a tremendous extent to make it possible to achieve these amendments that are in this bill, and I express publicly my appreciation and recognition for her work. Were it not for her they would not be in the bill.

Mr. BROWN. Mr. President, will the distinguished Senator from Ohio allow me to respond to his remarks?

Mr. HEFLIN. We want to know whose time this is being charged against.

The PRESIDING OFFICER. The Senator from Ohio has the floor.

Mr. METZENBAUM. I yielded the floor.

The PRESIDING OFFICER. The Senator yields the floor.

The Senator from Colorado.

Mr. BROWN. Mr. President, I believe I have some time reserved.

The PRESIDING OFFICER. The Senator from Colorado has 4 minutes.

Mr. BROWN. Mr. President, my good friend from Ohio addressed some concerns about the deficit and made a point about Presidential records. Inasmuch as my view differs to some degree from the distinguished Senator from Ohio, I wanted to at least participate in this discussion and this debate.

First of all with regard to the Presidents: Unless they have changed the Constitution other than exercising the veto, the President does not have a vote on this floor or the floor of the House. If the Senator's point is that the Presidents have not—and I say "Presidents" plural, referring to President Bush, President Reagan, perhaps even President Carter—if the point is that those Presidents have not done all they could to reduce the deficit I must say I agree with him. I think more can and should have been done.

But if the point is that Presidents have a vote in these Chambers and control the budgets, I sincerely disagree. They do not. The Constitution is quite clear on this.

Second, it should be noted for the record that when it comes to the mandatory spending programs, Presidents do not have an opportunity to veto spending for these programs. Those changes in the law to these programs must come from Congress.

Third, I think it ought to be noted that the current President has recommended over 4,000 projects and programs that ought to be cut or terminated. Many of these Congress has yet to act on.

Fourth, I think it would be a shame not to note that, while our current President has not recommended a balanced budget, over the 5 years, for fiscal year 1993, every other budget that the President of the United States has sent to Capitol Hill has been, over the 5-year plan, a balanced budget.

The breakdown has not come from the failure of the President of the United States, to recommend balanced budgets. The failure has been in this Congress which does not adopt and enforce budget plans that are balanced.

Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. DANFORTH addressed the Chair.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. DANFORTH. Mr. President, I yield myself as much time as I require on my amendment.

The PRESIDING OFFICER. The Senator from Missouri is recognized.

Mr. DANFORTH. Mr. President, I ask for the yeas and nays on my amendment.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. DANFORTH. Mr. President, 2 weeks ago tonight, Senators BOB GRAHAM, BROWN, LEVIN, DOMENICI, NUNN, and I appeared on the television program "Nightline." During that program, Ted Koppel announced that ABC would make available to the Presidential candidates three 1-hour programs. Each of the three Presidential candidates would be invited to appear for 1 hour on those programs and they would be questioned by Senators RUDMAN and CONRAD on the sole issue of the budget deficit and what to do about the budget deficit.

Last week, the six Senators wrote the three Presidential candidates and extended the invitation that had come from ABC to the Presidential candidates and asked for a response.

Today, we have received a response, which was dated yesterday, June 16, from H. Ross Perot, and would like to read that response to the Senate:

DEAR SIRS: Thank you for your letter of June 10 inviting me to participate in a series of discussions about our national debt.

As I look at your names, my first reaction is that I would like to have a long meeting with the six of you to listen and learn. Certainly, you understand this problem and have been working to resolve it. In the event that the people select me in November, we will be working together night and day to implement well thought-out plans of action to rebuild our country.

I propose that the first hour be given to the current leaders of the House and Senate to explain what they intend to do. These legislators are in office now and have the authority to act now. They and their predecessors understand the problems and forces that created our current four trillion dollar debt. In my opinion, they will have the best ideas about how to solve the problem.

I propose that the second hour be given to the President to let him explain to the American people his plan of action. He is in office, has twelve years experience in the Executive Branch, and the authority to take action now.

In the event that you approve the format I have suggested. I will agree to participate.

assuming the petition-signing process is completed successfully, and that I do become a candidate.

Again, I would welcome the opportunity to meet, listen, and learn from all of you.

Best wishes.

Sincerely,

ROSS PEROT.

Now, Mr. President, of course, this letter is no response at all to the invitation from ABC. It ducks the invitation. That is not to say that ducking direct questions is not a tried and true method for Presidential candidates. It is not a new development with Mr. Perot. But I suggest that this letter is no more than part of a long tradition in American politics of ducking hard questions. He has managed to duck, or provided the basis for ducking, the hardest question of them all; namely, What do you intend to do about the deficit in the Federal budget?

ABC has made available a particular format. ABC has said each of the Presidential candidates is invited to appear on a separate 1-hour program to be questioned in depth about the deficit, and only the deficit, by two outgoing Members of the U.S. Senate, both members of the Budget Committee, Senator RUDMAN and Senator CONRAD. That is the format. That is the offering. It is either accepted or rejected, yes or no. Failing to give a yes or no answer to direct questions is, as I say, nothing new in the parlance of American politics.

I do think this is a most unfortunate response, a response which is evasive, evasive to the question that has been asked. My hope is that Mr. Perot will consider the letter that we sent on June 10 and give us an answer to that letter and give us a response to that invitation which has been put forward by ABC.

Mr. President, I want to return to consideration of the amendment that is now before us and call the Senate's attention to the fact that this is a tough amendment in the wording of it. I would like to restate to the Senate what we will be voting on.

The amendment states, among other things, that "the frequency and level of public comment on this issue"—that is the budget deficit—"by public officers and candidates, including those who hold and seek the office of the President, are so insignificant as to constitute irresponsibility."

So we are saying that the three major Presidential candidates still standing in this election year have engaged in insignificant discussion of the problem of the deficit, and that is irresponsible. That is tough language that we are using.

We further say that, "by and large, the candidates, Congress, and the media have ignored or trivialized this issue by suggestions such as that meaningful deficit reduction can be accomplished merely by attacking waste, fraud, and abuse."

We further say that "the existing reckless Federal fiscal policy cannot be addressed in any meaningful way without including consideration of restraining entitlements and increasing taxes, as well as reducing defense and domestic spending."

Now, that, Mr. President, is very tough. I believe that at least one Senator is going to try to undo that language, try to water it down, try to fuzz it up. But this says quite clearly that we must at least consider, we must at least place on the table of consideration, those two items which are the most unpopular to deal with politically; namely, restraining entitlements and increasing taxes.

Now, there are going to be differences among all of us as to the extent to which we should restrain entitlements and the extent to which we should increase taxes if at all. But the first order of business has to be to face reality. The first order of business has to be to clean out the underbrush of misconception by American politicians and the media and the American people themselves. The first order of business is to face up to the reality that responsible action on the Federal deficit cannot occur—cannot occur—without consideration of restraining entitlements and increasing taxes. If those items, entitlements and taxes, are taken off the table there can be no responsible action on the Federal budget deficit.

So, if we say going into this next election, "No new taxes," and if we further say, "No action to control the growth of entitlements," those might be popular things to say to try to win an election but they are contrary to the language that we will vote on with respect to this amendment. This amendment says squarely and directly that entitlements must be on the table and taxes must be on the table for consideration if we are going to deal with the budget deficit.

Then the amendment says that candidates for President should agree to a formal discussion that focuses entirely on the Federal budget deficit, its implications and solutions.

The point here, of course, is that the typical political campaign nowadays is the 30-second spot commercial or the 20-second sound bite or the debate where the answer is 2 or 3 minutes in length. And any politician worth his salt can dance around an issue for 2 or 3 minutes. But extended discussion involving hard questioning on the one subject of the budget deficit is much harder to deal with. And it is going to be hard to deal with. And there is no responsible way of dealing with it without including consideration of entitlements and taxes. That is what this amendment is all about.

Every Senator who votes for this amendment is taking a great political risk because it has language in it that will come back in the next election—no doubt about it. Any Senator who is willing to vote for this language is asking to be the subject of a 30-second negative commercial dealing with entitlements or taxes the two so-called silver bullet issues. That is why I expect that there will be efforts to fuzz this up by way of amendment. I will oppose those efforts to fuzz it up.

The time has come for clarity. The time has come for straight talk to the American people. And straight talk means we are either going to have to address the issue of entitlements or taxes or more likely both, or we are going to continue to see our country get weaker and weaker and weaker and weaker, year after year after year. So that by the time we pass it on to our children and our grandchildren, the United States is no longer going to be the leader of the world.

The PRESIDING OFFICER (Mr. AKAKA). The Senator from Washington [Mr. GORTON].

Mr. GORTON. Point of parliamentary inquiry. Is an amendment in the second degree to the amendment of the Senator from Missouri in order at this point?

The PRESIDING OFFICER. Only after all time on the first-degree amendment has expired.

Who yields time?

Mr. GORTON. Mr. President, at the suggestion of the Senator from Missouri, I ask unanimous consent that I be permitted to offer a second-degree amendment to the amendment of the Senator from Missouri at this time.

The PRESIDING OFFICER. Is there objection?

Mr. HEFLIN. We object to that.

The PRESIDING OFFICER. Objection is heard.

Who yields time on the amendment?

If no Senator yields time, time will be charged equally on the amendment.

Mr. HEFLIN. Mr. President, I will ask for a quorum, in the event that equal time can be charged against both sides in regards to the Danforth amendment.

The PRESIDING OFFICER. Is there objection?

Mr. HEFLIN. I ask unanimous consent that be the case.

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

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. DANFORTH. Mr. President, I yield 5 minutes to the Senator from Washington and, immediately following that, 5 minutes to the Senator from Michigan.

The PRESIDING OFFICER. The Senator from Washington is recognized.

Mr. GORTON. Mr. President, I thank the Senator from Missouri for yielding

to me at this time, especially due to the fact that I am not particularly friendly to his amendment. It seems to me we have now once again reached either silly season in the U.S. Senate or perhaps more significantly have shown another mark of our failure to deal with reality.

Just a few weeks ago a proposal by Senator RUDMAN and Senator NUNN, which was strongly supported by the Senator from Missouri which actually would have eliminated the budget deficit by the end of this decade, received only 28 votes on the floor of the Senate. Just last week, a constitutional amendment which would have forced Congress to take meaningful action with respect to the budget deficit was turned down by the House of Representatives and has been abandoned here, at least for the reminder of this Congress, by its primary supporter in the Senate. Those votes, or those failures to vote, were real votes on a real debate on real issues.

This is a pretend vote, Mr. President, whether it takes place on the amendment of the Senator from Missouri or on some substitute for it which I understand is now being prepared. Even so, while it mentions in several of its paragraphs the Congress of the United States, in one of its key paragraphs it ignores the Congress entirely, focusing solely on the President and on candidates for President.

My amendment, if we are ever able to get to it, will simply add the Members of Congress and candidates for Congress in a place where I believe it was inadvertently omitted by the sponsors of the amendment and to which they will agree. It will cure one minor defect in this proposal. It will not, in my opinion, cure the unwillingness of Congress, including this body, to deal with the real problem. The real responsibility, the power of the purse under the Constitution of the United States rests in the Congress of the United States. This is one more attempt I think, Mr. President, to focus on candidates for the Presidency in order to excuse the failure of this body to pass the proposal which was before it early in April or the House of Representatives to pass a constitutional amendment on the subject to send to the States.

It is the view of this Senator that it is time to vote on real issues, with real binding effect which will actually affect the fiscal policy of the United States. If a resolution of this nature leads us to such a vote, it will have been time well spent. I am afraid that I doubt that and that this will be used by many who vote for it as an excuse for not acting on the real issue, rather than to deal with the problem of the deficit here where responsibility lies, in a timely and in a effective manner.

I will offer this minor amendment if and when the parliamentary position allows me to do so. If there is a substitute for the Danforth amendment, I suspect it will be less meaningful than the Danforth amendment is itself, and I, as other Members, will deal with that proposal in the way in which it deserves.

Mr. LEVIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Michigan is recognized for 5 minutes.

Mr. LEVIN. Mr. President, first let me commend Senators DANFORTH, GRAHAM, and the others who have worked together so hard on this. I am proud to be part of that group, and I think we are making some progress. We are putting the focus of public attention on an issue which is critical to the future of this country, and that is our economy and the budget deficit. Basically, the President and the Congress have ducked this issue for too long. Is the Congress included in that sentence? You bet you. Is the President included in that sentence? He sure is.

But the point is that until and unless we have a Presidential debate that focuses on the specifics of how to address this deficit, we are not going to have a mandate to the next President to act on the deficit. All three of those candidates out there know where the loopholes are. They know where the hiding places are. They know the few buzzwords they can use to try to duck a question on how they will address the deficit. But if they are confronted with two knowledgeable, strong interlocutors for 1 hour each on how specifically they will address the deficit, they will not be able to wiggle out of it. They are going to have to get specific.

Those of us who are cosponsoring this resolution have stated fairly clearly, as clearly as we can, that the reckless Federal fiscal policy cannot be addressed in a meaningful way without including, and here I am going to read the words because they are so important, "consideration of restraining entitlements and increasing taxes, as well as reducing defense and domestic spending." In other words, everything has to be on the table. That is what we have signed up to. It all has to be considered.

That is our belief. Do the Presidential candidates believe that? Maybe they do and maybe they do not, but that is what in-depth discussions are all about. If they believe that they can address the deficit by going after one item, let them say what the item is, let them put a dollar figure on it. If they say it will take 10 items, let them say what the 10 items are. We have had enough of platitudes. We have had enough of 30-second sound bites. We have had enough of photo opportunities. We have had enough of generalities. What we need is leadership.

Some people say, what about leadership in the Congress? I say amen. A lot of us have set forth our own specifics, and there are 535 of us. There are 100 in this body and 435 in the other body. We have no consensus here on a plan to address the deficit. There are so many of us, we have not been able to achieve that consensus.

Having said that, that still leaves us with the heart of the problem: We need a strong President who will lead on this subject and, Mr. President, if we have learned nothing in the last 10 years, it is that a President must have a mandate to lead. If these candidates can get through this election with nothing but generalities and 30-second responses on how they will reduce the deficit, they may be able to get elected—one of them will be—but they will not have the crucial mandate to address this issue once they are in office. This resolution is intended to force the candidates to address an issue which must be addressed specifically if the public is going to vote for a program to be implemented when one of these candidates raises his hand and takes the oath of office next January.

There has just been a silent, eerie truce on this subject that has permeated the campaigns of these candidates and must end. If it is to end, it will take this kind of energy forcing the candidates to address the issue.

I thank the Chair, and I yield the floor, and suggest the absence of a quorum.

Mr. HEFLIN. Mr. President, I ask unanimous consent that the quorum call that has been requested be charged against both sides equally.

Mr. DANFORTH addressed the Chair.

The PRESIDING OFFICER. Senator from Missouri.

Mr. DANFORTH. Because no time has been used on the other side, I object to that.

The PRESIDING OFFICER. Objection is heard. Who yields time? If no one yields time, time will be deducted from both sides.

Mr. DANFORTH. How much time do I have?

The PRESIDING OFFICER. The Senator has 3 minutes.

Mr. DANFORTH. Mr. President, I would call the attention of the Senate to an article that appeared today in the New York Times on page A13, and the headline of the article is: "U.S. To Press Yeltsin To Reduce Budget Deficit."

The first paragraph of this article in the New York Times is as follows:

> Administration officials said today that they would press President Boris N. Yeltsin to bring Russia's budget deficit under control to help enable it to sign an economic reform agreement with the International Monetary Fund.

Mr. President, I ask unanimous consent that the text of the article be printed in the RECORD.

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

[From the New York Times, June 17, 1992]

UNITED STATES TO PRESS YELTSIN TO REDUCE BUDGET DEFICIT

(By Steven Greenhouse)

WASHINGTON.—Administration officials said today that they would press President Boris N. Yeltsin to bring Russia's budget deficit under control to help enable it to sign an economic reform agreement with the International Monetary Fund.

If Russia controls its deficit, reins in its money supply and moves to make the ruble convertible, then the Administration will press the I.M.F. not to delay an agreement because of concerns about details, the officials added.

"If those three key issues can be resolved, then we're willing to work with Russia to see that superfluous issues don't get in the way," said a senior Administration official.

With their battered economy deteriorating day by day, Russian officials are eager to sign an agreement with the fund as soon as possible because an accord will unblock most of the $24 billion aid the Group of Seven industrial nations promised last April.

CAMPAIGN BY RUSSIANS

During Mr. Yeltsin's visit to Washington, Russian officials have waged a public campaign to urge more flexibility from the fund, arguing that if the I.M.F. is too stern it could push Russia's economy to the breaking point.

Fund officials are pushing Russia to reduce its budget deficit to zero, while Russian officials are talking of a deficit target of around 4 percent of the gross national product as compared with more than 20 percent last year.

The fund also wants Russia to explain how it will coordinate monetary policy with other former Soviet republics that plan to continue to use the ruble, because such coordination is deemed essential for reducing inflation and stabilizing the currency.

"We couldn't support a program that would be regarded as less than adequate," said Michel Camdessus, the I.M.F.'s managing director.

The I.M.F. is also pushing Russia to remove price controls on oil, but Mr. Yeltsin said this would make it hard for farmers to harvest.

"Russia needs to concentrate on the key elements fundamental to reform," said Treasury Under Secretary David C. Mulford.

In meetings today with President Bush, Mr. Yeltsin explained the sweeping reforms he announced Monday about privatization, bankruptcy, ownership of land and foreign exchange.

"They clearly gave us the impression that they're fully committed to continuing with their reform effort, that they're going to stay the course," said an Administration official who sat in on the meetings.

Members of Congress said an American aid package for Russia could be further delayed by Mr. Yeltsin's statement that Russia might be holding some American prisoners of war who have survived since the Vietnam War.

"If it's determined definitively there are Americans being held as prisoners of war in Russia, there's no way that the Congress is going to pass aid while they're being held," said Senator Patrick J. Leahy, Democrat of Vermont.

The House and Senate foreign relations committees have both approved the package, but no floor vote has been scheduled.

Mr. DANFORTH. Mr. President, clearly we are lacking in some degree of credibility in asking that Russia bring its budget deficit under control when we in our country have a $400 billion budget deficit.

Mr. President, I am prepared to yield back the remainder of my time, and I understand Senator HEFLIN is also. So conditioned on Senator HEFLIN yielding back the remainder of his time on my amendment, I yield back the remainder of my time.

Mr. MITCHELL addressed the Chair.

The PRESIDING OFFICER. Does the Senator from Alabama yield back his time?

Mr. MITCHELL. Mr. President, if I might just clarify the situation, I intend to offer a substitute amendment. It is my understanding that I will not be eligible to do so until the remaining time on the Danforth amendment has been used or yielded back, and it is that time which is now being yielded back; is that correct?

The PRESIDING OFFICER. The leader is correct.

Mr. MITCHELL. Second, it is my understanding that once I offer this substitute amendment, under the order there will be 1 hour for debate on this amendment equally divided and controlled in the usual form. Is that correct?

The PRESIDING OFFICER. The leader is correct.

Mr. HEFLIN. We yield back our time on this side.

The PRESIDING OFFICER. All time on the amendment has been yielded back.

Mr. MITCHELL addressed the Chair.

The PRESIDING OFFICER. The majority leader is recognized.

AMENDMENT NO. 2430 TO AMENDMENT NO. 2426

(Purpose: To express the sense of the Senate regarding the need to reduce the Federal deficit)

Mr. MITCHELL. Mr. President, on behalf of myself, Senator BYRD, Senator SASSER, and Senator WELLSTONE, I send an amendment to the desk and ask that it be stated.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Maine [Mr. MITCHELL] (for himself, Mr. BYRD, Mr. SASSER, and Mr. WELLSTONE) proposes an amendment numbered 2430 to amendment No. 2426.

Mr. MITCHELL. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

In lieu of the language proposed to be inserted, insert the following:

The Senate finds that—

(1) the growing national debt is a legacy of bankruptcy which will make America's economy steadily weaker and more vulnerable than it is today;

(2) to amass a national debt of $4,000,000,000,000 and an annual deficit of $400,000,000,000 is to breach trust with present and future Americans;

(3) the national interest in controlling the deficit takes precedence over partisan advantage;

(4) it is the responsibility of candidates for President and for Congress to discuss the deficit, if the priority issues facing our country (such as investing in human capital and physical infrastructure to promote economic growth) are to be effectively and honestly addressed;

(5) the American people will provide a mandate for governmental action, if given information and serious choices for deficit reduction that calls for shared sacrifice;

(6) the frequency and level of public comment on this issue by too many public officers and House and Senate candidates, including those who hold and seek the office of the President, have been insignificant and inadequate;

(7) by and large, too many candidates, Members of Congress, and members of the media have ignored or trivialized this issue by suggestions such as that meaningful deficit reduction can be accomplished merely by attacking waste, fraud, and abuse;

(8) entitlement and interest spending are the fastest growing components of the Federal budget and are at an all-time high, largely due to the explosion of health costs;

(9) other than taxes devoted to Social Security pensions, the level of taxation relative to the United States economy has been lower in the last decade than it was in any year between 1962 and 1982;

(10) the existing reckless Federal fiscal policy cannot be addressed in a meaningful way without including consideration of restraining entitlements and increasing taxes, as well as reducing defense and domestic spending; and

(11) to suggest that meaningful deficit reduction can be accomplished without shared sacrifice constitutes deception of the American people:

It is the sense of the Senate that—

(1) public officials and candidates for public office should make proposals and engage in extensive and substantive discussion on reducing the deficit;

(2) the candidates for President should agree to a formal discussion that focuses entirely on the Federal budget deficit, its implications and solutions; and

(3) all candidates for office should affirm their support for this statement of principles and should resolve, in the course of their campaigns, to seek a mandate from the electorate with which they can effectively address the Federal budget deficit if elected.

Mr. MITCHELL. Mr. President, this amendment slightly modifies the Danforth amendment. It makes just a few changes in words which I will momentarily describe in verbatim form but embodies the substance and the intention of the Danforth amendment.

The changes are as follows: Paragraph 4 in the Danforth amendment, that paragraph in the form introduced by Senator DANFORTH and others read as follows:

It is the responsibility of candidates for President and for Congress to discuss the deficit, if the priority issues facing our country are to be effectively and honestly addressed.

The proposed modification is to add in parenthesis a clause as an example of such issues the following words: "such as investing in human capital and physical infrastructure to promote economic growth."

So the entire paragraph now as amended would read:

It is the responsibility of candidates for President and for Congress to discuss the deficit, if the priority issues facing our country (such as investing in human capital and physical infrastructure to promote economic growth) are to be effectively and honestly addressed.

That is the first change.

The second change is in paragraph 6. Senator GORTON earlier sought to amend the Danforth amendment by specifying that the reference to candidates was made specific to House and Senate candidates, and this modification does that. And it also makes one other word change. Where the original amendment described the efforts as insignificant as to constitute irresponsibility, it now is changed to say "insignificant and inadequate."

So that is the principal change in paragraph 6 which as modified would read:

The frequency and level of public comment on this issue by too many public officers and House and Senate candidates, including those who hold and seek the office of the President, have been insignificant and inadequate.

The words "too many," the words "House and Senate" have been added, and the words "insignificant and inadequate" have been substituted for the words "as to constitute irresponsibility."

The third change is in paragraph 7, and these changes are similar to the changes I have just described in paragraph 6. In this case the words "too many" are added as well and the words "Members of" Congress, and "members of" the media.

So that the language, which is very close to that initially suggested by Senator DANFORTH, would now read, under the substitute amendment:

By and large, too many candidates, Members of Congress, and members of the media have ignored or trivialized this issue by suggestions such as that meaningful deficit reduction can be accomplished merely by attacking waste, fraud, and abuse.

The final change, Mr. President, in paragraph no. 8, which as initially proposed by Senator DANFORTH and his cosponsors, reads "entitlement and interest spending are the fastest-growing components of the Federal budget and are at an all-time high." The modification would simply add to that sentence the following clause, "largely due to the explosion of health costs."

Mr. President, I believe these changes are self-explanatory. Each of these changes relates to the findings portion of the amendment. There are no proposed changes in the operative resolving portions of the amendment; that is the three paragraphs reading after the words "It is the sense of the Senate that * * *" So I believe they can be described as relatively minor modifications of the original amendment.

Mr. President, I yield the floor. I reserve the remainder of my time.

Mr. DANFORTH. Mr. President, I wonder if the majority leader would entertain some questions about the substitute.

Mr. MITCHELL. Certainly.

Mr. DANFORTH. Mr. President, it is always, it seems to me, that any time any Members of the Senate are drafting anything—and this was drafted on a bipartisan basis—there are always going to be differences of opinion as to wording. I wonder. Is it the intention of the majority leader that the substitute be a substantial difference from the amendment that is before us?

Mr. MITCHELL. Mr. President, of course "substantial" is a relative term. What may be substantial to one is not substantial to the other. I believe the modifications improve the amendment and further promote the intention of the amendment.

I think also, for myself—and I cannot speak for all the others on this because I have not discussed this particular detail with them—I felt that substituting the word "inadequate" for "irresponsibility" was a substantive change and that should be made.

Mr. DANFORTH. That occurs in paragraph No. 6.

Mr. MITCHELL. That is correct.

The second point I would make is that, as the Senator from Missouri may know, I have long argued that one of the necessary steps that we must take to deal with the deficit is to bring under control the tremendous increase in health care costs in our society. I have introduced legislation to that effect.

I think it is a central problem—surely not the exclusive problem with respect to the deficit—but a central problem that actually goes beyond the Federal deficit, contributes to State and local government problems, and that of business.

So I think the addition of the reference to health costs is a substantial change but I do not know whether the Senator would see it in that light.

Mr. DANFORTH. I would see it as a statement of fact; that is, there is no doubt about it, that the increase in health care costs is the largest single growing area in the Federal budget, Medicare and Medicaid as far as the Federal Government's share of the health care problems is concerned, that is the main budget problem we have.

I obviously would prefer the word "irresponsibility" to "inadequate." I think it is a better total word. I am not sure that I would lose much sleep over "inadequate." Such as investing in human capital and physical infrastructure to promote economic growth, as modifying the priority issues facing the country, that is simply a specification of what some of the priorities are. But I take it that the point here is that it is very hard to deal with any problems that we have in our country, and it is very hard to pursue any kind of domestic agenda for the country if we do so on the basis of a $400 billion deficit.

Mr. MITCHELL. I surely share that. But I also believe it is intended to convey the view that a principal objective in reducing the deficit, and for reasons beyond that, must be to promote economic growth. There is an interacting effect. The deficit retards economic growth and the lack of economic growth contributes to the deficit. So it is an effort to give importance and weight, in my mind at least, to the necessity for a more rapid economic growth as a way of dealing with the budget deficit.

Mr. DANFORTH. In the original form of the amendment, which is not touched, the amendment says that the existing reckless Federal fiscal policy cannot be addressed in a meaningful way without including consideration of restraining entitlements and increasing taxes as well as reducing the defense and domestic spending. That, of course, would be the most politically volatile statement in the whole amendment. I notice that is not touched in the substitute.

Mr. MITCHELL. That is correct.

Mr. DANFORTH. Further, the call in the resolution for formal discussion that focuses entirely on the Federal budget deficit by the Presidential candidates, that remains as it originally was in the amendment.

Mr. MITCHELL. The Senator is correct.

Mr. DANFORTH. I thank the majority leader.

Mr. MITCHELL. Mr. President, I yield the floor.

I yield such time as the Senator from Minnesota would like: 5 minutes?

The PRESIDING OFFICER. The Senator from Minnesota is recognized for 5 minutes.

Mr. WELLSTONE. Mr. President, first of all, let me also respond to the questions of the Senator from Missouri, which I think are good questions.

Yesterday, as I presided and was listening to the Senator from Missouri speaking with considerable eloquence and power about the deficit, there were a couple of issues that came to mind that I really wanted to see addressed. As long as we are going to try to make an effort here on the floor of the Senate to make sure that there is a political dialog and debate that focuses on the deficit, I thought it should address what we believe are the critical issues that affect people's lives in our country, especially health care and investment in human capital.

These additions, which I think really strengthen this amendment, are designed to ensure that we deal not just with the budget deficit, but that we also acknowledge the enormous invest-

ment deficit we face. I mean we simply have not invested in our human capital, we have not invested in our kids, we have not invested in education, we have not invested in job training, we have not invested in physical infrastructure, repair of roads, bridges, and all the rest. There comes a point in the history of a country—I am afraid that we are now at that point—where decline begets decline begets decline.

Second, if we are going to talk about the explosion of costs of entitlement programs, I think it is factually correct to make the compelling point that the huge cost increases have virtually all been in the health care field.

I think that is a central priority to which I testified before the Finance Committee this morning, and Senator DANFORTH was there. I think that also needed to be referenced.

Finally, let me just say that as far as trying to place blame, I have here somewhere a whole series of votes that have taken place on a variety of different budget issues for fiscal year 1993, as well as fiscal year 1992. I could go through the votes of different Senators, and I could point out that there is plenty of blame to spread around. There are Senators who have supported this original resolution, and voted against that would have had a major impact on reducing the deficit.

Mr. President, we are past the stage of blaming each other. I think this is a good-faith effort on the part of all of us to develop an amendment that gets the debate focused on key economic issues in our country.

I think that is what this does. I think that this substitute is an improvement. I think the differences are minor but significant, especially in the findings.

So, Mr. President, to conclude, I do not have any problem at all with making it very clear, along with Senator GRAHAM, Senator DANFORTH, and everyone else, that as a matter of fact, we have to speak the truth about raising revenue, and that may mean we raise taxes. For my own part, I think we ought to restore progressivity to the Federal Income Tax Code which we have severely eroded since 1981. That was one of the most regressive pieces of tax legislation passed in this country since the 1920's.

Second, I believe we must begin to have serious discussions about reducing substantially Pentagon expenditures. I think we should make such reductions now. Third, I have no problem with focusing on entitlements and making the point that we have to look there as well, as long as it is linked to this critical question of reform in the way we finance and deliver health care.

I think this kind of discussion makes sense. I think these additions make sense, and I think the substitute is an improvement in the original text. I am pleased to cosponsor it.

I yield the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. MITCHELL addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. MITCHELL. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. MITCHELL. Mr. President, I have discussed the matter with Senator DANFORTH and Senator GRAHAM. They have suggested that the Senate accept, by voice vote, the amendment which I have just proposed, and then vote by rollcall on the Danforth amendment, as amended by the amendment which I have just proposed, and which would then have been adopted.

That is agreeable to me, and I therefore am authorized, on behalf of Senator DANFORTH and Senator HEFLIN, to yield back all of the time on the amendment which I have just offered, so as to complete the acceptance of that amendment, and then go immediately to a rollcall vote on the Danforth amendment, as amended by this amendment.

Mr. DANFORTH. That is correct.

The PRESIDING OFFICER. All time having been yielded back, the question is on agreeing to the amendment.

The amendment (No. 2430) was agreed to.

Mr. MITCHELL. Mr. President, I move to reconsider the vote.

Mr. HEFLIN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. KASTEN. Mr. President, the Federal budget is out of control. The irresponsible spending habits of Washington have resulted in a massive debt burden that is being passed on to our children. This must end, and it is precisely the reason that I have lead the effort to approve a balanced budget/tax limitation amendment to the Constitution. However, the sense-of-the-Senate amendment before us unfortunately implies that tax increases are once again the solution to the deficit. This is not the case.

The people of Wisconsin are tired of Congress repeatedly raising their taxes only to increase spending and produce even greater deficits. In recent years tax hikes have repeatedly been justified on the grounds that they will reduce the deficit. Tax increases do not reduce the deficit, they merely encourage Congress to spend more money. This is confirmed by a new study by Richard Vedder, Lowell Gallaway, and Christopher Frenze titled "Taxes and Deficits: New Evidence." This study concludes, based on an analysis of 1947–90 data, that $1 of tax increases leads to $1.59 of new spending.

In the 1982 budget deal, Congress promised $3 in spending cuts for $1 in tax hikes. The actual result was a dramatic spending increase. In 1990, the so-called budget summit deal imposed a $165-billion tax increase on the American people. All in the name of reducing the deficit. And what was the result? Tax revenues dramatically fell—and the deficit went up instead of down. When the agreement was enacted 18 months ago the deficit for 1992 was supposed to be $229 billion, it will in fact be over $350 billion. Similarly, the 1993 deficit forecast has grown by $223 billion. The reason is clear, in addition to encouraging more spending, tax increases depress the economy, destroy jobs, and ensure that a balanced budget continues to elude Congress.

This argument is reinforced by recent history. After declining from 6.5 percent of GDP to 3 percent during the low-tax, high-growth period of 1983–89, the deficit is now projected to reach almost 7 percent of GDP in 1992 following a massive tax hike and several years of antigrowth policies.

Mr. President, America's families and small businesses are already overtaxed. This year Tax Freedom Day for the American taxpayer will fall on May 5, 1992, the latest day ever. This means that the average American will work 126 days to satisfy all Federal, State, and local taxes. This date is late enough and I will not support efforts to further increase the Federal tax burden. The Federal deficit will be balanced when Congress makes a serious effort to restrain spending and then enacts a comprehensive progrowth economic package that will boost the economy, create jobs, and increase Federal tax revenues.

Mr. McCAIN. Mr. President, I am concerned about the deficit like Senator DANFORTH and the supporters of his amendment. However, I must oppose the amendment for reasons I will discuss below.

I have worked for the enactment of proposals that would actually reduce the deficit rather than just talking about the issue. I have been the main proponent of the line-item veto. A recent General Accounting Office study found that a President empowered with a line-item veto could have saved the taxpayer $70 billion between 1984 and 1989. That savings would be realized without raising taxes or cutting entitlements. At the very minimum, we must cut the waste.

I strongly disagree with the resolution's contention that the deficit debate is trivialized by suggesting that meaningful deficit reduction cannot be accomplished merely by attacking waste, fraud, and abuse. Whether it is billions for missionless *Seawolf* submarines, billions for unauthorized de-

fense spending, billions for Lawrence Welk homes, demonstration projects, or other pork projects; it is waste, and meaningful deficit reduction can be accomplished by addressing waste. The budget will not be balanced solely by eliminating waste, but I consider $70 billion of deficit reduction meaningful.

I must also take exception to another contention in the resolution. It states:

Other than taxes devoted to Social Security pensions, the level of taxation relative to the United States economy has been lower in the last decade than it was in any year between 1962 and 1982.

The level of taxation relative to the economy has been low recently because we simply have not had any economic growth, it is not a result of tax relief. Just 2 years ago, this body passed a $166 billion tax increase that has caused little more than economic stagnation.

I also find it interesting that the resolution excludes taxes devoted to Social Security pensions in calculating the level of taxation. Why exclude this tax from the calculation? While the Senate can conveniently exclude the consideration of taxes for Social Security, taxpayers cannot. According to the Tax Foundation, the average American works until February 8 to pay his or her Social Security taxes. To exclude the second largest tax from calculating the relative level of taxation, is to provide the American public with incomplete information about taxation that does little more than trivialize the debate. Social Security taxes are a distinct reality to all working Americans. I do not support increasing any of the taxes we have imposed on our citizens.

Mr. President, I would also like to address another problem with the resolution's position on the relative level of taxation in the United States. The relative level of taxation is irrelevant—especially when you compare it to the size of the economy. What is important is the absolute level of taxation. In 1962, the average American taxpayer worked until April 17 to pay all his or her taxes. In 1982, tax freedom day was May 3. In 1992, Tax Freedom Day is May 5. While the relative level of taxation to the size of the economy may be lower, Americans are paying more and more in taxes.

Finally, the resolution contends that the budget cannot be balanced without tax increases and restrained entitlement spending. In the last 30 years, Congress has raised taxes 56 times and balanced the budget once. Tax increases have only gone to finance more and more spending. The 1990 budget deal is the quintessential example of a tax increase that was supposed to reduce the deficit but only masked spending increases. Taxes went up. Spending increased. The deficit increased. And, the economy went into recession. Again, in the last 30 years, Congress has raised taxes 56 times and balanced the budget once. We have to learn how to control spending.

Mr. President, we can control spending without restraining entitlement spending. I am a cosponsor of the 4-percent solution, legislation that would limit the growth of domestic discretionary spending to 4 percent a year. This would save $255 billion over 4 years. And, even without changes in law, tax receipts are expected to increase annually by about $75 billion. Thus, with modest economic growth, restraining domestic discretionary spending to 4 percent growth could eliminate the deficit without cutting Social Security or Medicare or other entitlements.

Mr. President, the deficit can be addressed in a meaningful way without considering restraining entitlements or imposing tax increases. It can be addressed by eliminating waste that does exist. It can be addressed by limiting the growth of domestic discretionary spending to 4 percent. At the very least, we should try to eliminate waste and try to control domestic discretionary spending before we mug the taxpayer for the 57th time in 30 years or balance the budget on the back of seniors.

I am greatly concerned about the deficit. I have spent a great deal of my time in the Senate on efforts to reduce or eliminate the deficit like the line-item veto, rescissions, the 4-percent solution, and a balanced budget amendment to the Constitution.

Unfortunately, Mr. President, I cannot support this amendment. I feel that it is based upon questionable premises that do not promote a healthy debate on deficit reduction. The resolution attempts to define what is relevant and what is not relevant. I feel efforts to reduce waste are relevant—not trivial. I feel we can balance the budget without tax increases or restraints on entitlements.

We have never tried. Maybe we should before we scare the American public with tax increases and attacks on entitlement programs.

Mr. LEAHY. Mr. President, the accelerating growth in the Federal debt, which will be about $4 trillion by the end of this year, imperils the economic stability of our Nation today and the legacy we pass to our grandchildren in the next century.

I agree with the resolution that "the American people will provide a mandate for governmental action, if given information and serious choices for deficit reduction." One of the "serious choices" this resolution cites without giving any information is restraining entitlement spending.

Mr. President, in recent years, cutting entitlement spending has been used as a code phrase for reducing access to the Medicare and Medicaid programs.

Meaningful entitlement spending reductions cannot occur without reducing the amount the Government spends on health care. This year one in seven Federal dollars will be spent on health care. Without reform and cost containment this level will rise to one in three Federal dollars in a decade. Medicare and Medicaid spending cannot be controlled without first having comprehensive health care reform including cost containment.

I want to be perfectly clear that health care reform and cost containment are precursors to controlling entitlement spending. Capping entitlement programs and expecting health care reform to result would be putting the cart before a Trojan horse.

Mr. WOFFORD. Mr. President, I commend my colleagues for introducing this resolution and for focusing the Nation's attention on the hard issues surrounding the Federal budget deficit.

The balanced budget amendment, which was narrowly rejected by the House last week, is a symbol of the strong desire in our country and in this Capitol to tame the Federal deficit and protect our children's future. But, the people deserve more than symbols. They deserve action. And real action to reduce the deficit will take leadership from the President, courage from Congress and a mandate from the voters.

The resolution we are voting on does not provide the answers on how to reduce the deficit. I don't have all the answers myself. Hard choices will have to be made. If something serious is to be accomplished in balancing our Federal budget, all of us must be willing to make those choices. I am ready to begin.

The budget deficit is a reflection of competing public demands and priorities. For more than a decade, Washington has failed to resolve those competing demands and choose among those priorities. The time has come for a frank public discussion of those choices. Just as our Pennsylvania campaign sharpened the debate on our Nation's health care crisis, the upcoming election campaign can provide the national forum we need for a mandate to balance the Federal budget.

We must use this opportunity. The time has come to put our country back on the right track. We know that to do that, we must begin to live within our means. We must focus our precious resources on the kind of public investments which will build for our children a land of opportunity instead of a mountain of debt.

Again, I congratulate my colleagues on their effort. I look forward to working with them and others to reduce the deficit.

Mr. GRASSLEY. Mr. President, there is no question that the deficit and its attendant debt spiral is public enemy No. 1. It threatens the future of our children and our country. There is no

question we need drastic action, and the time for that action is long past. Nonetheless, this amendment, in my view, does not address the underlying, fundamental cause of this problem.

I intend to vote "no" on this amendment at the risk of seeming indifferent on the question of lowering the deficit and retiring the spiralling debt.

I am confident, however, that my long record on fighting for deficit reduction in this body would belie that perception.

Let me remind my colleagues that this is the same Senator who, in 1984, 1985 and 1986 offered across-the-board budget freezes, including entitlement freezes, either in the Senate Budget Committee, on the Senate floor, or both. These proposals were roundly criticized as draconian by many of those still in this body who currently pronounce that they are "shocked, shocked to find the deficit is so huge." Many voted, instead, for a watered-down Rose Garden budget each year because the Rose Garden budget was "much more responsible." This view was held notwithstanding the fact that many of us prepared analyses to show that the spending and revenue estimates, year after year, had been biased. In other words, Congress knew the deficit would be larger than projected at the time of each vote for a watered-down budget. And now some of us are shocked, shocked to discover the deficit is so huge.

What irony it is that some of my colleagues prefer to point the finger at Presidential candidates instead of Congress. Some of these are the same Senators who voted to release the constraints imposed by Gramm-Rudman. And now we are shocked, shocked at what has occurred on Congress' own watch. Under this amendment, this body is being asked to harass the Presidential candidates on the issue of the budget deficit. Why not a little self-harassment? Why not reflect on Congress' record, which is miserable-in-the-extreme. Instead of abdicating, why doesn't Congress make an act of contrition? Instead of throwing rocks, why not confess to a mea culpa?

As one Senator who is up for reelection this year, I intend to run on my own record to fight for lower deficits. I, for one, have been screaming ad nauseum for drastic deficit reduction, since day one of my service in this body. I was proposing across-the-board budget freezes so long ago that a budget freeze back then would actually save big money. And that included entitlements. Now, all it'll get you is a spit in the ocean. That's because we're having to pay all that interest on the debt. In 1984—May 16, to be exact—I stood right here on this floor warning about how we were starting to pay interest on the interest on our national debt. That was the first indication that we were bankrupt—that's the classic sign. I had just offered, with some of my colleagues, the infamous KGB freeze, which stood for Kassebaum, Grassley, and Biden. That freeze would have saved tens of billions. Moreover, the freeze was regarded as merely a tourniquet needed to stop the hemorrhaging. I called, also, for an overhaul of our budget estimating, our program estimating and for dramatic structural reforms to follow the freeze. It was an attempt to herald the impending budget crisis that was becoming obvious to those of us who would just look.

Instead, we opted for procrastination—the Rose Garden budget—the archetypical see-no-evil budget. Because there was a Presidential election that year, it was safer in the short term to call a truce, and put fiscal policy on automatic pilot. We did the same thing in 1985, 1986, 1987, 1988, and 1989. In 1990, all we did was ensure rising deficits by pulling the teeth from the Gramm-Rudman straitjacket. And now deficits are $300 billion as far as the eye can see. And we're shocked.

If this is to be a serious vote, let Congress offer specifics. Let's see the Defense Budget where it should be—between $200 and $250 billion. Let's scale back the congressional budget by 10 percent so we'll have the moral authority to scale others back by 10 percent.

Two months ago, when the entitlement freeze was offered, I voted against it because there was no balance. If you're not willing to reduce defense to a level that meets a drastically diminished threat, how do you expect to get others to sacrifice their own benefits. In the budget game in this town, either everything is a sacred cow. or nothing is a sacred cow. The reality is, there is no in between.

True leadership, Mr. President, does not mean pointing the finger at Presidential candidates. This is where the buck stops—Congress. The American people have watched the actions of this institution. Congress has built a public record, and the American people have studied it. And they have responded by saying "A pox on all your Houses."

Indeed, Congress' record is one gigantic failure. Congress simply had a wishbone where its backbone should be. It crowed about deficit reduction the last 12 years. The only difference between Congress crowing and roosters crowing is that the roosters delivered what was promised.

When the American people examine the past pronouncements of Congress on deficit reduction, and then they match those pronouncements against Congress' performance, there is clearly one lesson to be learned by the public about the product of this body: if it looks like a duck, quacks like a duck and walks like a duck, it's probably a hog.

It is not the Presidential candidates who have trivialized the deficit issue, Mr. President. It is the Congress. The proof is the legacy of debt Congress has left to our children and their children. Unless we learn from the past and stop pointing the finger, Congress will continue to have diminishing credibility with the public. If ever there were people living in a glass house, surely it is Congress.

Mr. GLENN. Mr. President, I rise today in support of the Danforth amendment. We can no longer put off earnest discussions over the burgeoning deficit crisis. We must address the causes of the deficit and its cures—not after the coming election—not in the next fiscal year—but now.

From the time of President Washington to President Carter the United States accumulated less than $1 trillion in Federal debt—200 years to accumulate not quite a trillion dollars. But it took us only 12 years following 1980 to nearly quadruple that trillion-dollar debt. Imagine that—in just 12 years we have increased our debt from less than $1 trillion to almost $4 trillion.

Consider how much $4 trillion really is. The amount is almost unimaginable. If the U.S. Mint had a money machine that produced dollar bills at one per second—day and night—it would take 128,000 years to produce $4 trillion. The figure is staggering.

This massive debt will burden a generation of Americans yet to be born. And it is the burden of our generation also, draining scarce resources away from pressing domestic needs. In fiscal 1993 we will pay more than $300 billion just in interest on the debt. This is more than the Federal Government has spent over the past 7 years on discretionary programs to promote education, training, employment, and social services—combined. What a waste.

Continuing the cycle of spiraling deficits will undermine America's future, draining our Nation of its hard-earned wealth and sacrificing our children's standard of living. How do we prevent this? The answer is clear—we must take steps now to eliminate the deficit.

Many of us will disagree about what steps should be taken. But few would disagree that the process must begin with responsible and forthright leadership from the White House. The Danforth amendment rightfully recognizes the importance of Presidential leadership.

It was in 1921 that the President was first formally required by law to submit a budget request to the Congress. With the 1921 Budget and Accounting Act, the President officially became the Government's budgeteer, subject, of course, to congressional approval.

Administrations since 1921 have deployed thousands of budgetary experts throughout departments and agencies to put together the President's annual budget request. While Congress has its own limited number of experts, we cannot compete with the executive's abil-

ity to construct its initial budget request.

In recent years, we have seen Presidents rely more and more on the use of loans in constructing their budget requests. So year after year—instead of seeing Presidential leadership in balancing the budget—we have rather seen repeated requests by the White House to increase the debt limit. We in Congress simply comply with each request and another step into debt is taken. That's why I have voted against debt limit increases eight times since 1981. If we would refuse to increase the debt limit and force the hard decisions, we would not need the budget tourniquets that have been debated in this body.

The Danforth amendment calls upon the Presidential candidates to earnestly address the deficit in the hopes that after winning election a President will not merely resort to loans as the easy way out. If the Danforth recommendations are carried out, we may see the end of this regrettable trend.

But these discussions must also take place in the Congress. We share in the responsibility of confronting the deficit—and we must not shy away from that responsibility merely because the pollsters and pundits tell us that the deficit is not a hot topic or because some of our actions may be unpopular.

I welcome debate over this issue. Throughout my years in the Senate, I have worked hard to achieve fiscal responsibility and intend to continue that effort. I have voted to cut spending on programs that I felt were not in the public interest, while supporting increased spending for others that offered important investments in our Nation's future.

And I have fought waste, fraud, and abuse long before it became a popular, cure-all campaign issue. As chairman of the Governmental Affairs Committee, I worked to expand and strengthen inspectors general throughout Federal agencies saving taxpayers billions of dollars in unnecessary spending.

I have also worked to ensure that wealthy Americans pay their fair share of the Federal tax burden. These Americans should not be the benefactors of big tax breaks and scarce Federal resources.

Over the past 12 years, we have learned that the trickle-down theory of Reaganomics was poorly named. It rather opened up the Federal floodgates drenching the wealthy with benefits while the middle class received rarely a drop. As we continue discussions over the budget, I am committed to restoring fairness in the Tax Code. Without it, we will see continued alienation with our system of government.

I look forward to a continuing debate over deficit reduction here in the Senate and throughout the Nation. I will work to ensure that this is an honest and forthright debate so that all Americans can be fully engaged in this critical issue.

• Mr. HATFIELD. Mr. President, I would like to applaud the efforts of several Senators, especially the distinguished Senator from Missouri, in making an effort to get the issue of deficit reduction to the forefront in this election year. While the Danforth amendment before us is only a sense of the Senate proposal, it contains an extremely important message to those who may make budgetary policy and to those who report on budget issues to the people of this country.

As I will discuss below, we need to take action on the real problem areas of our budget. This amendment is only a small gesture, created out of the frustration of seeing this important issue avoided. The national debt has been out of control for a long time. It will take much more attention in the media and many more real answers from our leaders before it is brought under control. The people of this country realize, perhaps better than their leaders, that there is no free lunch.

It is true that this amendment will not immediately enact laws to address the deficit. It is also true that we will hear many speeches in this Chamber decrying the lack of real action to address the deficit. Today, we have already heard speeches complaining that this amendment tells other candidates for office to address the deficit while we have not voted to attack this problem ourselves.

But, I would like to remind my colleagues that in April of this year we had the opportunity to shape our budget policies in a significant and novel direction. During consideration of the budget resolution, we debated a proposal to cap growth in mandatory spending programs. At that time, only 28 of us voted to keep that proposal intact. There was a lot of discussion about what caps would do to the various beneficiaries of these programs, and these are understandable concerns. But, we were not even suggesting spending reductions during that debate. We were talking about limiting programs, besides Social Security, to growth that represents inflation, population growth, plus an extra 2 percent to ease the effects of this limitation.

Mr. President, we have also heard it said today that we already have the power we need to lower the national budget deficit. This is only partially true. We have the ability to give ourselves control over spending, but have not yet done so. Mandatory programs do not come up for annual review by Congress. They continue to grow automatically year after year to the extent that they now account for around two-thirds of the budget. In 1990, the $750 billion in mandatory spending consumed 75 percent of all revenues brought in for that year. When you add this to all of the other demands upon the Federal Government it is no wonder that we run a budget deficit.

It has become evident that mandatory programs have grown by enormous amounts over the level of inflation and are taking over the budget. In another budget area, I still believe that defense spending can be reduced to reflect the new realities evident in light of President Yeltsin's address today to the joint session of Congress. However, we also need to begin to address the out-of-control spending represented by the largest portion of our budget; it is time for reform of our mandatory spending process.

We have the power to take real steps to address the deficit. That we have not collectively taken these steps at this time is not a reason to shy away from asking for help from any person willing to come up with solutions. It is my hope that we will see the Presidential candidates discuss this issue in a serious manner. At the same time, Congress should be an equal partner in making the tough choices necessary for finally lowering the deficit.

Mr. President, at this time I would also like to announce my support for final passage of S. 1985, which contains several amendments to the Bankruptcy Code. While I have concerns over some of the provisions contained in the bill, I believe that this legislation is an important step towards correcting some of the problems that exist in our bankruptcy laws. I have heard from many debtors and creditors in Oregon regarding the issue of bankruptcy. Their comments make it obvious that there are other modifications to the Bankruptcy Code that will have to be considered in the future. However, most of the provisions in this bill represent thoughtful and much needed changes. I would like to acknowledge Senators HELFIN, GRASSLEY, BIDEN, and HATCH and their staffs for the fine efforts put into the creation and passage of this legislation.•

Mr. MITCHELL. Mr. President, am I correct in my understanding that if this amendment is agreed to, the bill will not be open further to amendment?

The PRESIDING OFFICER. The majority leader is correct.

Mr. MITCHELL. Thank you, Mr. President.

The PRESIDING OFFICER (Mr. CONRAD). The question is on agreeing to the underlying amendment, as amended.

The yeas and nays are ordered.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Oklahoma [Mr. BOREN] is necessarily absent.

I further announce that, if present and voting, the Senator from Oklahoma [Mr. BOREN] would vote "aye."

Mr. SIMPSON. I announce that the Senator from North Carolina [Mr. HELMS] and the Senator from Oregon

[Mr. HATFIELD] are absent due to illness.

On this vote, the Senator from Oregon [Mr. HATFIELD] is paired with the Senator from North Carolina [Mr. HELMS]. If present and voting, the Senator from Oregon would vote "yea" and the Senator from North Carolina would vote "nay."

The result was announced—yeas 65, nays 32, as follows:

[Rollcall Vote No. 122 Leg.]

YEAS—65

Adams	Dodd	Metzenbaum
Akaka	Durenberger	Mikulski
Baucus	Exon	Mitchell
Bentsen	Ford	Moynihan
Biden	Glenn	Nunn
Bingaman	Gore	Pell
Bond	Graham	Pressler
Bradley	Harkin	Pryor
Breaux	Inouye	Reid
Brown	Jeffords	Riegle
Bryan	Johnston	Robb
Bumpers	Kassebaum	Rockefeller
Burdick	Kennedy	Rudman
Byrd	Kerrey	Sanford
Chafee	Kerry	Sarbanes
Cohen	Kohl	Sasser
Conrad	Lautenberg	Simon
Cranston	Leahy	Specter
Danforth	Levin	Wellstone
Daschle	Lieberman	Wirth
DeConcini	Lugar	Wofford
Dixon	McConnell	

NAYS—32

Burns	Grassley	Roth
Coats	Hatch	Seymour
Cochran	Heflin	Shelby
Craig	Hollings	Simpson
D'Amato	Kasten	Smith
Dole	Lott	Stevens
Domenici	Mack	Symms
Fowler	McCain	Thurmond
Garn	Murkowski	Wallop
Gorton	Nickles	Warner
Gramm	Packwood	

NOT VOTING—3

Boren	Hatfield	Helms

So the amendment (No. 2426), as amended, was agreed to.

Mr. MITCHELL. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HEFLIN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The majority leader, is recognized.

UNANIMOUS-CONSENT AGREEMENT

Mr. MITCHELL. Mr. President, I ask unanimous consent that the vote on final passage of S. 1985 occur at 5:30 p.m. today and that the time between now and then be equally divided between Senators HEFLIN and GRASSLEY

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

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

The committee substitute, as amended, was agreed to.

The PRESIDING OFFICER. Is the majority leader seeking recognition?

Mr. MITCHELL. Yes; merely to ask for the yeas and nays on final passage.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. DECONCINI. Mr. President, I would like to express my thanks for the hard work of Senators HEFLIN and GRASSLEY and their staff in putting together S. 1985, bankruptcy reform legislation. I know what a tough job it is to try and balance the rights of creditors and debtors in the Bankruptcy Code.

This bill makes a number of significant and needed changes to the code. It creates a national bankruptcy review commission to review the Bankruptcy Code and look for further modifications needed to make the bankruptcy process more effective. It also seeks to solve some of the problems facing small business by creating a temporary chapter 10. This will be a pilot program in eight Federal districts which will provide expedited procedures for the reorganization of small businesses.

There are a number of particular provisions included in the bill that I would especially like to thank Senator HEFLIN for his help. S. 1985 includes the language of S. 1588, a bill I introduced last July that clarifies that official creditors' committees and equity security holders' committees are eligible to recover reasonable, "actual and necessary" administrative expenses incurred during a chapter 11 bankruptcy proceeding. The bankruptcy courts currently disagree over whether and to what extent official committees may recover their costs. This provision will clarify once and for all that these committees are eligible to have their expenses paid as administrative costs.

This bill also includes language providing some assistance for maintaining the low cost and availability of money orders. Money orders are used by many consumers as their principal means of paying bills. When a business that sells money orders goes bankrupt, the money order proceeds may not be released to the money order company. Nonetheless, the money order company must still pay the outstanding money order. Language included in S. 1985 is needed to clarify that money order proceeds are not the property of the bankrupt estate and as a result will be available to pay the outstanding money orders.

The modified version of S. 1985 that we expect to pass today is a compromise. In my additional views to the Judiciary Committee's report on S. 1985, I expressed some concerns about section 210 dealing with airport gate leases and section 408 dealing with attorney fees. I am pleased that these issues have been revisited and improvements made.

I would like to express some reservations about section 401 which would extend chapter 12, the family farmer bankruptcy chapter, for 2 additional years. Currently, it is set to expire in 1993. When chapter 12 was enacted in 1986, I was worried about the impact this chapter could have on our Nation's farm borrowers and lenders. Chapter 12 was enacted in the midst of the agricultural crisis as a temporary means to allow bona fide family farmers an opportunity to continue farming through a special reorganization procedure.

In particular, I am troubled about a provision of chapter 12 that permits a family farmer to cram down the secured debt on their farm to the current value of the land, and then to pay creditors what amounts to a new mortgage at a decidedly lower value. Then as the farmer returns to profitability, the creditor is precluded from sharing in the appreciation of these assets, as they could do under a more traditional chapter 11 reorganization.

It is my understanding that as a result of the cram down provisions, farm lenders are being forced to write off hundreds of millions of dollars of farm debt with no hope of recovery. This in turn is limiting the credit available to family farmers. I believe this was not the result we intended when we enacted chapter 12 in 1986.

I will not object to the 2-year extension of chapter 12. However, I do expect that during the next Congress, the Judiciary Committee will have a thorough hearing and debate on the effect of chapter 12 prior to any further reauthorization.

Mr. President, the number of bankruptcy filings continues on its upward trend. For the first quarter of 1992 bankruptcy filings were up to 9.5 percent from the same period last year. There were 252,733 individuals and businesses that filed for protection from January through March. Clearly bankruptcy filings will reach the 1 million mark in 1992. Although the legislation before us today is unlikely to affect the number of filings occurring, it will help make the process run more smoothly. I am pleased to see the bill is moving forward and express my strong support for its enactment.

Moreover, because of my concern about the significant increase in bankruptcy cases, I introduced legislation on March 13, 1991, to authorize the appointment of additional bankruptcy judges. This legislation which passed the Senate on August 2, last year, would create 32 new bankruptcy judges, including 2 for my home State of Arizona. The need for these judges is overwhelming. Unfortunately, the House of Representatives has not yet acted on this bill. Nonetheless, I am hopeful this legislation will be enacted before adjournment this fall.

Mr. THURMOND. Mr. President, I rise in support of S. 1985, the omnibus bankruptcy reform bill, sponsored by Senator HEFLIN and Senator GRASSLEY. This legislation is the result of a series of hearings before the Subcommittee on Courts and Administrative Practice last summer to consider several different bankruptcy matters and their effect on the bankruptcy community.

S. 1985 represents a comprehensive reform of the Bankruptcy Code. The first title of this legislation establishes a National Bankruptcy Review Commission to study problems relating to the Bankruptcy Code and develop proposals to make the bankruptcy process more effective and efficient. The Commission will report its findings to Congress for appropriate action.

Title II of the bill addresses a number of commercial and credit issues in bankruptcy, including the creation of a pilot chapter 10 program for small business bankruptcies which would allow for more streamlined reorganizations. Title II of the bill also addresses some of the concerns of the Pension Benefit Guaranty Corporation, seeks to clarify bankruptcy law with respect to Employee Retirement Income Security Act pension fund assets, and addresses the issue of the effect of personal guarantees and insiders preferences in the bankruptcy system.

Title III of the bill addresses issues involving individual debtors. This title seeks to encourage individual debtors to file chapter 13 bankruptcies, if possible, as opposed to liquidating under chapter 7. Other provisions of this title will increase the eligibility limits to file a bankruptcy under chapter 13, require that the debtor be examined under oath to determine if he or she fully understands the consequences of filing a bankruptcy, and encourage chapter 13 trustees to begin making payments under a chapter 13 plan as soon as possible.

S. 1985 also includes a bill, which I introduced at the administration's request, to amend the compensation method for private bankruptcy trustees to provide incentives to ensure that the bankruptcy system is not abused. Further, the substitute amendment includes a provision that I recommended, along with Senator HELMS, that will amend the bankruptcy rules to require that summons and complaints of adversary proceedings be served by certified or registered mail to ensure that all interested parties are aware of these proceedings.

Mr. President, I would like to commend the following staff members for their fine work on this important legislation: Mary Fritsche, and Thad Strom, my counsel on the Judiciary Committee, and also Winston Lett, Scott Williams and Jeffrey Hartley of Senator HEFLIN's staff, and Melissa Patack and Fred Ansell with Senator GRASSLEY.

Mr. President, in my home State of South Carolina, the number of bankruptcy filings increased by 35 percent last year. Clearly, Congress must take steps to address this situation. The bill we are considering today contains many necessary reforms that will assist in making the system more efficient. I believe that overall this legislation is fair to all parties, and I urge my colleagues to vote in favor of S. 1985, the omnibus bankruptcy reform bill.

Mrs. KASSEBAUM. Mr. President, I applaud the managers of the bill and support their efforts in making reforms to the current bankruptcy laws. However, I am concerned with the section of the bill which would extend chapter 12, which allows for the reorganization of debtors who qualify as family farmers.

In 1986, the Family Farm Bankruptcy Act established chapter 12 to provide both temporary relief and an expedited procedure under which prompt reorganization would alleviate further distress of both debtors and creditors. At that time, during a severe agricultural crisis in the Midwest, the Senate adopted a conference agreement which called for the addition of more bankruptcy judges and included the establishment of chapter 12.

According to the conference report, "Because this is a new chapter, aimed at a specific class of debtors, Congress will want to evaluate both whether the chapter is serving its purpose and whether there is a continued need for a special chapter for the family farmer. When it makes this evaluation, Congress will be able to determine whether or not to make this chapter permanent." Because of these reasons, Congress chose to sunset chapter 12 on October 1, 1993.

My concern is that Congress has yet to evaluate this chapter, even now as it acts to extend it for 2 years. I believe, at some point, we should take the time to see how well this provision has worked. Since its enactment, a number of issues have been raised with respect to its effectiveness.

For example, chapter 12 permits a family farmer to go into bankruptcy, write down the secured debt to the current value of the land, and then begin to pay the creditor based on the current value of the land. However, chapter 12 does not include write-down protections corresponding to sections 1129(b)(2)(A) and 1111(b) of chapter 11. This bill, by not including the doctrines embraced in chapter 11, precludes a creditor from any hope of participating in any upswing in the value of the collateral. Consequently, a real credit crunch for young farmers and ranchers may be the end result.

Mr. President, I hope the Committee on the Judiciary would consider hearings and focus on this matter next year.

Mr. HEFLIN. Are we ready now to have the bill read for the third time?

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

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

Mr. HEFLIN. Mr. President, at this time, I wish to take a moment to thank all the members and staff who have worked so diligently on this legislation. I want to first recognize the ranking member of the Subcommittee on Courts, Senator GRASSLEY, and his staff—Melissa Patack and especially Fred Ansell for all their hard work. On the committee, I would like to thank the following people:

From Senator BIDEN's staff: Scott Schell, James Cooper, and Cynthia Hogan;

From Senator THURMOND's staff: Mary Fritchie and Thad Strom;

From Senator KENNEDY's staff: Jeff Blatner;

From Senator HATCH'S staff: Mark Disler and Miller Baker;

From Senator METZENBAUM's staff: Pam Banks, Bill Corr, Jim Brudney, and Michele Varnhagan;

From Senator SIMPSON's staff: Jeff McCullough;

From Senator DECONCINI's staff: Janis Long and Karen Robb;

From Senator SPECTER's staff: Barry Caldwell;

From Senator LEAHY's staff: Tris Coffin;

From Senator BROWN's staff: Tracy Carnes;

From Senator SIMON's staff: Jayne Jerkins and Susan Kaplan;

From Senator KOHL's staff: Matt McCoy.

In addition, a wide range of staff from members of the committee, we received enormous input and aid. Some of these persons are:

From Senator DANFORTH's staff: Bill Hughes;

From Senator BOB GRAHAM's staff: Ann Hardison;

From Senator REID's staff: Melissa Mueller;

From Senator SANFORD's staff: David Post;

From Senator PACKWOOD's staff: Rick Grafmeyer.

In addition, I would be remiss if I did not mention the outstanding efforts of Tim Trushel from Legislative Counsel's Office, and the efforts of my staff especially: Winston Lett, Jeff Hartley, Scott Williams, and Becky Ward.

I particularly want to pay tribute to Scott Williams who has worked untiringly on this bill over a long period of time. He will be leaving the Senate shortly, and we will miss him, but in the conference and followup we are sure that Winston Lett and Jeff Hartley will be able to carry on in a competent and acceptable manner.

I know that these are not all the names of everyone who has worked on this bill and I apologize for any person who I may have left out. But I want to thank these persons for their efforts and recognize them for their hard work.

Mr. GRAMM addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Mr. President, I yield myself 5 minutes.

The PRESIDING OFFICER. The Senator is recognized for 5 minutes.

Mr. GRAMM. Mr. President, we just adopted a sense-of-the-Senate resolution to tell the Nation that the Senate is deeply alarmed about the budget deficit. I voted against the resolution, and I would like to begin by just reading the clauses in the resolution and then make a few brief remarks, and I will be finished.

What we voted for was a resolution that said, No. 1:

Public officials and candidates for public office should make proposals and engage in extensive and substantive discussion on reducing the deficit.

No. 2:

The candidates for President should agree to a formal discussion that focuses entirely on the Federal budget deficit, its implications, and solutions.

No. 3:

All candidates for office should affirm their support for this statement of principles and should resolve in the course of their campaigns to seek a mandate from the electorate with which they can effectively address the Federal deficit if elected.

Mr. President, I hope that a merciful God does not hold politicians accountable for the sin of hypocrisy. Here we are sitting Members of the Senate asking candidates for office to talk about the deficit when we have the power to do something about it right here on the floor of the Senate, and yet, we don't take action. That is why I voted against the resolution.

We voted just last week to increase funding through authorization for the Public Broadcasting System by 50 percent. The President asked for $490 million of emergency aid for Los Angeles, and now the conference committee is sending to the floor of the House and Senate a bill that spends $2 billion. We just rejected a Presidential proposal to stop this absurd situation where we are building MIA2 tanks in one part of the country and getting ready to disassemble them in another part of the country, very much like the former Soviet Union is doing today. Yet in the midst of all of this spending and all of this irresponsibility, the best we can do is to say that these people who are running for public office, these people who are running for President ought to talk about this issue.

Well, Mr. President, I believe that we ought to act on this issue. The House voted on the balanced budget amendment to the Constitution, and much to my disappointment, they rejected it. We ought to vote on it. We ought to bring up the balanced budget amendment to the Constitution. It is in order as an amendment to any bill brought to the floor of the Senate. If we are so concerned about the deficit, we ought to bring it up and vote on it in the Senate. If we are concerned about the deficit, why not defeat this emergency aid bill and go back and write one that is at the funding level the President requested?

I guess, Mr. President, I am frustrated in that the best we seem to be able to do is say to the guys who are running for public office, go out and talk about the deficit, cogitate on it, think about it, and if you get elected consider doing something about it.

We have been elected. We ought to do something about it.

Mr. President, I propose we start doing something about it today. I think we ought to vote on the balanced budget amendment to the Constitution. I just want to put people on notice that I am committed to seeing that this Congress does not come to an end without the Senate having an opportunity to be recorded with the yeas and the nays on this critically important issue. I do not believe that passing a balanced budget amendment to the Constitution will fundamentally change the world before the election.

But it will force us to begin to adopt a meaningful process to deal with the deficit. We will not have any more cases where we are seeing exploding spending at the same time that we are talking in these vague platitudes about doing something about the deficit, by debating it in the Presidential campaign.

So I am ready to act, and not just talk about these issues. I trust others are as well. I look forward to the opportunity to getting to vote yes on the balanced budget amendment to the Constitution.

I yield the floor.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. LOTT. I yield myself 5 minutes.

Mr. President, I have a rate opportunity here today, and in these brief moments I cannot pass it up. I find myself in agreement with one of the lead editorials in the Washington Post of June 17, 1992. I ask unanimous consent that editorial be printed in the RECORD.

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

SIX WEEKS AND COUNTING

It's been six weeks since the Los Angeles riots, and Congress has yet to pass even the "dire emergency" supplemental appropriations bill that was meant to be its quick response. Much less have the Democrats and the president agreed on the longer-term increase in urban aid that they also hastily promised at the time.

The House approved its tidy version of the appropriations bill a month ago; the measure was limited to cleanup money. A grandstanding Senate insisted on adding about $1.5 billion in mostly summer aid to cities generally, but without financing it. Instead it gave the president the moral equivalent of the line-item veto he is always calling for—the right to spend the extra money or not in whatever increments he chose simply by suspending the budget rules, declaring an emergency and adding the cost to the deficit.

Mr. Bush, however, turned out to like neither the cost nor the responsibility the bill conferred. The conferees obliged him in part by reducing his discretion over the money, but they kept the Senate amounts and still did not finance them. He is now threatening a veto, but the House may spare him the trouble. For lack of funds as well as lack of enthusiasm for urban causes, it is said to be likely to cut back the conference report to about $500 million in extra money for summer jobs to which the administration would apparently agree. If that's how it turns out, the summer jobs money should become available—by about midsummer.

As to a longer-range bill, the White House and Democrats are still negotiating. The president's main proposal is to establish low-tax inner-city enterprise zones, the theory being that the tax concessions will generate on-the-spot employment. The Democrats seem disposed to give him this, though there could be a fight ahead on the form of the tax inducements. A new Congressional Research Service study warns that tax cuts that favor capital over labor could actually reduce employment in the target areas, and that even those that favor labor—tax cuts based on hiring rather than investment—aren't likely to increase employment much.

The Democrats meanwhile have their own magic formula, which is to increase spending on public works, but whether all of that would rebound to the benefit of the inner cities, and how to finance it, aren't clear, either.

The dispute between the president and Congress over unemployment insurance also continues. The government has been providing extended benefits on an emergency basis to tens of thousands of workers who wouldn't otherwise qualify but have exhausted their basic 26 weeks. The provision expires next month; both parties want to extend it through the election. But the Democrats also want to strengthen the underlying system to make such emergency provisions unnecessary in the future. The president objects to both the restructuring and the tax increases with which they would finance the bill; here again he has threatened a veto. They are playing a game of chicken with the unemployed; that's about what they're doing with the cities as well.

Mr. LOTT. Mr. President, let me just read part of this editorial. It begins:

It has been 6 weeks since the Los Angeles riots, and Congress has yet to pass even the "dire emergency" supplemental appropriations bill that was meant to be a quick response.

It goes on to say:

The House approved its tidy version of the appropriations bill a month ago; the measure was limited to cleanup money. A grandstanding Senate insisted on adding about $1.5 billion in mostly summer aid to cities generally, but without financing it.

It goes on to point out that this is an issue that has been ending, this emergency, and yet we have reached no agreement, that the Senate added $1.5 billion, did not finance it, and continues to insist on that extra money for summer programs while we begin to approach the end of June.

So I would like to associate myself with the remarks of the Senator from Texas. I looked at the sense-of-the-Senate resolution we just adopted. I found myself in somewhat of a position of

disbelief. Here we are saying that Members of Congress should quiz Presidential candidates about what they want to do about the deficit and we say that other candidates for public office should have a dialog about what we should do about deficit. Yet here we are in instance after instance adding to the deficit.

The Presidents are not the problem, and will not be the problem. Democratic Presidents and Republican Presidents, since I have been a Member of the House and Senate, have usually asked for less money than the Congress appropriated.

Under the Constitution, the spending bills begin in the House of Representatives. We are the people that set up the automatic entitlement programs that are spiraling through the ceiling. We are the people that pass the appropriations bills that spend the money that cause this great deficit. So, for us to lecture Presidential candidates about what they want to do about the deficit is ridiculous. I am willing to bet you they would do a better job, any of the three, than we are doing.

I do also feel that we have just been party to hypocrisy, letting on we are so worried about the deficit and asking why nothing is done about it.

I took the time to read the resolution. It is setting up once again to say that the way to deal with the deficit is to raise taxes.

It says in the Mitchell substitute, article 9, that other than taxes devoted to Social Security pensions, the level of taxation relative to the U.S. economy has been lower in the last decade than it was in any year between 1962 and 1982. The implication once again is that the American people are undertaxed.

I invite my colleagues to check with your constituents and ask them if they feel undertaxed. Talk to the people that are pulling the load and paying the taxes. They will tell you they feel they are already overtaxed and they do not need more taxes.

Clearly, the implication in the next article, No. 10, is that the existing reckless Federal fiscal policy cannot be addressed in a meaningful way without including consideration of restraining entitlements and increasing taxes.

That is why I voted "no" on this resolution; first of all, I could not believe that we would presume to lecture somebody else about the deficit when you look at our voting record. And second, because I believe this is the beginning of the effort to deal with the deficit just by raising taxes.

The simple truth is we are spending too much money on entitlements and on regular appropriations bills. We should get our own act in order first before we begin to lecture any candidate for President about the deficit.

I yield the remainder of my time, Mr. President.

Mr. BUMPERS addressed the Chair.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. BUMPERS. Mr. President, I rise for two purposes. One is to comment on the speeches I just heard about the deficit and balancing the budget.

I heard the junior Senator from Texas say that he is going to see that every Member of the U.S. Senate is recorded on a constitutional amendment to balance the budget. Everybody knows that the House has already killed that—it is dead for this session—and that a vote on it in the U.S. Senate would be for purely partisan purposes. That is fine with me. We are all grown up here. I will face that when it comes.

But I also want to assure the junior Senator from Texas that in addition to voting to put some writing in the Constitution, I am going to personally guarantee him and everybody else in this body who waxes eloquently on a daily basis about the criminality of the deficit, and what we are going to do about it, I promise all of them personally that they are going to get a chance to vote to do something about the deficit, not just to put a few words in the Constitution and say the deed is done.

There are people who actually think that when you put it in the Constitution you have waved the wand and somehow or other it is all going to happen. You can put it in the Constitution, you can put it anywhere you want to, but the spines of the Members of Congress still have to be stiffened to make the tough choices.

I am going to start with a couple of programs called the space station and the superconducting super collider. One, the space station, the General Accounting Office says will cost some $118 billion over the next 25-30 years. The other, the superconducting super collider, started out at $4 billion—star wars started out I think at $4 billion, too—everything starts at $4 billion around here—it is up to $8-$12 billion, headed north; first spade of dirt not turned.

Last year when I offered an amendment on the super collider, of course, I had the senior Senator from Texas on this side of the aisle, and the junior Senator from Texas on that side—both opposed my amendment—and I think we had maybe 37 votes.

One of the principal arguments was, what will our partners in this venture think if we halt the super collider? We were promised that the Japanese are going to put over $1 billion into this. We are going to be untrustworthy if we stop the program. George Bush goes to Japan, and he brings up the superconducting super collider, and everybody thinks since this trip is already an unmitigated disaster the Japanese will certainly commit to him on the superconducting super collider.

Do you know what the Japanese told him he could do with that superconducting super collider: "Do not call us; we will call you."

That argument is gone. So here are two little projects, the latter one headed for $20 billion, the first one going upwards of $118 billion.

We are going to find out whether people just want to talk about this deficit, and put it in the Constitution, or whether they want to do something about it.

Mr. President, I will save the remainder of this barn-burning speech for the day we actually offer amendments and give everybody a chance to vote on reducing the deficit.

Mr. President, I rose a few minutes ago to compliment the Judiciary Committee on this bill that is before the Senate right now, the bankruptcy bill, and to say that as a young practicing lawyer it did not take me very long to learn to decline all bankruptcy cases.

There are people who specialize in bankruptcy. I suppose they get along very well with it. But I represented a lot of small businesses, trying to collect something for them, and was in bankruptcy court. I never got enough to pay my fee out of a bankruptcy case, let alone anything for my client. The trustee, the lawyers, they know how to drag these cases out until there is not even a nickel left for the creditors.

The best thing about this bill is not what the bill does, but that it sets up a commission to study precisely what is wrong with the Bankruptcy Code; how can we refine it; how can we streamline it; above all how can we be assured that small business gets something out of Bankruptcy Court.

What happens so often is that small businesses are put under because some big creditor that owes them a lot of money takes bankruptcy.

Mr. President, I was not born in a log cabin. The story goes that my folks moved into one just as soon as they could afford it. But I was born during the Depression. My father really was better off than most in town. When people were working for $21 a month on WPA and a few cheese and bean commodities, my father was making $75 a month. He sent my sister to college at a private institution when he was making $75 a month. Having grown up in that environment, I think it was only natural that one of my first desires, of course, was to make money.

One of the reasons I got into politics—and this sounds terribly self-serving, and so be it—I bought back the family business that my family had sold after my father died. It was a small town, and I knew it was going to be a long time before I could build a law practice. It was a lot longer than I thought it was going to be. Betty taught school for $125 a month, and I could not take anything out of the business, because it was not making anything. We lived on that $125 a month.

For 10 years, I owed more people than I did not owe. But bankruptcy was out of the question. I had grown up in a household where it was just an absolute given that you would not ever declare bankruptcy, even though I was hopelessly insolvent the day I bought the business.

So I toughed it out, and I had a few people take bankruptcy that owed me money. That almost put me to the point where I was going to have to shut my doors. So I have a very keen appreciation for what small business people go through. I am sympathetic to people who fall on hard times and have to take bankruptcy. I am not trying to paint everybody with the same brush, but I can tell you that, oftentimes, not only did some of my customers take bankruptcy, they skipped the country, and I got left with nothing, and they left with my merchandise.

So I feel very strongly about reforming the bankruptcy laws for the benefit of the small business community in this country.

Finally, Mr. President, I will simply say that I put everything I made in my business back into it, and the only way I got anything out of it was when I sold it. I came out reasonably well when I sold my business. I can tell you that it was a struggle for 15 years in a small town, and I knew I was going to have a tough time making it. You are being addressed right now by the South Franklin County Bar Association. I was the only lawyer in town in south Franklin County. I had personal experience with this. So I compliment the Judiciary Committee and thank them for the idea of creating this commission. I hope that commission will pay special attention to how small businesses are so adversely affected by bankruptcies.

I yield the floor.

Mr. DODD. Mr. President, first of all, if I may, I commend my colleague from Arkansas for his eloquence, as always. I want to say, before he leaves the floor, when he told me about not taking bankruptcy matters as a lawyer, he probably should have had the professor I had in law school, who taught bankruptcy. When he gave a final exam, he asked one question: What is the first thing you do as a lawyer when you are confronted with a bankruptcy matter? Everybody tried to remember the textbook and all the things in it, and everybody flunked the test, because the answer was that the first thing you do is get your client to borrow some money so you get paid. So I presume that had my colleague had that professor in law school, he might have handled more bankruptcy matters. Unfortunately, that is how they do it today.

Mr. BUMPERS. Will the Senator yield?

Mr. DODD. Yes.

Mr. BUMPERS. Since we are having a bit of levity, I had a professor one time who said, "I am going to tell you the most important thing at the end of this course anybody will every tell you." We were waiting with wild anticipation, and he said, "Here it is: Bill them while the tears are falling."

Mr. DODD. That is one of the reasons people love lawyers so much.

Mr. BUMPERS. I yield the floor.

Mr. DODD. Mr. President, I ask unanimous consent that I may be allowed to speak as in morning business for 10 minutes.

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

The Senator from Connecticut is recognized.

Mr. DODD. I thank the Chair.

(The remarks of Mr. DODD pertaining to the introduction of S. 2863 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

RACHEL ROSSOW RECEIVES JEFFERSON AWARD

Mr. DODD. Mr. President, I would like to say a few words about someone from my State who cared very deeply about children for many, many years and who this morning was recognized in a very moving ceremony at the Supreme Court, along with a number of other people, including retired Justice Thurgood Marshall, Eunice Kennedy Shriver, Faye Wattleton, and others, as recipients of the Jefferson awards in the 20th anniversary since those awards were first given.

Rachel Rossow is not well-known nationally, but she is in my State. I have known and worked with her for 20 years. In fact, I serve on the board she started called Alpha and Omega, which deals with multiply handicapped and retarded children.

This morning, as I said, she was recognized nationally for her efforts. It is hard for anybody to imagine anyone who has more fully devoted her life to public service. She and her husband have given more than 20 children their home, love, and caring beyond anything they could have ever imagined, considering the conditions to which they were born into. She has brought together and supported other families of children with special needs. She has tirelessly advocated for children, especially children with significant and sever disabilities, in every possible forum and town meeting before your State legislature, in fact, the Halls of Congress.

Mr. President, before I served in this body I served in the House of Representatives, which the Presiding Officer is very familiar with. And that body today is accessible to the handicapped because of Rachel Rossow. Back 15 years ago she showed up with about 10 of her children, all of whom were in wheelchairs with respirators, in some cases suffering from the worst kinds of birth defects and disabilities. But her children could not witness Congress in session. All they could do was put those wheelchairs in the various doors, not unlike in this Chamber, around the Chamber so they could watch Congress in session.

Then Speaker of the House, Tip O'Neill, was so moved by that inability of people to actually witness Congress in session who suffered from disabilities, that, without any legislation or any resolutions, they changed the interior of the House to accommodate people who suffer from disabilities and who would like to watch their Congress in session. And that all happened because of Rachel Rossow.

She was not recognized today for that particular involvement, but that is the kind of person she is. It was not done by holding a rally or a demonstration at all. It was just bringing her family down and, coincidentally, encountered that particular set of circumstances.

At any rate, she is a remarkable women. She has been a great asset to Connecticut.

There were some 80 or 85 nominees for this award around the country and she was 1 of the 5 finalists who received that honor today at the Supreme Court.

I missed the speech given by Boris Yeltsin. I would have loved nothing more this morning than to have attended the joint session of Congress to hear history in the making. And I apologize—I am sure Boris Yeltsin noted my absence—for missing that historic moment.

But, frankly, I think most people would understand that exactly at the same hour in the Supreme Court, in a small ceremony, a friend of mine and five richly deserving individuals received a very high honor in this country, and I wanted to be with Rachel Rossow this morning and I am pleased that I was.

I would just like to thank her and thank her husband, Carl, and her family, for all they have done for so many people as an example of what one individual can do, making a difference in the lives of so many of the people.

NATIONAL BANKRUPTCY REVIEW COMMISSION ACT

The Senate continued with the consideration of the bill.

Mr. GRASSLEY. Mr. President, I would like to offer a few remarks concerning the matter that is before the body, and that we will vote in about 17 minutes. I want to repeat what I said yesterday because I mean it and also because I want everybody to know that I feel this way as one Republican, who has worked so closely with Senator HEFLIN. As we get to the final vote on this bankruptcy bill, I thank once again Senator HEFLIN, as chairman of

the subcommittee, and as a hard-working member of the full Judiciary Committee, for working out what I think is a very good bill. Particularly over the long haul the bill will improve the operation of our bankruptcy system through the establishment of the blue ribbon commission of experts on bankruptcy law that will look at needed changes in the Bankruptcy Code. All that has been put into motion by this bill—the bankruptcy commission and the consensus-type legislation that is involved with it—I am confident will create positive change in this vital field.

It is a very technical subject. It is very difficult to craft bankruptcy legislation. Senator HEFLIN has done a very good job. I thank him very much for his efforts.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. LIEBERMAN). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. HEFLIN. Mr. President, I appreciate the kind remarks from the distinguished Senator from Iowa. It has been a pleasure to work with him and his staff. Melissa Patack has done a tremendous job. Senator GRASSLEY is not a lawyer but has tremendous abilities to comprehend legal principles and to understand the bankruptcy laws, the bankruptcy courts, as well as other matters that arise in the Judiciary Committee.

It is a real pleasure to work with him. A person normally does not understand such matters unless he has a legal education and background but I suppose a person that just has a high IQ, and a natural ability to learn, can prove himself to be a fast learner in this regard. I deeply appreciate all of his efforts and recognize and respect his mentality and his ability.

There have been many people who have been involved in this bankruptcy bill. We have talked to a great number of bankruptcy judges, seeking advice from them although they probably want to stay in the shadow. I was going to mention some of them but my very competent, able aid, Scott Williams, thinks it would be inappropriate if we mention their names, there has been a great deal of input.

There has been a lot of input from the American Bankruptcy Institute and the National Bankruptcy Conference. These organizations are dedicated toward a balance in regard to bankruptcy law. This balance is necessary. The Constitution allows for bankruptcy. In the speech that Boris Yeltsin gave today he indicated that the Republic of Russia had adopted a bankruptcy law based on the civil law in the Republic of Russia.

I think it is essential that we recognize that people do need a new start; but, on the other hand, we recognize that there have been tremendous abuses by individuals who have gone into bankruptcy. The thrust of this bill is to try to see that debts are paid. There is a chapter 7, which is known as straight bankruptcy, by which an individual goes in and his debts are erased, turning or over what assets he might have. The creditors generally will not get more than maybe a few cents on the dollar when this happens. But chapter 13 is a chapter of the Bankruptcy Code which allows a person who has to go into bankruptcy the ability to pay their debts over an extended period of time, by working out a plan of reorganization for themselves just like corporations that go into chapter 11. One of the main features of this bankruptcy bill is to fully inform all people who go into bankruptcy that there is a provision in the Bankruptcy Code that will allow them to pay their debts. And if they choose to do so, I think they come out with a feeling that they are not marked by society with the scorn that used to be present when people went into bankruptcy. Although, I think the scorn is something that is needed today for those who do not have the justification for going into bankruptcy.

There are many provisions in this bill. I will not reiterate them because I have mentioned them previously. But this is a good bill and it is a bill that I think will do a lot toward bringing about the balance now needed.

There has been a sort of absence of this balance. I think this bill will bring that balance forward.

There are also issues that arise between secured creditors and nonsecured creditors addressed in this bill. I think this bill gives a balance in this regard.

There are many provisions that some people would not notice, but we think under the trends that are currently taking place relative to the purchase of homes where Fannie Mae and Freddie Mac are involved, the average home buyer may will have to pay substantially more interest and a substantially greater discount on money. We feel this bill will help the housing market, particularly in that it remedies a situation that could have a disastrous effect in the real estate market if not addressed.

There are many other aspects of the bill. One aspect relates to asbestos litigation. In the civil court, there is probably no more urgent need for some sort of congressional solution than that of asbestos claimants. In this particular bill, we attempt to codify a procedure that took place in the Bankruptcy Court in the Southern District of New York. Here, Judge Weinstein worked out with the consent of claimants, the consent of creditors, and the consent of the asbestos company involved, by creating a situation by which, instead of wasting assets in regard to litigation, the court developed a compensation type of an approach toward pain based on the severity of the sickness and the injury of each claimant.

To me, this approach gives us some ideas in regard to how judicially we can approach the issue dealing with asbestos claims in civil courts. This is certainly something that we will be giving more attention to.

We have already had one hearing, and we hope to schedule another, dealing with the issue of asbestos claims and the civil courts of the United States which includes State courts as well as the Federal courts. We will be giving careful consideration to this in the near future.

There are many things in this bankruptcy bill that affect the general economy. We feel by passing this bill that it will aid the economy in many different ways. Some may look at them as a small matter, but such things all come together to have a big impact upon the economy, hopefully helping to get out of the recession. This bill, I think, approaches this concern and gives incentives and encouragement to business relative to how to approach economic problems in the future. We believe that this bill will help the economy as we proceed to try to get out of the current recession.

So, again, let me thank all the people who have been involved in this process. I feel like it is a good bill, and hope that the House will move expeditiously. There are some people who have come to me at the last moment pointing out what they think are defects in the bill. We disagree with this position, but nevertheless, attention can be given to any problem raised.

We have worked on this bill over a long period of time and I believe have addressed many of the problems that has been brought to our attention. The Bankruptcy Review Commission, of course, will review substantial problems as we look to the future in the bankruptcy field. Nevertheless, there are many concerns addressed. For example, the airline industry and the airport authorities will benefit. Ultimately the traveling public who use airlines will benefit as a result of this bill.

There are many aspects of this bill that do affect the general health of the economy of this country.

I again want to thank Senator GRASSLEY and all people who have participated in trying to frame a bankruptcy bill that addresses many of the problems in today's bankruptcy laws.

Mr. President, I suggest the absence of quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. MACK. Mr. President, I support S. 1985 which will do much to redress current problems in the bankruptcy system and thereby help to assure a reasonably priced and adequate supply of credit to America's businesses and consumers. However, I do wish to express my concern about one provision of S. 1985 which I believe may create unnecessary problems.

Section 205 of S. 1985 establishes a new, eight-district pilot program for small business bankruptcies. I have no quarrel with the notion that the options available to small business in financial distress may be too limited under the current Bankruptcy Code. My concern is that section 205 may actually hinder the flow of credit to small businesses due to increased lender concern about the protection of their rights in a bankruptcy situation.

For example, section 205 would permit reorganizing small businesses to write down the secured portion of an undersecured claim to the collateral's value, provide little or no recovery on that unsecured portion, and subsequently retain the entire benefit of any postbankruptcy appreciation in the collateral's value. This could have a chilling effect on a lender's willingness to extend credit to small businesses in a state where this option is available and may worsen the credit crunch already being felt by our Nation's small businesses.

It is my understanding there also could be constitutional problems with a pilot program in a limited number of States because it would not be applied uniformly to a defined class of debtors. Litigation questioning its constitutionality will likely follow the filing of the first application for relief under its provisions. Given the extended time the courts generally take to deal with constitutional issues, it is probable that this provision will be under a constitutional cloud during its entire 3-year lifespan.

Section 205 is modeled on the successful consensual program of procedural shortcuts which have been working in the Eastern District of North Carolina. It is my belief that section 205 should be replaced by an amendment to title I of the bill to encourage the National Bankruptcy Review Commission to study the need for a separate small business chapter and to recommend its contents.

I believe this issue must be approached carefully in order to keep credit flowing to small businesses. As I have said many times, credit to a business is like oxygen to the body, without it one will die. Abrogating creditor's rights in an attempt to help small businesses may only serve to cut off this essential element to a thriving small business.

I thank my colleagues for their attention to this matter of serious concern.

The PRESIDING OFFICER. The hour of 5:30 having arrived, the question is on final passage of the bill. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Idaho [Mr. SYMMS], is necessarily absent.

I further announce that the Senator from Oregon [Mr. HATFIELD] and the Senator from North Carolina [Mr. HELMS] are absent due to illness.

I further announce that if present and voting, the Senator from Oregon [Mr. HATFIELD] and the Senator from North Carolina [Mr. HELMS] would each vote "yea."

The result was announced—yeas 97, nays 0, as follows:

[Rollcall Vote No. 123 Leg.]

YEAS—97

Adams	Ford	Mitchell
Akaka	Fowler	Moynihan
Baucus	Garn	Murkowski
Bentsen	Glenn	Nickles
Biden	Gore	Nunn
Bingaman	Gorton	Packwood
Bond	Graham	Pell
Boren	Gramm	Pressler
Bradley	Grassley	Pryor
Breaux	Harkin	Reid
Brown	Hatch	Riegle
Bryan	Heflin	Robb
Bumpers	Hollings	Rockefeller
Burdick	Inouye	Roth
Burns	Jeffords	Rudman
Byrd	Johnston	Sanford
Chafee	Kassebaum	Sarbanes
Coats	Kasten	Sasser
Cochran	Kennedy	Seymour
Cohen	Kerrey	Shelby
Conrad	Kerry	Simon
Craig	Kohl	Simpson
Cranston	Lautenberg	Smith
D'Amato	Leahy	Specter
Danforth	Levin	Stevens
Daschle	Lieberman	Thurmond
DeConcini	Lott	Wallop
Dixon	Lugar	Warner
Dodd	Mack	Wellstone
Dole	McCain	Wirth
Domenici	McConnell	Wofford
Durenberger	Metzenbaum	
Exon	Mikulski	

NAYS—0

NOT VOTING—3

Hatfield	Helms	Symms

So the bill (S. 1985), as amended, was passed, as follows:

S. 1985

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

SECTION 1. FINDINGS.

Congress finds that—

(1) there was a record number of Federal bankruptcy filings for the calendar year of 1991;

(2) the smooth and efficient operation of the bankruptcy system is vital to the continued growth and vitality of our Nation's economy;

(3) debtors that file for bankruptcy are entitled and deserve full and complete information regarding the effects and consequences of filing for bankruptcy;

(4) creditors of a debtor that files for bankruptcy deserve and need full and timely information regarding the circumstances of a debtor's bankruptcy filing; and

(5) individual debtors, creditors, the bankruptcy system, and the national economy may be generally better served by the successful completion of a reorganization of debts under chapter 13 or a liquidation of debts under chapter 7 of the Bankruptcy Code, depending upon the circumstances of each particular case; however, it is vital to the efficient operation of the bankruptcy system that each debtor consider and understand the consequences of both options.

TITLE I—BANKRUPTCY REVIEW COMMISSION

SEC. 101. SHORT TITLE.

This title may be cited as the "National Bankruptcy Review Commission Act".

SEC. 102. ESTABLISHMENT.

There is established the National Bankruptcy Review Commission (referred to as the "Commission").

SEC. 103. DUTIES OF THE COMMISSION.

The duties of the Commission are—

(1) to investigate and study issues and problems relating to title 11, United States Code (commonly known as the "Bankruptcy Code");

(2) to evaluate the advisability of proposals and current arrangements with respect to such issues and problems;

(3) to prepare and submit to the Congress, the Chief Justice, and the President a report in accordance with section 108; and

(4) to solicit divergent views of all parties concerned with the operation of the bankruptcy system.

SEC. 104. MEMBERSHIP.

(a) NUMBER AND APPOINTMENT.—The Commission shall be composed of 9 members as follows:

(1) Three members appointed by the President, 1 of whom shall be designated as chairman by the President.

(2) Two members of the Senate, 1 from each of the 2 major political parties, appointed by the President pro tempore of the Senate.

(3) Two members of the House of Representatives, 1 from each of the 2 major political parties, appointed by the Speaker of the House of Representatives.

(4) Two members appointed by the Chief Justice.

(b) TERM.—Members of the Commission shall be appointed for the life of the Commission.

(c) QUORUM.—Five members of the Commission shall constitute a quorum, but a lesser number may conduct meetings.

(d) APPOINTMENT DEADLINE.—The first appointments made under subsection (a) shall be made within 60 days after the date of enactment of this Act.

(e) FIRST MEETING.—The first meeting of the Commission shall be called by the chairman and shall be held within 90 days after the date of enactment of this Act.

(f) VACANCY.—A vacancy on the Commission resulting from the death or resignation of a member shall not affect its powers and shall be filled in the same manner in which the original appointment was made.

(g) CONTINUATION OF MEMBERSHIP.—If any member of the Commission who was appointed to the Commission as a member of Congress or as an officer or employee of a government leaves that office, or if any member of the Commission who was not ap-

pointed in such a capacity becomes an officer or employee of a government, the member may continue as a member of the Commission for not longer than the 90-day period beginning on the date the member leaves that office or becomes such an officer or employee, as the case may be.

(h) CONSULTATION PRIOR TO APPOINTMENT.—Prior to the appointment of members of the Commission, the President, the President pro tempore of the Senate, the Speaker of the House of Representatives, and the Chief Justice shall consult with each other to ensure fair and equitable representation of various points of view in the Commission and its staff.

SEC. 105. COMPENSATION OF THE COMMISSION.

(a) PAY.—

(1) NONGOVERNMENT EMPLOYEES.—Each member of the Commission who is not otherwise employed by the United States Government shall be entitled to receive the daily equivalent of the annual rate of basic pay payable for Level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which he or she is engaged in the actual performance of duties as a member of the Commission.

(2) GOVERNMENT EMPLOYEES.—A member of the Commission who is an officer or employee of the United States Government shall serve without additional compensation.

(b) TRAVEL.—Members of the Commission shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of their duties.

SEC. 106. STAFF OF COMMISSION; EXPERTS AND CONSULTANTS.

(a) STAFF.—

(1) APPOINTMENT.—The chairman of the Commission may, without regard to the civil service laws and regulations, appoint, and terminate an executive director and such other personnel as are necessary to enable the Commission to perform its duties. The employment of an executive director shall be subject to confirmation by the Commission.

(2) COMPENSATION.—The chairman of the Commission may fix the compensation of the executive director and other personnel without regard to the provisions of chapter 51 and subchapter II of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay for the executive director and other personnel may not exceed the rate payable for level V of the Executive Schedule under section 5316 of that title.

(b) EXPERTS AND CONSULTANTS.—The Commission may procure temporary and intermittent services of experts and consultants under section 3109(b) of title 5, United States Code.

SEC. 107. POWERS OF THE COMMISSION.

(a) HEARINGS AND MEETINGS.—The Commission or, on authorization of the Commission, a member of the Commission, may hold such hearings, sit and act at such time and places, take such testimony, and receive such evidence, as the Commission considers appropriate. The Commission or a member of the Commission may administer oaths or affirmations to witnesses appearing before it.

(b) OFFICIAL DATA.—The Commission may secure directly from any Federal department, agency, or court information necessary to enable it to carry out this title. Upon request of the chairman of the Commission, the head of a Federal department or agency or chief judge of a Federal court shall furnish such information, consistent with law, to the Commission.

(c) FACILITIES AND SUPPORT SERVICES.—The Administrator of General Services shall provide to the Commission on a reimbursable basis such facilities and support services as the Commission may request. Upon request of the Commission, the head of a Federal department or agency may make any of the facilities or services of the agency available to the Commission to assist the Commission in carrying out its duties under this title.

(d) EXPENDITURES AND CONTRACTS.—The Commission or, on authorization of the Commission, a member of the Commission may make expenditures and enter into contracts for the procurement of such supplies, services, and property as the Commission or member considers appropriate for the purposes of carrying out the duties of the Commission. Such expenditures and contracts may be made only to such extent or in such amounts as are provided in appropriation Acts.

(e) MAILS.—The Commission may use the United States mails in the same manner and under the same conditions as other Federal departments and agencies of the United States.

(f) GIFTS.—The Commission may accept, use, and dispose of gifts or donations of services or property.

SEC. 108. REPORT.

The Commission shall submit to the Congress, the Chief Justice, and the President a report not later than 2 years after the date of its first meeting. The report shall contain a detailed statement of the findings and conclusions of the Commission, together with its recommendations for such legislative or administrative action as it considers appropriate.

SEC. 109. TERMINATION.

The Commission shall cease to exist on the date that is 30 days after the date on which it submits its report under section 108.

SEC. 110. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated $1,500,000 to carry out this title.

TITLE II—COMMERCIAL AND CREDIT MATTERS

SEC. 201. DEFINITION OF PERSON FOR PURPOSES OF SECTION 1102.

Section 101(42) of title 11, United States Code, as redesignated by section 501(7), is amended to read as follows:

"(42) 'person' includes an individual, a partnership, and a corporation, but does not include a governmental unit, except that a governmental unit is a person for purposes of section 1102 to the extent that it—

"(A) acquires an asset from a person as a result of operation of a loan guarantee agreement;

"(B) is a receiver or liquidating agent of a person;

"(C) is a guarantor of pension benefits of the debtor or an affiliate of the debtor; or

"(D) is the legal or beneficial owner of an asset of—

"(i) an employee pension benefit plan that is a governmental plan as defined in section 414(d) of the Internal Revenue Code of 1986; or

"(ii) an eligible deferred compensation plan as defined in section 457(b) of the Internal Revenue Code of 1986.

SEC. 202. ANTI-ALIENATION.

(a) AUTOMATIC STAY.—Section 362(b) of title 11, United States Code, as amended by section 501(7), is amended—

(1) by striking "or" at the end of paragraph (16);

(2) by adding "or" at the end of paragraph (17); and

(3) by adding at the end the following new paragraph:

"(18) under subsection (a), of withholding of income from a debtor's wages and collection of amounts withheld, pursuant to the debtor's agreement authorizing such withholding and collection for the benefit of a pension, profit sharing, stock bonus, or other plan qualified under section 401(a), 403(a), 403(b), or 408(k), or 457 or a governmental plan under 414(d) of the Internal Revenue Code of 1986, which is sponsored by the employer of the debtor, or an affiliate, successor or predecessor of such employer, to the extent that the amounts withheld and collected are used solely for payments relating to a loan from the plan that satisfies the requirements of section 404 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1108(b)(1)) or, in the case of a loan from the Thrift Savings Plan described in subchapter III of title 5, United States Code, that satisfies the requirements of section 8433(i) of that title.".

(b) EXCEPTIONS TO DISCHARGE.—Subsection 523(a) of title 11, United States Code, is amended—

(1) by striking "or" at the end of paragraph (11);

(2) by striking the period at the end of paragraph (12) and inserting "; or"; and

(3) by adding at the end the following new paragraph:

"(13) owed to a pension, profitsharing, stock bonus, or other plan qualified under section 401(a), 403(a), 403(b), 408(k) or a governmental plan under 414(d) or 457 of the Internal Revenue Code of 1986 pursuant to a loan permitted under section 404 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1108(b)(1)) or pursuant to a loan from the Thrift Savings Plan described in subchapter III of title 5, United States Code, that satisfies the requirements of section 8433(i) of that title.".

(c) PROPERTY OF THE ESTATE.—Subsection 541(c) of title 11, United States Code, is amended by adding at the end the following new paragraph:

"(3)(A) Subject to subparagraph (B), assets and benefits accumulated for the benefits of a debtor pursuant to a pension, profitsharing, stock bonus, or other plan qualified under section 401(a), 403(a), 403(b), or 408(k), or a governmental plan under 414(d), or 457 of the Internal Revenue Code of 1986 and any rights of debtor to such assets or benefits shall be excluded from the property of the estate.

"(B) Subparagraph (A) does not apply to plan assets or benefits attributable to contributions of the debtor to the extent that such contributions were in excess of the applicable limits on such contributions under section 401(k), 401(m), or 415 of the Internal Revenue Code of 1986.".

(d) PLAN CONTENTS.—Section 1322 of title 11, United States Code, is amended by adding at the end the following new subsection:

"(d) The plan may not materially alter the terms of a loan described in section 362(b)(18).".

(e) PLAN CONFIRMATION.—Section 1325 of title 11, United States Code, is amended—

(1) in subsection (b)(2) by striking "debtor and" and inserting "debtor (not including income that is withheld from the debtor's wages for the purposes stated in section 362(b)(18)) and"; and

(2) in subsection (c) by striking "income to" and inserting "income (except income that is withheld from a debtor's wages for the purposes stated in section 362(b)(18) after confirmation of a plan) to".

SEC. 203. CASH COLLATERAL.

Section 363(a) of title 11, United States Code, is amended by adding at the end the

following new sentence: "If the cash collateral includes an interest in rents or leases, in real property, held by a creditor and duly recorded in the public records, such interest shall be deemed perfected for purposes of this title upon the filing of a petition under section 301 or 302, or upon the entry of an order for relief under section 303.".

SEC. 204. PREFERENCES.

Section 550 of title 11, United States Code, is amended—

(1) by redesignating subsections (b), (c), (d), and (e) as subsections (c), (d), (e) and (f), respectively; and

(2) by inserting after subsection (a) the following new subsection:

"(b) The trustee may recover under subsection (a) a transfer avoided under section 547(b) from a first transferee or an immediate or mediate transferee of a first transferee only to the extent that—

"(1) all the elements of section 547(b) are satisfied as to the first transferee; and

"(2) the exceptions in section 547(c) do not protect the first transferee.".

SEC. 205. SMALL BUSINESS CHAPTER.

(a) DEFINITION.—Section 101 of title 11, United States Code, as amended by section 501, is amended—

(1) by redesignating paragraphs (54), (55), (56), (57), (58), (59), (60), (61), and (62) as paragraphs (55), (56), (57), (58), (59), (60), (61), (62), and (63); and

(2) by inserting after paragraph (53) the following new paragraph:

"(54) 'small business' means a person engaged in commercial or business activities (but does not include a person whose primary activity is the business of owning or operating real property and activities incidental thereto) whose aggregate liquidated secured and unsecured debts as of the date of the petition do not exceed $2,500,000.".

(b) WHO MAY BE A DEBTOR UNDER CHAPTER 10.—Section 109 is amended by adding at the end the following new subsection:

"(h) Only a small business may be a debtor under chapter 10.".

(c) TEMPORARY CHAPTER APPLICABLE TO SMALL BUSINESSES.—Title 11, United States Code, is amended by inserting after chapter 9 the following new chapter:

"CHAPTER 10—SMALL BUSINESSES

"SUBCHAPTER I—OFFICERS, ADMINISTRATION, AND THE ESTATE

"Sec.
"1001. Definitions for this chapter.
"1002. Commencement of action.
"1003. Trustee.
"1004. Rights and powers of debtor.
"1005. Removal of debtor as debtor-in-possession.
"1006. Property of the estate.
"1007. Conversion or dismissal.

"SUBCHAPTER II—THE PLAN

"1021. Filing of plan.
"1022. Contents of plan.
"1023. Postpetition disclosure and solicitation.
"1024. Modification of plan before confirmation.
"1025. Confirmation hearing.
"1026. Confirmation of plan.
"1027. Payments.
"1028. Effect of confirmation.
"1029. Modification of plan after confirmation.
"1030. Revocation of order of confirmation.

"Subchapter I—Officers, Administration, and the Estate

"§ 1001. Definitions for this chapter

"In this chapter, 'disposable income' means income that is received by a debtor and that is not reasonably necessary to be expended for the payment of expenditures necessary for the continuation, preservation, and operation of the debtor's business.

"§ 1002. Commencement of case

"(a) ELECTION BY DEBTOR.—A person that is eligible to be a small business debtor may commence a case under this chapter by filing a voluntary petition electing to be treated as a small business.

"(b) CONVERSION.—

"(1) THIS CHAPTER TO CHAPTER 11.—Upon the motion of a party in interest, and after notice and a hearing, the court may determine that a person subject to an order for relief electing treatment under this chapter does not qualify as a small business, and that the case shall be converted to a case under chapter 11, 12, or 13.

"(2) COMPENSATION OF TRUSTEE.—Prior to the court's conversion of a case under this section, the court shall charge upon and require to be paid from the estate such compensation as the court finds reasonable under the circumstances to compensate the trustee appointed and serving under section 1003.

"§ 1003. Trustee

"(a) PERSON TO SERVE.—If the United States trustee has appointed a person under section 586(b) of title 28 to serve as a standing trustee in cases under this chapter and if that person qualifies as a trustee under section 322, that person shall serve as a trustee in any case filed under this chapter. If such a person has not been appointed, the United States trustee shall appoint one disinterested person to serve as trustee in the case or the United States trustee may serve as trustee in the case.

"(b) DUTIES.—The trustee shall—

"(1) perform the duties described in section 704 (2), (3), (5), (6), (7), and (9);

"(2) perform the duties described in section 1106(a) (3) and (4) if the court, for cause and on a request of a party in interest, the trustee, or the United States trustee, so orders;

"(3) appear and be heard at any hearing that concerns—

"(A) the value of property subject to a lien;

"(B) the operation of the business activity of the person by the debtor;

"(C) the filing of a plan and the approval of a disclosure statement;

"(D) confirmation of a plan;

"(E) modification of a plan after confirmation; or

"(F) the sale of property of the estate;

"(4) ensure that the debtor timely files a plan and disclosure statement;

"(5) ensure that the debtor commences making timely payments required by a confirmed plan;

"(6) if the debtor ceases to be a debtor-in-possession, perform the duties described in sections 704(8) and 1106(a) (1), (2), (6), and (7);

"(7) investigate the financial affairs of the debtor including, but not limited to, the proper use of disposable income;

"(8) file and serve the report required by section 1029(d); and

"(9) file such motions as are appropriate under section 1029.

"§ 1004. Rights and powers of debtor

"Subject to such limitations as the court may prescribe, a debtor-in-possession shall have all the rights, other than the right to compensation under section 330, and powers, and shall perform all the functions and duties, except the duties described in section 1106(a) (3) and (4), of a trustee serving in a case under chapter 11, including operating the debtor's business activities.

"§ 1005. Removal of debtor as debtor-in-possession

"(a) ORDER FOR CAUSE.—On request of a party in interest, and after notice and a hearing, the court shall order that the debtor shall not be a debtor-in-possession if cause, including fraud, dishonesty, incompetence, or gross mismanagement of the affairs of the debtor, either before or after the commencement of the case, is shown.

"(b) REINSTATEMENT.—On request of a party in interest, and after notice and a hearing, the court may reinstate the debtor-in-possession.

"§ 1006. Property of the estate

"(a) PROPERTY INCLUDED.—Property of the estate includes, in addition to property described in section 541, all property of the kind specified in that section that the debtor acquires after the commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7, whichever comes first.

"(b) POSSESSION.—Except as provided in section 1005 or in a confirmed plan or order confirming a plan, a debtor shall remain in possession of all property of the estate.

"§ 1007. Conversion or dismissal

"(a) CONVERSION BY DEBTOR.—A debtor may convert a case under this chapter to a case under chapter 7 at any time if the debtor may be a debtor under that chapter. Any waiver of the right to convert under this subsection is unenforceable.

"(b) DISMISSAL BY DEBTOR.—On request of the debtor at any time, if the case has not been converted under section 706 or 1112, the court may dismiss a case under this chapter.

"(c) CONVERSION OR DISMISSAL AT REQUEST OF PARTY IN INTEREST.—

"(1) IN GENERAL.—On request of a party in interest, and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 (if the debtor may be a debtor under this chapter) or may dismiss the case for cause.

"(2) CAUSE.—For purposes of paragraph (1), cause includes—

"(A) unreasonable delay or gross mismanagement by the debtor that is prejudicial to creditors;

"(B) nonpayment of any fees and charges required under chapter 123 of title 28;

"(C) failure to file a plan timely under section 1021;

"(D) failure to file a disclosure statement timely under section 1023;

"(E) failure to commence making timely payments required by a confirmed plan;

"(F) denial of confirmation of a plan under section 1026 or denial of a request made for additional time to filing another plan or a modification of a plan;

"(G) material default by a debtor with respect to a term of a confirmed plan;

"(H) revocation of an order of confirmation under section 1030 or denial of confirmation of a modified plan under section 1029;

"(I) termination of a confirmed plan by reason of the occurrence of a condition specified in the plan; and

"(J) continuing loss to or diminution of the estate and absence of a reasonable likelihood of rehabilitation.

"(d) COMPENSATION OF TRUSTEE.—Prior to the court's conversion or dismissal of a case under this section, the court shall charge upon and require to be paid from the estate such compensation as the court finds reasonable under the circumstances to compensate the trustee appointed and serving under section 1003.

"Subchapter II—The Plan

"§ 1021. Filing of plan

"The debtor shall file a plan not later than 90 days after the date of entry of the order for relief under this chapter, except that the court may, for cause shown, and after notice and hearing, shorten or extend that period if such shortening or extension is substantially justified.

"§ 1022. Contents of plan

"(a) REQUIRED CONTENTS.—The plan shall—

"(1) provide for the submission of all or such portion future earnings or other future income of the debtor to the supervision and control of the trustee as is necessary for the execution of the plan; and

"(2) if the plan classifies claims and interests, provide the same treatment for each claim or interest within a particular class unless the holder of a particular claim or interest agrees to less favorable treatment.

"(b) ADDITIONAL CONTENTS.—Subject to subsections (a) and (c), the plan may—

"(1) designate a class or classes of unsecured claims, as provided in section 1122, but may not discriminate unfairly against any class so designated; however, the plan may treat claims for a consumer debt differently from other unsecured claims if another individual is liable on the consumer debt with the debtor;

"(2) modify the rights of holders of secured claims or holders of unsecured claims, or leave unaffected the rights of holders of any class of claims, but the plan may not modify a claim pursuant to section 506 of a person holding a primary or junior security interest in real property or a manufactured home (as defined in section 603(6) of the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5402(6)) that is the debtor's principal residence, except that the plan may modify the claim of a person holding such a junior security interest that was undersecured at the time the interest attached to the extent that the interest remains undersecured;

"(3) provide for the curing or waiving of any default;

"(4) provide for payments on any unsecured claim to be made concurrently with payments on any secured claim or any other unsecured claim;

"(5) notwithstanding paragraph (2), provide for the curing of any default within a reasonable time and maintenance of payments while the case is pending on any unsecured claim or secured claim on which the last payment is due after the date on which the final payment under the plan is due;

"(6) subject to section 365, provide for the assumption, rejection, or assignment of any executory contract or expired lease of the debtor not previously rejected under that section;

"(7) provide for the payment of all or part of a claim against the debtor from the property of the estate or property of the debtor;

"(8) provide for the sale of all or any part of the property of the estate among those having an interest in such property;

"(9) provide for payment of allowed secured claims, consistent with section 1026(a)(5), over a period exceeding the period permitted under section 1022(c);

"(10) provide for the vesting of property of the estate on confirmation of the plan or at a later time, in the debtor of any other entity ;and

"(11) include any other appropriate provision not inconsistent with this title.

"(c) LIMITATION.—Except as provided in subsection (b)(5) and (9), the plan may not provide for payments over a period that is longer than 3 years unless the court for cause approves a longer period, but the court may not approve a period that is longer than 5 years.

"§ 1023. Postpetition disclosure and solicitation

"(a) PLAN AND DISCLOSURE STATEMENT.—In a case under this chapter, an acceptance or rejection of a plan may not be solicited after the commencement of the case from a holder of a claim or interest with respect to the claim or interest unless, at the time or before such solicitation, there is transmitted to the holder the plan or a summary of the plan and a written disclosure statement that includes information sufficient to show whether or not the plan meets the requirements of section 1026.

"(b) FORM.—The court may require that the summary of the plan and the disclosure statement employ a standard form approved by the court.

"§ 1024. Modification of plan before confirmation

"(a) IN GENERAL.—A debtor may modify a plan at any time before confirmation but may not modify the plan so that the plan as modified fails to meet the requirements of section 1022.

"(b) EFFECT.—After a debtor files a modification under this section, the plan as modified becomes the plan.

"(c) ACCEPTANCE.—A holder of a secured claim that has accepted or rejected a plan is deemed to have accepted or rejected, as the case may be, the plan as modified, unless—

"(1) the modification provides for a change in the rights of the holder under the plan before modification; and

"(2) the holder changes the holder's previous acceptance or rejection.

"§ 1025. Confirmation hearing

"(a) HEARING.—After expedited notice, the court shall hold a hearing on confirmation of the plan.

"(b) OBJECTION TO CONFIRMATION.—A party in interest, the trustee, or the United States trustee may object to the confirmation of the plan.

"(c) OBJECTION TO DISCLOSURE OF INFORMATION.—A party in interest, the trustee, or the United States trustee may object to the disclosure of information that is required to be disclosed under section 1023.

"(d) CONCLUSION OF HEARING.—Except for cause, the hearing shall be concluded not later than 45 days after the filing of the plan.

"§ 1026. Confirmation of plan

"(a) CRITERIA.—Except as provided in subsection (b), the court shall confirm a plan if—

"(1) the plan complies with all applicable provisions of this title;

"(2) any fee, charge, or amount required under chapter 123 of title 28, or by the plan, to be paid before confirmation, has been paid;

"(3) the plan has been proposed in good faith and not by any means forbidden by law;

"(4) the value of property to be distributed under the plan on account of each unsecured claim, as of the effective date of the plan, is not less than the amount that would be paid on the claim if the estate of the debtor were to be liquidated under chapter 7 on that date;

"(5) with respect to each allowed secured claim provided for by the plan—

"(A) the holder of the claim has accepted the plan;

"(B)(i) the plan provides that the holder of the claim will retain the lien securing the claim; and

"(ii) the value of property to be distributed by the trustee or the debtor under the plan on account of the claim, as of the effective date of the plan, is not less than the allowed amount of the claim; or

"(C) the debtor surrenders the property securing the claim to the holder;

"(6) the debtor will be able to make all payments under the plan and to comply with the plan;

"(7) except to the extent that the holder of a claim has agreed to a different treatment of the claim, the plan provides that—

"(A) with respect to a claim of a kind described in section 507(a) (1) or (2), on the effective date of the plan, the holder of the claim will receive on account of the claim cash equal to the allowed amount of the claim;

"(B) with respect to a class of claims of a kind described in section 507(a) (3), (4), (5), or (6), each holder of a claim of the class will receive cash or deferred cash payments of a value, as of the effective date of the plan, equal to the allowed amount of such claims; and

"(C) with respect to a claim of a kind described in section 507(a)(7), the holder of the claim will receive on account of the claim deferred cash payments, over a period ending on the later of—

"(i) the date of termination of the plan; or

"(ii) the date that is 6 years after the date of assessment of the claim,

of a value, as of the effective date of the plan, equal to the allowed amount of the claim; and

"(8) confirmation of the plan is not likely to be followed by the liquidation or the need for further financial reorganization of the debtor or any successor to the debtor under the plan, unless liquidation or reorganization is proposed in the plan.

"(b) CONFIRMATION NOTWITHSTANDING NONCONFORMANCE OR OBJECTION.—If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, the court may not approve the plan unless, as of the effective date of the plan—

"(1) the value of the property to be distributed under the plan on account of the claim is not less than the amount of the claim; or

"(2) the plan provides that all of the debtor's projected disposable income to be received in the 3-year period, or such longer period as the court may approve under section 1022(c), beginning on the date on which the first payment is due under the plan, will be applied to make payments under the plan.

"§ 1027. Payments

"(a) RETENTION BY TRUSTEE.—Payments and funds received by the trustee shall be retained by the trustee until confirmation or denial of confirmation of a plan.

"(b) DISTRIBUTION FOLLOWING CONFIRMATION.—If a plan is confirmed, the trustee shall distribute in accordance with the plan payments and funds retained pursuant to subsection (a).

"(c) RETURN FOLLOWING NONCONFIRMATION.—If a plan is not confirmed, the trustee shall return any payments and funds retained pursuant to subsection (a), after deducting—

"(1) any unpaid claim allowed under section 503(b); and

"(2) if a standing trustee is serving in the case, the percentage fixed for the standing trustee under section 1003.

"(d) PAYMENTS PRECEDING PAYMENTS TO CREDITORS.—Before or at the time of each payment to creditors under the plan, there shall be paid—

"(1) any unpaid claim of a kind described in section 507(a)(1); and

"(2) if a standing trustee is serving in the case, the percentage fee fixed for such standing trustee under section 1003.

"(e) PAYMENTS TO CREDITORS.—Except as otherwise provided in the plan or in the order confirming the plan, the trustee shall make payments to creditors under the plan.

"§ 1028. Effect of confirmation

"(a) PERSONS BOUND.—Except as provided in subsection (d) (2) and (3), a confirmed plan binds the debtor, any entity issuing securities under the plan, any entity acquiring property under the plan, and any creditor, equity security holder, or general partner of the debtor, whether or not the claim or interest of such creditor, equity security holder, or general partner is impaired under the plan and whether or not such creditor, equity security holder, or general partner has accepted the plan.

"(b) VESTING OF PROPERTY.—Except as otherwise provided in the plan or order confirming the plan, the confirmation of a plan vests all of the property of the estate in the debtor.

"(c) FREEDOM OF PROPERTY FROM CLAIMS AND INTERESTS.—Except as provided in subsection (d) (2) and (3), and except as otherwise provided in the plan or in the order confirming the plan, after confirmation of a plan, the property dealt with by the plan is free and clear of all claims and interests of creditors, equity security holders, and general partners of the debtor.

"(d) DISCHARGE OF DEBTOR.—

"(1) ON COMPLETION OF PAYMENTS.—As soon as practicable after completion by the debtor of all payments under the plan, other than payments to holders of allowed claims provided for under section 1022(b) (5) or (9), unless the court approves a written waiver of discharge executed by the debtor after the order for relief under this chapter, the court shall grant the debtor a discharge of all debts provided for by the plan allowed under section 503 or disallowed under section 502, except any debt—

"(A) provided for under section 1022(b) (5) or (9); or

"(B) of the kind specified in section 523(a).

"(2) WHEN PAYMENTS ARE NOT COMPLETED.—At any time after the confirmation of the plan and after notice and a hearing, the court may grant a discharge to a debtor that has not completed payments under the plan if—

"(A) the debtor's failure to complete such payments is due to circumstances for which the debtor should not be justly held accountable;

"(B) the value, as of the effective date of the plan, of property actually distributed under the plan on account of each allowed secured claim is not less than the amount that would have been paid on the claim if the estate of the debtor had been liquidated under chapter 7 on that date; and

"(C) modification of the plan under section 1029 is not practicable.

"(3) EFFECT.—A discharge granted under paragraph (2) discharges the debtor from all unsecured debts provided for by the plan or disallowed under section 502, except any debt—

"(A) provided for under section 1022(b)(5) or (9); or

"(B) of a kind specified in section 523(a).

"(4) REVOCATION.—On request of a party in interest made before the date that is 1 year after the date on which a discharge under this section is granted, and after notice and hearing, the court may revoke the discharge if—

"(A) the discharge was obtained by the debtor through fraud; and

"(B) the requesting party did not know of the fraud until after the discharge was granted.

"(e) TERMINATION OF SERVICES OF TRUSTEE.—After the debtor is granted a discharge, the court shall terminate the services of any trustee serving in the case.

"§ 1029. Modification of plan after confirmation

"(a) IN GENERAL.—At any time after confirmation of a plan but before the completion of payments under the plan, the plan may be modified, on request of the debtor, the trustee, or the holder of any allowed unsecured claim, to—

"(1) increase or reduce the amount of payments of claims of a particular class provided for by the plan;

"(2) extend or reduce the time for such payments; or

"(3) alter the amount of the distribution to a creditor whose claim is provided for by the plan to the extent necessary to take account of any payment of the claim other than under the plan.

"(b) APPLICABILITY OF REQUIREMENTS.—Sections 1022 (a) and (b) and 1024 and the requirements of section 1025(a) apply to a modification under subsection (a).

"(c) LIMITATION.—A plan modified under subsection (a) may not provide for payments over a period that expires after 3 years after the date on which the first payment under the original confirmed plan was due, unless the court, for cause, approves a longer period, but the court may not approve a period that expires after 5 years after that date.

"(d) REPORT.—Not later than 60 days after each anniversary of the confirmation of the plan, the trustee shall file a report with the court, and serve a copy on all creditors requesting service of a copy of the report, setting forth—

"(1) the amount of distributions made to creditors during the preceding year;

"(2) a description of the debtor's compliance with the provisions of the plan during the preceding year;

"(3) a description of the debtor's disposable income in relation to the continued ability to comply with the terms of the confirmed plan; and

"(4) any modifications to the plan that are necessary to ensure the reorganization of the debtor and the payment to creditors of all disposal income.

"§ 1030. Revocation of order of confirmation

"(a) REVOCATION FOR FRAUD.—On request of a party in interest at any time within 180 days after the date of the entry of an order of confirmation under section 1028, and after notice and a hearing, the court may revoke the order if the order was procured by fraud.

"(b) DISPOSITION OF CASE AFTER REVOCATION.—If the court revokes an order of confirmation under subsection (a), the court shall dispose of the case under section 1007, unless, within a time fixed by the court, the debtor proposes and the court confirms a modification of the plan under section 1029.".

(d) TECHNICAL AMENDMENTS.—

(1) TABLE OF CHAPTERS IN TITLE 11, UNITED STATES CODE.—Title 11, United States Code, is amended in the table of chapters by inserting after the item relating to chapter 9 the following new item:

"10. Small Businesses ..... 1001".

(2) CROSS-REFERENCES IN TITLE 11, UNITED STATES CODE.—Title 11, United States Code, is amended—

(A) in section 321(a) by inserting "10," after "7," each place it appears;

(B) in section 322(a) by inserting "1005" after "703,";

(C) in section 326(b)—

(i) by striking "12 or 13" and inserting "10, 12, or 13"; and

(ii) by striking "1202(a) or 1302(a)" and inserting "1005, 1202(a), or 1302(a)";

(D) in section 327—

(i) in subsection (b) by inserting "1005," after "721,"; and

(ii) in subsection (c) by inserting "10," after "7,";

(E) in section 329(b)(1)(B) by inserting "10," after "chapter";

(F) in section 330(c) by striking "12 or 13" and inserting "10, 12, or 13";

(G) in section 346—

(i) in subsection (b) by inserting "10," after "7,";

(ii) in subsection (g)(1)(C) by striking "11 or 12" and inserting "10, 11, or 12"; and

(iii) in subsection (i)(1) by inserting "10," after "7,";

(H) in section 347—

(i) in subsection (a)—

(I) by inserting "1027," after "726,"; and

(II) by inserting "10," after "7,"; and

(ii) in subsection (b)—

(I) by inserting "10," after "9,"; and

(II) by inserting "1026," after "943(b),";

(I) in section 348—

(i) in subsections (b), (c), and (e) by inserting "1009," after "706," each place it appears; and

(ii) in subsection (d) by inserting "1009," after "section";

(J) in section 362(c)(2)(C) by inserting "10" after "9,";

(K) in section 363—

(i) in subsection (c)(1) by inserting "1006," after "721,"; and

(ii) in subsection (l) by inserting "10," after "chapter";

(L) in section 364(a) by inserting "1006, 1007," after "721,";

(M) in section 365—

(i) in subsections (d)(2) and (g) (1) and (2) by inserting "10," after "9," each place it appears; and

(ii) in subsection (g)(2) (A) and (B) by inserting "1009," after "section" each place it appears;

(N) in section 502(g) by inserting "10," after "9,";

(O) in section 523(a) by inserting "1028(d)," after "727,";

(P) in section 524—

(i) in subsections (a)(1), (c)(1), and (d) by inserting "1028(d)," after "727," each place it appears; and

(ii) in subsection (a)(3) by inserting "1028(d)," after "523,";

(Q) in section 546(a)(1) by inserting "1005," after "702,";

(R) in section 557(d)(3) by inserting "1005," after "703,";

(S) in section 706—

(i) in subsection (a)—

(I) by inserting "10," before "11,"; and

(II) by inserting "1009," after "section"; and

(ii) in subsection (c) by striking "12 or 13" and inserting "10, 12, or 13";

(T) in section 726(b) by inserting "1009," after "chapter under section";

(U) in section 1106(a)(5) by inserting "10," after "7,";

(V) in section 1306(a) (1) and (2) by inserting "10," after "7," each place it appears; and

(W) in section 1307—

(i) in subsection (b) by inserting "1009," after "706,";

(ii) in subsection (d) by striking "11 or 12" and inserting "10, 11, or 12"; and

(iii) in subsection (e) by inserting "10," after "7,".

(3) BANKRUPTCY RULES.—The rules prescribed under section 2075 of title 28, United States Code, and in effect on the date of the enactment of this Act shall apply to cases filed under chapter 10 of title 11, United States Code, to the extent practicable and not inconsistent with the amendments made by this Act.

(4) AMENDMENT OF TITLE 28, UNITED STATES CODE.—Title 28, United States Code, is amended—

(A) in section 157(b)(2)(B) by inserting "10," after "chapter";

(B) in section 586—

(i) in subsection (a)—

(I) in paragraph (1)(C)—

(aa) by striking "12 and 13" and inserting "10, 12, and 13"; and

(bb) by inserting "1025, 1029," after "sections"; and

(II) in paragraph (3) in the matter preceding subparagraph (A), by inserting "10," after "7,"; and

(C) in subsections (b), (d), and (e) by striking "12 or 13" each place it appears and inserting "10, 12, or 13"; and

(D) in section 1930(a)—

(i) by redesignating paragraphs (3), (4), (5), and (6) as paragraphs (4), (5), (6), and (7), respectively; and

(ii) by inserting after paragraph (2) the following new paragraph:

"(3) For a case commenced under chapter 10 of title 11, $600.".

(5) AMENDMENT OF THE BANKRUPTCY, JUDGES, UNITED STATES TRUSTEES, AND FAMILY FARMER BANKRUPTCY ACT OF 1986.—Section 301 of the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986 (100 Stat. 3118) is amended in subsections (d) and (e) by inserting "10," after "7," each place it appears.

(e) APPLICATION OF CHAPTER 10 OF TITLE 11.—

(1) SELECTION OF DEMONSTRATION DISTRICTS.—Not later than 90 days after the date of enactment of this Act, the Director of the Administrative Office of the United States Courts shall—

(A) select 8 judicial districts in which chapter 10 of title 11, United States Code, shall be effective for a period of 3 years; and

(B) identify those districts by notice in the Federal Register.

(2) EFFECTIVE PERIOD.—Chapter 10 of title 11, United States Code, shall become effective only in the 8 judicial districts selected under paragraph (1), beginning on the date that is 90 days after the date of enactment of this Act and ending on the date that is 3 years after that date.

(3) REPEAL.—(A) Chapter 10 of title 11, United States Code, is repealed on the date that is 3 years after the date that is 90 days after the date of enactment of this Act. All cases commenced or pending under that chapter and all matters and proceedings in or relating to those cases shall be conducted and determined under that chapter as if the chapter had not been repealed. The substantive rights of parties in connection with those cases, matters, and proceedings as if the chapter had not been repealed.

(B) The Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives shall prepare and report to the Senate and the House of Representatives, respectively, not later than 90 days before the repeal date described in subparagraph (A), legislation proposing such technical amendments as may be necessary or appropriate at that time in view of the repeal made by subparagraph (A).

SEC. 206. SUPPLEMENTAL PERMANENT INJUNCTIONS.

Section 524 of title 11, United States Code, is amended by adding at the end the following new subsection:

"(g)(1)(A) After notice and hearing, a court that enters an order confirming a plan of reorganization under chapter 11 may issue an injunction to supplement the injunctive effect of a discharge under this section.

"(B) An injunction may be issued under subparagraph (A) to enjoin persons and governmental units from taking legal action for the purpose of directly or indirectly collecting, recovering, or receiving payment or recovery of, on, or with respect to any claim or demand that, under a plan of reorganization, is to be paid in whole or in part by a trust described in paragraph (2)(B)(i), except such legal action as is expressly allowed by the injunction or plan of reorganization.

"(2)(A) If the requirements of subparagraph (B) are met, after entry of an injunction under paragraph (1) any proceeding that involves the validity, application, construction, or modification of the injunction or of this subsection with respect to the injunction may be commenced only in the district court in which the injunction was entered, and such court shall have exclusive jurisdiction over any such proceeding without regard to the amount in controversy.

"(B) The requirements of this subparagraph are that—

"(i) the injunction is to be implemented in connection with a trust that, pursuant to the plan of reorganization—

"(I) is to be funded in whole or in part by the securities of one or more debtors involved in the plan of reorganization and by the obligation of such debtor or debtors to make future payments;

"(II) is to own, or by the exercise of rights granted under the plan could own, a majority of the voting shares of—

"(aa) each such debtor;

"(bb) the parent corporation of each such debtor; or

"(cc) a subsidiary of each such debtor that is also a debtor; and

"(III) is to use its assets or income to pay claims and demands; and

"(ii) the court finds that—

"(I) the debtor may be subject to substantial future demands for payment arising out of the same or similar conduct or events that gave rise to the claims that are addressed by the injunction;

"(II) the actual amounts, numbers, and timing of such future demands cannot be determined;

"(III) pursuit of such demands outside the procedures prescribed by the plan may threaten the plan's purpose to deal equitably with claims and future demands; and

"(IV) as part of the process of seeking approval of the plan of reorganization, a separate class or classes of the claimants whose claims are to be addressed by a trust described in clause (i) is established and votes, by at least 75 percent of those voting, in favor of the plan.

"(3)(A) If the requirements of paragraph (2)(B) are met and the order approving the plan of reorganization was issued or affirmed by the district court that has jurisdiction over the reorganization proceedings, then after the time for appeal of the order that issues or affirms the plan of reorganization—

"(i) the injunction shall be valid and enforceable and may not be revoked or modified by any court except through appeal in accordance with paragraph (6);

"(ii) no entity that is a direct or indirect transferee of, or successor to any assets of, a debtor or trust that is the subject of the injunction shall be liable with respect to any claim or demand made against it by reason of its becoming such a transferee or successor; and

"(iii) no entity that makes a loan to such a debtor or trust or to such a successor or transferee shall, by reason of making such loan, be liable with respect to any claim or demand made against it, nor shall any pledge of assets made in connection with such a loan be upset or impaired for that reason;

"(B) Subparagraph (A) is not intended to—

"(i) imply that such an entity would, if this paragraph were not applicable, have liability by reason of any of the acts described in subparagraph (A);

"(ii) relieve any such entity of the duty to comply with, or of liability under, any Federal or State law regarding the making of a fraudulent conveyance; or

"(iii) relieve any debtor of its obligation to comply with the terms of the plan of reorganization or affect the power of the court to exercise its authority under sections 1141 and 1142 to compel the debtor to do so.

"(4)(A) Subject to subparagraph (B), an injunction issued under paragraph (1) shall be valid and enforceable against all persons and governmental units that it addresses.

"(B) With respect to a demand that is made subsequent to the confirmation of a plan against any debtor or trust that is the subject of an injunction issued under paragraph (1), the injunction shall be valid and enforceable if, as part of the proceedings leading to its issuance, the court appointed a legal representative for the purpose of protecting the rights of persons that might subsequently assert such a demand.

"(5) In this subsection, the term 'demand' means a demand for payment, present or future, that—

"(A) was not a claim during the proceedings leading to the confirmation of a plan of reorganization;

"(B) arises out of the same or similar conduct or events that gave rise to the claims addressed by an injunction issued under paragraph (1); and

"(C) pursuant to the plan, is to be paid by a trust described in paragraph (2)(B)(i).

"(6) Paragraph (3)(A)(i) does not bar an action taken by or at the direction of an appellate court on appeal of an injunction issued under paragraph (1) or of the order of confirmation that relates to the injunction.

"(7) This subsection governs any injunction of the nature described in paragraph (1)(B) entered before or after the date of enactment of this subsection.

"(8) This subsection does not affect the operation of section 1144 or the power of the district court to refer a proceeding under section 157 of title 28 or any reference of a proceeding made prior to the date of enactment of this subsection.

"(9) Nothing in subsection (g) shall affect the court's existing authority to issue an injunction pursuant to an order approving a plan of reorganization.".

SEC. 207. EXEMPTION.

Section 109(b)(2) of title 11, United States Code, is amended by inserting after "homestead association" the following: "a small business investment company licensed by the Small Business Administration under section 301 (c) or (d) of the Small Business Investment Act of 1958 (15 U.S.C. 681 (c) and (d)),".

SEC. 208. PRE-MERGER NOTIFICATION.

Section 363(b)(2) of title 11, United States Code, is amended by amending subparagraphs (A) and (B) to read as follows:

"(A) notwithstanding subsection (a) of that section, the notification on behalf of the debtor shall be given by the trustee; and

"(B) notwithstanding subsection (b)(1) of that section, the required waiting period shall end on the tenth day after the date of receipt of the notification, unless the waiting period is extended—

"(i) pursuant to subsection (e)(2) or (g)(2) of that section; or

"(ii) by the court, after notice and hearing.".

SEC. 209. STATUS CONFERENCE.

Section 1121 of title 11, United States Code, is amended by adding at the end the following new subsection:

"(e) Notwithstanding any other provision of this section, the court, on its own motion or on the motion of any party in interest, may hold a status conference regarding any case under this chapter, after notice to creditors and other parties in interest. At such a conference or any subsequent status conference set by the court, the court may issue an order, consistent with this title, prescribing such limitations and conditions as the court deems appropriate to ensure that the case is handled expeditiously and economically, including orders that—

"(1) set a date by which the debtor, or trustee if one has been appointed, shall file a disclosure statement and plan;

"(2) set a date by which the debtor, or trustee if one has been appointed, shall confirm a plan;

"(3) set the date by which a party in interest other than a debtor may file a plan;

"(4) fix the notice to be provided regarding the hearing on approval of the disclosure statement;

"(5) provide that the hearing on approval of the disclosure statement may be combined with the hearing on confirmation of the plan;

"(6) direct the use of standard-form disclosure statements, plans, or other forms that have been adopted by the court; and

"(7) set the date by which the debtor must accept or reject an executory contract.".

SEC. 210. AIRPORT LEASES.

(a) EXECUTORY CONTRACTS AND UNEXPIRED LEASES.—Section 365(d) of title 11, United States Code, is amended by adding at the end the following new paragraph:

"(5)(A) Notwithstanding paragraphs (1), (2), and (4), and subject to subparagraphs (B) and (C) of this paragraph, if the trustee in a case under any chapter of this title does not assume or reject an unexpired lease or executory contract with an airport operator under which the debtor has a right to the use or possession of an airport terminal, aircraft gate, or related facility within 180 days after the date of the order for relief, or within such additional time as the court sets under subparagraph (B) during such 180-day period, such lease or executory contract is deemed rejected, and the trustee shall immediately surrender the airport terminal, gate, or related facility to the airport operator.

"(B)(i) The court may enter an order extending beyond 180 days after the date of the order for relief the time for assumption or rejection of an unexpired lease or executory contract described in subparagraph (A) only after finding that such an extension of time does not cause substantial harm to the airport operator or to airline passengers.

"(ii) In making the determination of substantial harm, the court shall consider, among other relevant factors—

"(I) the level of use of airport terminals, gates, or related facilities subject to the unexpired lease or executory contract;

"(II) the existence of competing demands for the use of the airport terminals, gates, or related facilities;

"(III) the size and complexity of the case; and

"(IV) air carrier competition at the airport.

"(iii) The burden of proof for establishing cause for an extension of time under this subparagraph shall be on the trustee.

"(iv) An order entered under this subparagraph shall be without prejudice to the right of a party in interest to request, at any time, a shortening or termination of the extension of time granted under this subparagraph.".

(b) APPLICATION OF AMENDMENT.—The amendment made by subsection (a) shall apply in all proceedings commenced on or after January 1, 1992. In a proceeding commenced on or after January 1, 1992, that is pending on the date of enactment of this Act, the 180-day period provided in section 365(d)(5)(A) of title 11, United States Code, as added by subsection (a), shall commence on the date of enactment of this Act.

SEC. 211. SINGLE ASSET REAL ESTATE.

(a) DEFINITION.—Section 101 of title 11, United States Code, as amended by section 205(a), is amended—

(1) by redesignating paragraphs (54), (55), (56), (57), (58), (59), (60), (61), (62), and (63) as paragraphs (55), (56), (57), (58), (59), (60), (61), (62), (63), and (64); and

(2) by inserting after paragraph (53) the following new paragraph:

"(54) 'single asset real estate' means real property constituting a single property or project, other than residential real property with fewer than 4 residential units, which generates substantially all of the gross income of a debtor and on which no substantial business is being conducted by a debtor other than the business of operating the real property and activities incidental thereto;".

(b) AUTOMATIC STAY.—Section 362 of title 11, United States Code, is amended—

(1) in subsection (d)—

(A) in paragraph (1) by striking "or" at the end;

(B) in paragraph (2) by striking the period at the end and inserting "; or"; and

(C) by adding at the end the following new paragraph:

"(3) with respect to a stay of an act against single asset real estate under subsection (a), by a creditor whose claim is secured by an interest in such real estate, unless, not later than the date that is 90 days after the entry of the order for relief (or such later date as the court may determine for cause by order entered within that 90-day period)—

"(A) the debtor has filed a plan of reorganization that has a reasonable possibility of being confirmed within a reasonable time; or

"(B) the debtor has commenced monthly payments to each creditor whose claim is secured by such real estate, which payments are in an amount equal to interest at a current fair market rate on the value of the creditor's interest in the real estate."; and

(2) by adding at the end the following new subsection:

"(i)(1) Upon request of a creditor whose claim is secured by an interest in single asset real estate, if the interest has more than de minimis value, the court shall issue an order granting limited relief from the stay provided under subsection (a) to permit the creditor to continue a foreclosure proceeding commenced before the commencement of the case up to, but not including, the point of sale.

"(2) An order under paragraph (1) shall not issue before the date that is 30 days after the date of entry of the order for relief, but thereafter shall issue promptly after such a request.

"(3) A hearing shall not be required for the granting of relief under paragraph (1) unless the debtor files an objection to the request and shows the court extraordinary circumstances requiring such a hearing.".

SEC. 212. PAYMENT OF INSURANCE BENEFITS TO RETIRED EMPLOYEES.

Section 1114(e) of title 11, United States Code, is amended by adding at the end the following new paragraph:

"(3) Notwithstanding any other provision of this title, if there are not sufficient unencumbered assets available to make a timely payment required by paragraph (1), an order approving the use, sale, or lease of cash collateral or the obtaining of credit or incurring of debt shall require the debtor to use such cash collateral, credit, or incurring of debt to make the payment.".

SEC. 213. AIRCRAFT EQUIPMENT, VESSELS AND ROLLING STOCK EQUIPMENT.

(a) AMENDMENT OF SECTION 1110.—Section 1110 of title 11, United States Code, is amended to read as follows:

"§ 1110. Aircraft equipment and vessels

"(a)(1) The right of a secured party with a security interest in equipment described in paragraph (2) or of a lessor or conditional vendor of such equipment to take possession of such equipment in compliance with a security agreement, lease, or conditional sale contract is not affected by section 362 or 363 or by any power of the court to enjoin the taking of possession unless—

"(A) before the date that is 60 days after the date of the order for relief under this chapter, the trustee, subject to the court's approval, agrees to perform all obligations of the debtor that become due on or after the date of the order under such security agreement, lease, or conditional sale contract; and

"(B) any default, other than a default of a kind specified in section 365(b)(2), under such security agreement, lease, or conditional sale contract—

"(i) that occurs before the date of the order is cured before the expiration of such 60-day period; and

"(ii) that occurs after the date of the order is cured before the later of—

"(I) the date that is 30 days after the date of the default; or

"(II) the expiration of such 60-day period.

"(2) Equipment is described in this paragraph if it is—

"(A) an aircraft, aircraft engine, propeller, appliance, or spare part (as defined in section 101 of the Federal Aviation Act of 1958 (49 U.S.C. App. 1301)) that is subject to a security interest granted by, leased to, or conditionally sold to a debtor that is an air carrier (as defined in section 101 of the Federal Aviation Act of 1958 (49 U.S.C. App. 1301)); or

"(B) a documented vessel (as defined in section 30101(1) of title 46, United States Code) that is subject to a security interest granted by, leased to, or conditionally sold to a debtor that is a water carrier that holds a certificate of public convenience and necessity or permit issued by the Interstate Commerce Commission.

"(3) Paragraph (1) applies to a secured party, lessor, or conditional vendor acting in its own behalf or acting as trustee or otherwise in behalf of another party.

"(b) The trustee and the secured party, lessor, or conditional vendor whose right to take possession is protected under subsection (a) may agree, subject to the court's approval, to extend the 60-day period specified in subsection (a)(1).

"(c) If the trustee makes an agreement of the kind described in subsection (a)(1)(A) with respect to a security agreement, lease, or conditional sale contract, any costs and expenses incurred by the secured party, lessor, or conditional vendor to remedy the failure of the trustee to perform the obligations of the estate to maintain or return equipment in accordance with the security agreement, lease, or conditional sale contract constitute administrative expenses under section 503(b)(1)(A).

"(d) With respect to equipment first placed in service on or prior to the date of enactment of this subsection, for purposes of this section—

"(1) the term 'lease' includes any written agreement with respect to which the lessor and the debtor, as lessee, have expressed in the agreement or in a substantially contemporaneous writing that the agreement is to be treated as a lease for Federal income tax purposes; and

"(2) the term 'security interest' means a purchase-money equipment security interest.".

(b) AMENDMENT OF SECTION 1168.—Section 1168 of title 11, United States Code, is amended to read as follows:

"§ 1168. Rolling stock equipment

"(a)(1) The right of a secured party with a security interest in or of a lessor or conditional vendor of equipment described in paragraph (2) to take possession of such equipment in compliance with an equipment security agreement, lease, or conditional sale contract is not affected by section 362 or 363 or by any power of the court to enjoin the taking of possession, unless—

"(A) before the date that is 60 days after the date of commencement of a case under this chapter, the trustee, subject to the court's approval, agrees to perform all obligations of the debtor that become due on or after the date of commencement of the case under such security agreement, lease, or conditional sale contract; and

"(B) any default, other than a default of a kind described in section 365(b)(2), under such security agreement, lease, or conditional sale contract—

"(i) that occurs before the date of commencement of the case and is an event of default therewith is cured before the expiration of such 60-day period; and

"(ii) that occurs or becomes an event of default after the date of commencement of the case is cured before the later of—

"(I) the date that is 30 days after the date of the default or event of default; or

"(II) the expiration of such 60-day period.

"(2) Equipment is described in this paragraph if it is rolling stock equipment or accessories used on such equipment, including superstructures and racks, that is subject to a security interest granted by, leased to, or conditionally sold to the debtor.

"(3) Paragraph (1) applies to a secured party, lessor, or conditional vendor acting in its own behalf or acting as trustee or otherwise in behalf of another party.

"(b) The trustee and the secured party, lessor, or conditional vendor whose right to take possession is protected under subsection (a) may agree, subject to the court's approval, to extend the 60-day period specified in subsection (a)(1).

"(c) If the trustee makes an agreement of the kind described in subsection (a)(1)(A) with respect to a security agreement, lease, or conditional sale contract, any costs and expenses incurred by the secured party, lessor, or conditional vendor to remedy the failure of the trustee to perform the obligations of the estate to maintain or return equipment in accordance with the security agreement, lease, or conditional sale contract constitute administrative expenses under section 503(b)(1)(A).

"(d) With respect to equipment first placed in service on or prior to the date of enactment of this subsection, for purposes of this section—

"(1) the term 'lease' includes any written agreement with respect to which the lessor and the debtor, as lessee, have expressed in the agreement or in a substantially contemporaneous writing that the agreement is to be treated as a lease for Federal income tax purposes; and

"(2) the term 'security interest' means a purchase-money equipment security interest.".

(c) APPLICATION OF AMENDMENTS.—(1) The amendment of section 1110(a) and section 1168(a) of title 11, United States Code, made by subsections (a) and (b) shall not apply to bankruptcy proceedings commenced prior to the date of enactment of this Act.

(2) The amendment of section 1168(a) of title 11, United States Code, made by subsection (b) shall take effect with respect to equipment that is first placed in service after the date of enactment of this Act, including rolling stock equipment that is substantially rebuilt after that date and accessories used on such equipment.

SEC. 214. UNEXPIRED LEASES OF PERSONAL PROPERTY IN CHAPTER 11 CASES.

Section 365(d)(3) of title 11, United States Code, is amended in the first sentence by inserting after "real property" the following: "and, in a case under chapter 11, under an unexpired lease of personal property".

SEC. 215. PROTECTION OF ASSIGNEES OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES APPROVED BY COURT ORDER IN CASES REVERSED ON APPEAL.

Section 365(d)(3) of title 11, United States Code, is amended by adding at the end the following new subsection:

"(p) The reversal or modification on appeal of an authorization under this section of an assignment of an executory contract or unexpired lease does not affect the validity of the assignment to an entity that obtained the assignment in good faith, whether or not the entity knew of the pendency of the appeal, unless the authorization and the assignment were stayed pending appeal.".

SEC. 216. RETURN OF GOODS.

(a) LIMITATION ON AVOIDING POWERS.—Section 546 of title 11, United States Code, is amended by adding at the end the following new subsection:

"(h) Notwithstanding the rights and powers of a trustee under sections 544(a), 545, 547, 549, and 553, if the court determines, after notice and a hearing, that a return is in the best interests of the estate, the debtor, with the consent of a creditor, may return goods shipped to the debtor by the creditor before the commencement of the case, and the creditor may offset the value of such goods against any claim of the creditor against the debtor that arose before the commencement of the case.".

(b) SETOFF.—Section 553(b)(1) is amended by inserting "546(h)," after "365(h)(2),".

SEC. 217. INDENTURE TRUSTEE COMPENSATION.

Section 503(b) of title 11, United States Code, is amended—

(1) in paragraph (3)—

(A) by redesignating subparagraphs (D) and (E) as subparagraphs (E) and (F), respectively;

(B) by inserting after subparagraph (C) the following new subparagraph;

"(D) an indenture trustee;"; and

(C) in subparagraph (E), as redesignated by subparagraph (A), by striking "an indenture trustee,"; and

(2) in paragraph (5) by striking "for services rendered by an indenture trustee in making a substantial contribution in a case under chapter 9 or 11 of this title" and inserting "for necessary services".

SEC. 218. PROCEEDS OF MONEY ORDER AGREEMENTS.

Section 541(b) of title 11, United States Code, is amended—

(1) by striking "or" at the end of paragraph (2);

(2) by striking the period at the end of paragraph (3) and inserting "; or"; and

(3) by adding at the end the following new paragraph:

"(4) any interest in cash or cash equivalents (within the meaning of section 363(a)) that constitute proceeds of a sale by the debtor of a money order that is made—

"(A) on or after the date that is 14 days prior to the date on which the petition is filed; and

"(B) under an agreement with a money order issuer that prohibits the commingling of such proceeds with property of the debtor (notwithstanding that, contrary to the agreement, the proceeds may have been commingled with property of the debtor).".

TITLE III—INDIVIDUAL DEBTORS

SEC. 301. BANKRUPTCY PETITION PREPARERS.

(a) AMENDMENT OF CHAPTER 1.—(1) Chapter 1 of title 11, United States Code, is amended by adding at the end the following new section:

"SEC. 110. PENALTY FOR PERSONS WHO NEGLIGENTLY OR FRAUDULENTLY PREPARE BANKRUPTCY PETITIONS.

"(a) DEFINITION.—In this section—

"(1) the term 'bankruptcy petition preparer' means a person, other than an attorney or an employee of an attorney, who prepares for compensation a document for filing; and

"(2) the term 'document for filing' means a petition or any other document prepared for filing by a debtor in a United States bankruptcy court or a United States district court in connection with a case under this title.

"(b) SIGNING OF DOCUMENTS.—(1) A bankruptcy petition preparer who prepares a document for filing shall sign the document and print on the document the preparer's name and address.

"(2) A bankruptcy petition preparer who fails to comply with paragraph (1) may be fined not more than $500 for each such failure unless the failure is due to reasonable cause.

"(c) FURNISHING OF IDENTIFYING NUMBER.—(1) A bankruptcy petition preparer who prepares a document for filing shall place on the document, after the preparer's signature, an identifying number that identifies the individuals who prepared the document.

"(2) For purposes of this section, the identifying number of a bankruptcy petition preparer shall be the Social Security account number of each individual who prepared the document or assisted in its preparation.

"(3) A bankruptcy petition preparer who fails to comply with paragraph (1) may be fined not more than $500 for each such failure unless the failure is due to reasonable cause.

"(d) FURNISHING OF COPY TO THE DEBTOR.—(1) A bankruptcy petition preparer shall, not later than the time at which a document for filing is presented for the debtor's signature, furnish to the debtor a copy of the document.

"(2) A bankruptcy petition preparer who fails to comply with paragraph (1) may be fined not more than $500 for each such failure unless the failure is due to reasonable cause.

"(e) AUTHORIZATION TO EXECUTE DOCUMENTS.—(1) A bankruptcy petition preparer shall not execute any document on behalf of a debtor unless—

"(A) the debtor has first given the preparer written authorization to execute the document; and

"(B) the preparer is otherwise authorized by law to execute the document.

"(2) A bankruptcy petition preparer may be fined not more than $500 for each document executed in violation of paragraph (1).

"(f) DAMAGES.—If a bankruptcy case or related proceeding is dismissed because of the negligence or intentional disregard of this title or the bankruptcy rules by a bankruptcy petition preparer, or if a bankruptcy petition preparer violates this section or commits any fraudulent, unfair, or deceptive act, the bankruptcy court shall certify that fact to the district court, and the district court, on motion of the debtor and after a hearing, shall order the bankruptcy petition preparer to pay to the debtor—

"(1) the debtor's actual damages;

"(2) the greater of—

"(A) $2,000; or

"(B) twice the amount paid by the debtor to the bankruptcy petition preparer for the preparer's services; and

"(3) reasonable attorneys' fees and costs in moving for damages under this subsection.

"(g) INJUNCTIVE RELIEF.—

"(1) IN GENERAL.—A debtor for whom a bankruptcy petition preparer has prepared as document for filing, the United States trustee in the district in which the bankruptcy petition preparer resides or has a principal place of business, or the United States trustee in the district in which the debtor resides may bring a civil action to enjoin a bankruptcy petition preparer from engaging in any conduct in violation of this section or from further acting as a bankruptcy petition preparer.

"(2) CONDUCT.—(A) In an action under paragraph (1), if the court finds that—

"(i) a bankruptcy petition preparer has—

"(I) engaged in conduct in violation of this section or of any provision of this title a violation of which subjects a person to criminal penalty;

"(II) misrepresented the preparer's experience or education as a bankruptcy petition preparer; or

"(III) engaged in any other fraudulent, unfair, or deceptive conduct; and

"(ii) injunctive relief is appropriate to prevent the recurrence of such conduct,

the court may enjoin the bankruptcy petition preparer from engaging in such conduct.

"(B) If the court finds that a bankruptcy petition preparer has continually engaged in conduct described in clause (i) (I), (II), or (III) and that an injunction prohibiting such conduct would not be sufficient to prevent such person's interference with the proper administration of this title, or has not paid a penalty imposed under this section, the court may enjoin the person from acting as a bankruptcy petition preparer.

"(3) ATTORNEY'S FEE.—The court shall award to a debtor who brings a successful action under this subsection reasonable attorney's fees and costs of the action.

"(i) UNAUTHORIZED PRACTICE OF LAW.—Nothing in this section shall be construed to permit activities that are otherwise prohibited by law, including rules and laws that prohibit the unauthorized practice of law.".

(2) The chapter analysis for chapter 1 of title 11, United states Code, is amended by adding at the end the following new item:

"110. Penalty for persons who negligently or fraudulently prepare bankruptcy petitions.".

(b) AMENDMENT OF TITLE 18, UNITED STATES CODE.—(1) Chapter 9 of title 18, United States Code, is amended by adding at the end the following new section:

"§ 156. Willful disregard of bankruptcy law or rule.

"(a) DEFINITIONS.—In this section—

"(1) the term 'bankruptcy petition preparer' means a person, other than an attorney or an employee of an attorney, who prepares for compensation a document for filing; and

"(2) the term 'document for filing' means a petition or any other document prepared for filing by a debtor in a United States bankruptcy court or a United States district court in connection with a case under this title.

"(b) OFFENSE.—If a bankruptcy case or related proceeding is dismissed because of a willful attempt by a bankruptcy petition preparer in any manner to disregard the requirements of title 11, United States Code, or the Bankruptcy Rules, the bankruptcy petition preparer shall be fined $5,000.".

(2) The chapter analysis for chapter 9 of title 18, United States Code, is amended by adding at the end the following new item:

"156. Willful disregard of bankruptcy law or rule.".

(c) AMENDMENT TO SECTION 152.—Section 152 of title 18, United States Code, is amended by—

(1) designating each of the presently unnumbered paragraphs as "(a)" through "(j)" respectively;

(2) inserting in the newly designated paragraph (a) "or the United States Trustee" after the words "or from creditors"; and

(3) inserting in the newly designated paragraph (i) "or the United States Trustee" after the words "or other officer of the court".

(d) AMENDMENT TO SECTION 153.—Section 153 of title 18, United States Code, is amended by deleting the words "which came into his charge as trustee, custodian, marshal, or other officer of the court,", and by amending the catchline and the item in the table of sections to read:

"§ 153. Embezzlement against estate".

(e) AMENDMENT TO SECTION 154.—Section 154 of title 18, United States Code, is amended by—

(1) designating each of the presently unnumbered paragraphs as "(a)" through "(c)" respectively;

(2) deleting the hyphen at the end of newly designated paragraph (b) and inserting in lieu thereof "; or";

(3) inserting a new paragraph (c) and redesignating paragraph (c) as paragraph (d):

"(c) Whoever being such officer, knowingly refuses to permit a reasonable opportunity for the inspection of the documents and accounts relating to the affairs of estates in his charge by the United States trustee—"; and

(4) deleting in subsection (d) "$500" and inserting in lieu thereof "$5,000".

SEC. 302. WHO MAY BE A DEBTOR.

Section 109(e) of title 11, United States Code, is amended to read as follows:

"(e)(1) An individual with regular income that owes, on the date of filing the petition, noncontingent, liquidated debts of less than $1,000,000, or an individual with regular income and such individual's spouse, except a stock broker or commodity broker, may be a debtor under chapter 13.

"(2) An individual with regular income that owes, on the date of filing the petition, noncontingent, liquidated debts of more than $1,000,000, or an individual with regular income and such individual's spouse, except a stock broker or commodity broker, may be a debtor under chapter 13 if there is no objection raised on the record by any creditor prior to the date that is 10 days after the date on which the meeting of creditors pursuant to section 341 is concluded, and no order of confirmation shall be entered prior to the date by which such an objection is required to be made.".

SEC. 303. MEETINGS OF CREDITORS AND EQUITY SECURITY HOLDERS.

Section 341 of title 11, United States Code, is amended by adding at the end the following new subsection:

"(d) Prior to the conclusion of the meeting of creditors or equity security holders, the United States trustee shall orally examine the debtor under oath and make recommendations on a preserved record regarding the debtor's knowledge of—

"(1) the potential consequences of seeking a discharge in bankruptcy, including the effects on credit history;

"(2) the debtor's ability to file a petition under a different chapter of this title;

"(3) the effect of receiving a discharge of debts under this title;

"(4) the effect of reaffirming a debt, including the debtor's knowledge of the provisions of section 524(d);

"(5) the debtor's duties under section 521;

"(6) the potential penalties and fines for committing fraud or other abuses of this title; and

"(7) the consequences of substantial abuse under section 707(b).".

SEC. 304. AUTOMATIC STAY.

Section 362(e) of title 11, United States Code, is amended by adding at the end the following new sentence: "In no event shall the final hearing on a request under subsection (d) be concluded later than 60 days after the filing of the request, except upon a finding of good cause by the court.".

SEC. 305. EXEMPTIONS.

Section 522(a) of title 11, United States Code, is amended—

(1) by striking "and" at the end of paragraph (1) and redesignating that paragraph as paragraph (2);

(2) by inserting before paragraph (2), as redesignated by paragraph (1), the following new paragraph:

"(1) 'antique', for purposes of subsection (d), means an item that was more than 100 years old at the time it was acquired by the debtor, including such an item that has been repaired or renovated without changing its original form or character;";

(3) by redesignating paragraph (2), as designated prior to the date of enactment of this Act, as paragraph (4); and

(4) by inserting after paragraph (2), as redesignated by paragraph (1), the following new paragraph:

"(3) 'household goods', for purposes of subsection (d), means clothing, furniture, appliances, linens, china, crockery, kitchenware, and personal effects of the debtor and the debtor's dependents, but does not include—

"(A) works of art;

"(B) electronic entertainment equipment (except to the extent of 1 television and 1 radio);

"(C) antiques; and

"(D) jewelry other than wedding rings.".

SEC. 306. EFFECT OF DISCHARGE.

Section 524(d) of title 11, United States Code, is amended—

(1) by striking "(d) In" and inserting "(d)(1) In";

(2) by striking "(1) inform" and inserting "(A) inform";

(3) by striking "(A) that" and inserting "(i) that";

(4) by striking "(B) of" and inserting "(ii) of";

(5) by striking "(i) an" and inserting "(I) an";

(6) by striking "(ii) a" and inserting "(II) a";

(7) by striking "(2) determine" and inserting "(B) determine";

(8) in the third sentence of paragraph (1), as designated by paragraph (1) of this section, by striking "If a discharge has been granted and if the debtor desires to make an agreement of the kind specified in subsection (c) of this section, then" and inserting "Prior to granting a discharge, if the debtor desires to make an agreement of the kind specified in subsection (c)(6),"; and

(9) by adding at the end the following new paragraph:

"(2) If a debtor fails to attend a hearing under paragraph (1) concerning a reaffirmation agreement—

"(A) the hearing shall be rescheduled;

"(B) the court shall cause the debtor to be given written notice that failure to attend the rescheduled hearing will cause the reaffirmation agreement to be deemed void; and

"(C) if the debtor fails to attend the rescheduled hearing, a discharge shall be granted without further delay.".

SEC. 307. PREFERENCES.

Section 547(c)(3)(B) of title 11, United States Code, is amended by striking "property" and inserting "property, or with respect to which the creditor has taken all necessary steps to perfect under State law and the failure to perfect within 20 days is due solely to the operations of a governmental unit;".

SEC. 308. SUBSTANTIAL ABUSE.

Section 707 of title 11, United States Code, is amended—

(1) by adding at the end the following new subsection:

"(c)(1) Nothing in this section prohibits a party in interest from providing information concerning the debtor's assets, liabilities, or financial affairs to the United States Trustee.

"(2) The United States trustee shall provide the debtor with—

"(A) notice that a party in interest has provided the United States trustee with information pursuant to subsection (c)(1), including the identities of all sources of information provided;

"(B) a copy of all documents presented to the United States trustee pursuant to subsection (c)(1); and

"(C) an opportunity to respond to the issues raised by a party in interest pursuant to subsection (c)(1).."; and

(2) in subsection (b) by inserting after the first sentence the following new sentence: "The court shall find that a petition constitutes a substantial abuse of this chapter if the petition was filed in bad faith or if the debtor, without substantial hardship, has the ability to pay the debtor's debts as they become due.".

SEC. 309. CONVERSION OR DISMISSAL.

Section 1307 of title 11, United States Code, is amended by adding at the end the following new subsection:

"(g) The clerk of the court shall give notice to all creditors not later than 30 days after the entry of an order of conversion or dismissal.".

SEC. 310. CONTENTS OF PLAN.

Section 1322(b)(2) of title 11, United States Code, is amended by striking "claims;" and inserting "claims, but the plan may not modify a claim pursuant to section 506 of a person holding a primary or a junior security interest in real property or a manufactured home (as defined in section 603(6) of the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5402(6)) that is the debtor's principal residence, except that the plan may modify the claim of a person holding such a junior security interest that was undersecured at the time the interest attached to the extent that the interest remains undersecured;".

SEC. 311. PAYMENTS.

Section 1326(a)(2) of title 11, United States Code, is amended in the second sentence by striking the period and inserting "as soon as practicable.".

SEC. 312. STAY OF ACTION AGAINST CODEBTOR.

Section 1301 of title 11, United States Code, is amended—

(1) in subsection (c)—

(A) by striking "or" at the end of paragraph (2);

(B) by striking the period at the end of paragraph (3) and inserting "; or"; and

(C) by adding at the end the following new paragraph:

"(4) the claim is for an amount valued at not greater than $25,000, and such relief is not a substantial impediment to an effective reorganization by the debtor, and unless the codebtor has demonstrated an inability to pay such claim or a substantial portion of such claim."; and

(2) by adding at the end the following new subsection:

"(e) If the relief sought by the creditor pursuant to subsection (c)(4) is granted by the court, the codebtor shall by subrogation have the same rights as the creditor, under this title, against the debtor to the extent of the amount of relief obtained from the codebtor. Pending any delay in obtaining relief from the codebtor, after the court order, payment by the debtor shall continue to be paid to the creditor, but subject to the developing subrogation rights of the codebtor.".

SEC. 313. PLAN CONTENTS.

Section 1322 of title 11, United States Code, as amended by section 202(d), is amended—

(1) by redesignating subsections (c) and (d) as subsections (d) and (e); and

(2) by inserting after subsection (b) the following new subsection:

"(c) Notwithstanding State law and subsection (b)(2), and whether or not a claim is matured or reduced to judgment, a debtor who at the time of filing a petition under this title possesses any legal or equitable interest, including a right of redemption, in real property securing a claim—

"(1) may cure a default and maintain payments on the claim pursuant to subsection (b) (3) or (5); or

"(B) in a case in which the last payment on the original payment schedule for the claim is due before the date on which the final payment under the plan is due, may provide for the payment of the claim pursuant to section 1325(a)(5).".

TITLE IV—MISCELLANEOUS

SEC. 401. DELAY OF REPEAL OF CHAPTER 12 (FAMILY FARMERS).

Section 302(f) of the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986 (11 U.S.C. 1201 note; 100 Stat. 3124) is amended by striking "October 1, 1993" and inserting "October 1, 1995".

SEC. 402. DOLLAR ADJUSTMENTS.

(a) INVOLUNTARY CASES.—Section 303(b) of title 11, United States Code, is amended—

(1) in paragraph (1) by striking "$5,000" and inserting "$10,000"; and

(2) in paragraph (2) by striking "$5,000" and inserting "$10,000".

(b) PRIORITIES.—Section 507(a) of title 11, United States Code, is amended—

(1) in paragraph (3)(B) by striking "$2,000" and inserting "$4,000";

(2) in paragraph (4)(B)(i) by striking "$2,000" and inserting "$4,000"; and

(3) in paragraph (6) by striking "$900" and inserting "$1,800".

(c) EXEMPTIONS.—Section 522(d) of title 11, United States Code, is amended—

(1) in paragraph (1) by striking "$7,500" and inserting "$15,000";

(2) in paragraph (2) by striking "$1,200" and inserting "$2,400";

(3) in paragraph (3)—

(A) by striking "$200" and inserting "$400"; and

(B) by striking "$4,000" and inserting "$8,000";

(4) in paragraph (4) by striking "$500" and inserting "$1,000";

(5) in paragraph (5)—

(A) by striking "$400" and inserting "$800"; and

(B) by striking "$3,750" and inserting "$7,500";

(6) in paragraph (6) by striking "$750" and inserting "$1,500";

(7) in paragraph (8) by striking "$4,000" and inserting "$8,000"; and

(8) in paragraph (11)(D) by striking "$7,500" and inserting "$15,000".

(d) APPOINTMENT OF EXAMINER IN CERTAIN CIRCUMSTANCES.—Section 1104(b)(2) of title 11, United States Code, is amended by striking "$5,000,000" and inserting "$10,000,000".

SEC. 403. TRUSTEE COMPENSATION.

Section 326(a) of title 11, United States Code, is amended to read as follows:

"(a) In a case under chapter 7 or chapter 11, the court may allow reasonable compensation under section 330 for the trustee's services, payable after the trustee renders such services, computed as a percentage of all monies disbursed or turned over in the case by the trustee to parties in interest, excluding the debtor for the debtor's exemptions, but including holders of secured claims, as follows:

"(1) In a case in which such moneys do not exceed $1,000,000, reasonable compensation may be 25 percent of the first $5,000 or less, 10 percent on any amount in excess of $5,000 but not in excess of $50,000, and 5 percent of any amount in excess of $50,000.

"(2) In a case in which such moneys exceed $1,000,000, reasonable compensation, in addition to that prescribed in paragraph (1), may be 3 percent of the excess of those moneys over $1,000,000, but the court may allow additional compensation to the trustee for exceptional services not to exceed 25 percent of the compensation otherwise due.".

SEC. 404. TAX PROVISIONS.

(a) SPECIAL TAX PROVISIONS.—Section 346 of title 11, United States Code, is amended by adding at the end the following new subsection:

"(k) A trustee or debtor in possession shall establish and maintain a separate bank account for post-petition taxes that are required to be withheld or collected from third parties, and shall also make deposit of such taxes therein when withheld or collected and

remit such taxes to a governmental unit at the time and in the manner required under Federal, State, or local government law, unless ordered by the court to do otherwise.".

(b) AUTOMATIC STAY.—Section 362(b)(9) of title 11, United States Code, is amended to read as follows:

"(9) under subsection (a), of an audit by a governmental unit to determine tax liability, of the issuance to the debtor by a governmental unit of a notice of tax deficiency, of a demand for tax returns, or of an assessment of an uncontested or agreed upon tax liability;".

(c) CONVERSION OR DISMISSAL OF CHAPTER 11 CASE.—Section 1112(b) of title 11, United States Code, is amended—

(1) by striking "or" at the end of paragraph (9);

(2) by striking the period at the end of paragraph (10) and inserting "; or"; and

(3) by adding at the end the following new paragraph:

"(11) failure to file tax returns or pay taxes due to be paid to a governmental unit within the time and in the manner required by laws applicable to such taxes subsequent to the date of the order for relief under this chapter.".

(d) CONFIRMATION OF PLAN.—Section 1129(a)(9)(C) of title 11, United States Code, is amended by striking "such claim, of a value" and inserting "such claim, or, if a claim has not been assessed, after the date of confirmation of the claim, of a value".

(e) CONVERSION OR DISMISSAL OF CHAPTER 12 CASE.—(1) Section 1208(c) of title 11, United States Code, is amended—

(A) by striking "or" at the end of paragraph (8);

(B) by striking a period at the end of paragraph (9) and inserting "; or"; and

(C) by adding at the end the following new paragraph:

"(10) failure to file tax returns or pay taxes due to be paid to a governmental unit within the time and in the manner required by the laws applicable to such taxes subsequent to the date of the order for relief under this chapter.".

(2) Section 1307(c) of title 11, United States Code, is amended—

(A) by striking "or" at the end of paragraph (9);

(B) by striking the period at the end of paragraph (10) and inserting "; or"; and

(C) by adding at the end the following new paragraph:

"(11) failure to file tax returns or pay taxes due to be paid to a governmental unit within the time and in the manner required by laws applicable to such taxes subsequent to the date of order for relief under this chapter.".

SEC. 405. CREDITOR COMMITTEE COMPENSATION.

Section 503(b) of title 11, United States Code, is amended—

(1) by striking "and" at the end of paragraph (5);

(2) by striking the period at the end of paragraph (6) and inserting "; and"; and

(3) by adding at the end the following new paragraph:

"(7) the actual, necessary expenses incurred by a committee representing creditors or equity security holders appointed under section 1102 in the performance of its powers and duties under that section.".

SEC. 406. JUDICIAL CONFERENCE REPORT.

Not later than 180 days after the date of enactment of this Act, the Judicial Conference of the United States shall produce and submit to the appropriate committees of Congress a report containing a description of—

(1) the efforts of the Federal judiciary to automate and computerize the Federal bankruptcy courts;

(2) the types of information that are currently available to Congress and the public regarding the number, size, and types of bankruptcy cases filed in the Federal courts;

(3) the types of additional information that the Federal judiciary believes are necessary and desirable to enhance its ability to manage the affairs of the bankruptcy system; and

(4) the projected timetable for being able to supply those additional types of information to Congress and the public in the future.

SEC. 407. SERVICE OF PROCESS.

Rule 7004(b)(3) of the Bankruptcy Rules is amended—

(1) by inserting ", by certified or registered mail," after "complaint"; and

(2) by inserting ", by certified or registered mail," after "copy".

SEC. 408. PROFESSIONAL FEES.

Section 330(a) of title 11, United States Code, is amended to read as follows:

"(a)(1) After notice to the parties in interest and the United States trustee and a hearing, and subject to sections 326, 328, and 329, the court may award to a trustee, an examiner, a professional person employed under section 327 or 1103, or the debtor's attorney in conformance with guidelines adopted by the Executive Office for United States Trustees pursuant to section 586(a)(3)(A) of title 28—

"(A) reasonable compensation for actual, necessary services rendered by the trustee, examiner, professional person, or attorney and by any paraprofessional person employed by any such person; and

"(B) reimbursement for actual, necessary expenses.

"(2)(A) In determining an amount of reasonable compensation to be awarded under paragraph (1)(A), the court—

"(i) may, on its motion or on the motion of the United States trustee or any party in interest, award compensation that is less than the amount of compensation that is requested; and

"(ii) shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including—

"(I) the time spent on such services;

"(II) the rates charged for such services;

"(III) whether the services were necessary in the administration of or beneficial toward the completion of a case under this title; and

"(IV) the total value of the estate and the amount of funds or other property available for distribution to all creditors both secured and unsecured.

"(B) In calculating compensation for services for the purpose of subparagraph (A)(ii), the court shall consider—

"(i) whether tasks were performed within a reasonable amount of time commensurate with the complexity, importance and nature of the problem, issue or task addressed; and

"(ii) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in nonbankruptcy cases.

"(3) The court shall not allow compensation for duplication of services or for services that are not either reasonably likely to benefit the debtor's estate or necessary in the administration of the case.

"(4)(A) The court shall take into account the amount and timing of interim compensation, if any awarded and paid, in awarding final compensation.

"(B) If interim compensation was awarded and paid in an amount that exceeds the amount the court awards as final compensation the court may order the return of the excess to the trustee or other entity that paid it.

"(5) In determining the amount to be awarded for the preparation of fee applications, the court shall recognize the difference between the cost of professional services and services for the preparation of fee applications. The costs awarded for the preparation of fee applications shall be reasonable and based on the level of skill required.

SEC. 409. TRUSTEE DUTIES.

Section 586(a)(3)(A) of title 28, United States Code, is amended to read as follows:

"(A)(i) reviewing, in accordance with procedural and substantive guidelines adopted by the Executive Office of the United States Trustee (which guidelines shall be applied uniformly except when circumstances warrant different treatment), applications for compensation and reimbursement filed under section 330 of title 11; and

"(ii) filing with the court comments with respect to such an application and, when the United States Trustee deems it to be appropriate, objections to any such application.

SEC. 410. PENSION PLAN CONTRIBUTIONS.

(a) TREATMENT AS ADMINISTRATIVE EXPENSES.—Section 503(b) of title 11, United States Code, as amended by section 405, is amended—

(1) by striking "and" at the end of paragraph (6);

(2) by striking the period at the end of paragraph (7) and inserting "; and"; and

(3) by adding at the end the following new paragraph:

"(8) minimum funding contributions to an employee pension benefit plan for which the debtor is liable, which accrue on or after the date of commencement of the case (regardless of the time such contribution comes due), under section 412 of the Internal Revenue Code of 1986 and section 302 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1082).".

(b) PAYMENT OR POSTPONEMENT OF MINIMUM FUNDING CONTRIBUTIONS DUE PENSION PLANS.—(1) Subchapter I of chapter 11 of title 11, United States Code, is amended by adding at the end the following new section:

"§ 1115. Contributions to certain employee pension benefit plans

"(a) TIMELY PAYMENT OF CONTRIBUTIONS.—Except as provided in subsection (b), the debtor in possession, or the trustee if one has been appointed, shall make any minimum funding contributions for which the debtor is liable, which accrue on or after the date of commencement of the case (regardless of the time such contribution comes due), under section 412 of the Internal Revenue Code of 1986 and section 302 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1082).

"(b) POSTPONEMENT OF CONTRIBUTIONS.—(1)(A) Subject to paragraph (2), the court may, on motion of any party and after notice and hearing, determine that the making of all or part of a minimum funding contribution required to be made by a debtor to a pension plan may be postponed until a date that is not later than—

"(i) the effective date of a plan of reorganization confirmed under section 1129; or

"(ii) if the case is converted to a case under chapter 7, the date on which a distribution of property is made under section 726.

"(B) In making a determination under subparagraph (A), the court shall take into account the requirements of the estate.

"(C) Interest shall accrue on the amount of a contribution that is postponed from the date on which the contribution became due to the date of payment at the rate specified in section 412(m) of the Internal Revenue Code of 1986 and section 302(e) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1082(e)).

"(2)(A) Before permitting payment of all or part of a contribution to be postponed, the court shall grant security to the pension plan and, in the case of a plan covered under section 4021 of the Employee Retirement Security Act of 1974 (29 U.S.C. 1321), the Pension Benefit Guaranty Corporation, for the amount of a contribution that is postponed, affording adequate protection in accordance with section 364(d)(1)(B).

"(B) If the debtor in possession or trustee fails to make a postponed contribution on the date on which it is to be made under an order issued under paragraph (1), the pension plan shall be permitted to foreclose on the security provided under subparagraph (A).

"(c) NOTICE.—The administrator of the pension plan and, in the case of a plan covered under section 4021 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1321), the Pension Benefit Guaranty Corporation, shall be given notice of and may participate in any hearing seeking postponement of a contribution or foreclosure under this section.".

(2) The chapter analysis for chapter 11 of title 11, United States Code, is amended by inserting after the item for section 1114 the following new item:

"1115. Contributions to certain employee pension benefit plans.".

(c) CLARIFICATION OF EXISTING LAW.—(1) The amendment of section 550 of title 11, United States Code, made by section 204 shall apply with respect to a transfer to a pension plan that is subject to the minimum funding requirements of section 412 of the Internal Revenue Code of 1986 and section 302 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1082) only if the transfer is the subject of a motion or proceeding seeking avoidance of the transfer that is filed on or after the date of passage of this Act in the Senate.

(2)(A) In making the amendments made by subsections (a) and (b), it is the purpose of Congress to clarify the meaning of the provisions that are amended as they existed prior to the date of enactment of this Act.

(B) The amendments made by subsections (a) and (b) shall not be applied so as to supersede or alter any agreement or understanding (or modifications thereto before or after enactment) regarding a debtor's minimum funding contributions entered into among a debtor, the Internal Revenue Service, and the Pension Benefit Guaranty Corporation prior to the date of enactment of this Act. If any agreement or understanding referenced in the preceding sentence is set aside or not implemented because of the act or omission of the Pension Benefit Guaranty Corporation, the law applicable to all matters in that proceeding shall be determined without regard to subsections (a) or (b).

SEC. 411. DEFICIT REDUCTION: A CALL FOR DEBATE.

(a) The Senate finds that—

(1) the growing national debt is a legacy of bankruptcy which will make America's economy steadily weaker and more vulnerable than it is today;

(2) to amass a national debt of $4,000,000,000,000 and an annual deficit of $400,000,000,000 is to breach trust with present and future Americans;

(3) the national interest in controlling the deficit takes precedence over partisan advantage;

(4) it is the responsibility of candidates for President and for Congress to discuss the deficit, if the priority issues facing our country (such as investing in human capital and physical infrastructure to promote economic growth) are to be effectively and honestly addressed;

(5) the American people will provide a mandate for governmental action, if given information and serious choices for deficit reduction that calls for shared sacrifice;

(6) the frequency and level of public comment on this issue by too many public officers and House and Senate candidates, including those who hold and seek the office of the President, have been insignificant and inadequate;

(7) by and large, too many candidates, Members of Congress, and members of the media have ignored or trivialized this issue by suggestions such as that meaningful deficit reduction can be accomplished merely by attacking waste, fraud, and abuse;

(8) entitlement and interest spending are the fastest growing components of the Federal budget and are at an all-time high, largely due to the explosion of health costs;

(9) other than taxes devoted to Social Security pensions, the level of taxation relative to the United States economy has been lower in the last decade than it was in any year between 1962 and 1982;

(10) the existing reckless Federal fiscal policy cannot be addressed in a meaningful way without including consideration of restraining entitlements and increasing taxes, as well as reducing defense and domestic spending; and

(11) to suggest that meaningful deficit reduction can be accomplished without shared sacrifice constitutes deception of the American people.

(b) It is the sense of the Senate that—

(1) public officials and candidates for public office should make proposals and engage in extensive and substantive discussion on reducing the deficit;

(2) the candidates for President should agree to a formal discussion that focuses entirely on the Federal budget deficit, its implications and solutions; and

(3) all candidates for office should affirm their support for this statement of principles and should resolve, in the course of their campaigns, to seek a mandate from the electorate with which they can effectively address the Federal budget deficit if elected.

SEC. 412. SEVERABILITY.

If any provision of this Act or amendment made by this Act or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remaining provisions of and amendments made by this Act and the application of such other provisions and amendments to any person or circumstance shall not be affected thereby.

SEC. 413. EFFECTIVE DATE.

Except as provided in sections 205(e)(2) and 210(b), this Act and the amendments made by this Act shall take effect on the date of enactment of this Act.

TITLE V—TECHNICAL CORRECTIONS

SEC. 501. TITLE 11, UNITED STATES CODE.

Title 11, United States Code, is amended—

(1) in the table of chapters by striking the item relating to chapter 15;

(2) in section 101—

(A) by striking paragraph (39);

(B) by redesignating paragraphs (40) through (51) as paragraphs (41) through (52), respectively;

(C) by redesignating paragraphs (36) through (38) as paragraphs (37) through (39), respectively;

(D) by inserting after paragraph (35) the following paragraph:

"(36) 'intellectual property' means—

"(A) trade secret;

"(B) invention, process, design, or plant protected under title 35;

"(C) patent application;

"(D) plant variety;

"(E) work of authorship protected under title 17; and

"(F) mask work protected under chapter 9 of title 17, to the extent protected by applicable nonbankruptcy law;";

(E) in paragraph (39) (as redesignated by subparagraph (C)) by striking "and" after the semicolon;

(F) by inserting after paragraph (39) (as redesignated by subparagraph (C)) the following paragraph:

"(40) 'mask work' has the meaning given it in section 901(a)(2) of title 17;";

(G) by redesignating paragraphs (52) and (53) (as designated before the date of enactment of this Act) as paragraphs (54) and (55), respectively;

(H) by inserting after paragraph (52) (as redesignated by subparagraph (B)) the following paragraph:

"(53) 'settlement payment' means, for purposes of the forward contract provisions of this title, a preliminary settlement payment, a partial settlement payment, an interim settlement payment, a settlement payment on account, a final settlement payment, a net settlement payment, or any other similar payment commonly used in the forward contract trade;"; and

(I) by striking both paragraphs (54), both paragraphs (55), both paragraphs (56), and both paragraphs (57) (as designated before the date of enactment of this Act) and inserting the following:

"(56) 'stockbroker' means a person—

"(A) with respect to which there is a customer, as defined in section 741(2) of this title; and

"(B) that is engaged in the business of effecting transactions in securities—

"(i) for the account of others; or

"(ii) with members of the general public, from or for such person's own account;

"(57) 'swap agreement' means—

"(A) an agreement (including terms and conditions incorporated by reference therein) which is a rate swap agreement, basis swap, forward rate agreement, commodity swap, interest rate option, forward foreign exchange agreement, rate cap agreement, rate floor agreement, rate collar agreement, currency swap agreement, cross-currency rate swap agreement, currency option, any other similar agreement (including any option to enter into any of the foregoing);

"(B) any combination of the foregoing; or

"(C) a master agreement for any of the foregoing together with all supplements;

"(58) 'swap participant' means an entity that, at any time before the filing of the petition, has an outstanding swap agreement with the debtor;

"(59) 'timeshare interest' means that interest purchased in a timeshare plan which grants the purchaser the right to use and occupy accommodations, facilities, or recreational sites, whether improved or unimproved, pursuant to a timeshare plan;

"(60) 'timeshare plan' means and shall include that interest purchased in any ar-

rangement, plan, scheme, or similar device, but not including exchange programs, whether by membership, agreement, tenancy in common, sale, lease, deed, rental agreement, license, right to use agreement, or by any other means, whereby a purchaser, in exchange for consideration, receives a right to use accommodations, facilities, or recreational sites, whether improved or unimproved, for a specific period of time less than a full year during any given year, but not necessarily for consecutive years, and which extends for a period of more than three years;

"(61) 'transfer' means every mode, direct or indirect, absolute or conditional, voluntary of involuntary, of disposing of or parting with property or with an interest in property, including retention of title as a security interest and foreclosure of the debtor's equity of redemption; and

"(62) 'United States', when used in a geographical sense, includes all locations where the judicial jurisdiction of the United States extends, including territories and possessions of the United States.";

(3) in section 322(a) by striking "1302, or 1202" and inserting "1202, or 1302";

(4) in section 346 (a) and (g)(1)(C) by striking "Internal Revenue Code of 1954" and inserting "Internal Revenue Code of 1986";

(5) in section 348—

(A) in subsection (b) by striking "728(a), 728(b), 1102(a), 1110(a)(1), 1121(b), 1121(c), 1141(d)(4), 1146(a), 1146(b), 1301(a), 1305(a), 1201(a), 1221, and 1228(a)" and inserting "728 (a) and (b), 1021, 1028, 1102(a), 1110(a)(1), 1121 (b) and (c), 1141(d)(4), 1146 (a) and (b), 1201(a), 1221, 1228(a), 1301(a), and 1305(a)"; and

(B) in subsections (b), (c), (d), and (e) by striking "1307, or 1208" each place it appears and inserting "1208, or 1307";

(6) in section 349(a) by striking "109(f)" and inserting "109(g)";

(7) in section 362(b)—

(A) by striking "or" at the end of paragraph (10);

(B) in paragraphs (12) and (13) by striking "the Ship Mortgage Act, 1920 (46 App. U.S.C. 911 et seq.)" each place it appears and inserting "section 31325 of title 46, United States Code";

(C) in paragraph (14), as added by section 102 of Public Law 101-311 (104 Stat. 267) at the end of the subsection, by removing it from the end of the subsection, inserting it after paragraph (13), and striking the period at the end and inserting a semicolon; and

(D) by redesignating paragraphs (14), (15), and (16), as added by section 3007(a) of the Student Loan Default Prevention Initiative Act of 1990 (104 Stat. 1388-28), as paragraphs (15), (16), and (17), striking "or" at the end of paragraph (16), as redesignated by this subparagraph, and adding "or" at the end of paragraph (17), as redesignated by this subparagraph;

(8) in section 363(c)(1) by striking "1304, 1203, or 1204" and inserting "1203, 1204, or 1304";

(9) in section 364(a) by striking "1304, 1203, or 1204" and inserting "1203, 1204, or 1304";

(10) in section 365—

(A) in subsection (g)(2) (A) and (B) by striking "1307, or 1208" each place it appears and inserting "1208, or 1307"; and

(B) in subsection (n)(1)(B) by striking "to to" and inserting "to";

(11) in section 507(d) by striking "(a)(3), (a)(4), (a)(5), or (a)(6)" and inserting "(a) (3), (4), (6), or (7)";

(12) in section 522(d)(10)(E)(iii) by striking "408, or 409 Internal Revenue Code of 1954" and inserting "section 401(b), 403(b), 408, or 409" of the Internal Revenue Code of 1986";

(13) in section 523(a) by striking "1141., 1228(a), 1228(b)," and inserting "1141, 1228 (a) or (b),";

(14) in section 524—

(A) in subsection (a)(3) by striking "or 1328(c)(1)" and inserting "1328(a)(1)";

(B) in subsection (c)(4) by striking "recission" and inserting "rescission"; and

(C) by inserting "and" at the end of subsection (d)(1)(B)(ii);

(15) in section 542(e) by striking "to to" and inserting "to";

(16) in section 543(d)(1) by striking "of equity" and inserting "if equity";

(17) in section 546(a)(1) by striking "1302, or 1202" and inserting "1202, or 1302";

(18) in section 553—

(A) in subsection (a)—

(i) by striking paragraph (1); and

(ii) by redesignating paragraphs (2) and (3) as paragraphs (1) and (2), respectively; and

(B) in subsection (b)(1) by striking "362(b)(14),," and inserting "362(b)(14),";

(19) in section 706(a) by striking "1307, or 1208" and inserting "1208, or 1307";

(20) in section 724(d) by striking "Internal Revenue Code of 1954" and inserting "Internal Revenue Code of 1986";

(21) in section 726(b) by striking "section 1112 1208" and inserting "section 1112, 1208,";

(22) in section 743 by striking "clerk" and all that follows through "Commission" and inserting "clerk shall give the notice required by section 342 to SIPC and to the Commission";

(23) in section 745(c) by striking "Internal Revenue Code of 1954" and inserting "Internal Revenue Code of 1986";

(24) in section 1104(c) by striking "then the United States trustee, after consultation with parties in interest shall" and inserting "the United States trustee, after consultation with parties in interest, shall";

(25) in section 1129(a)—

(A) by striking the semicolon at the end of paragraph (4) and inserting a period; and

(B) in paragraph (12) by striking "section 1930," and inserting "section 1930 of title 28,";

(26) in section 1226(b)(2)—

(A) by striking "section 1202(d) of this title" and inserting "section 586(b) of title 28"; and

(B) by striking "section 1202(e) of this title" and inserting "section 586(e) of title 28";

(27) in section 1302(b) by striking "and" at the end of paragraph (3); and

(28) in section 1328(a)(2) by striking "of" and all that follows through the semicolon and inserting "of the kind described in section 523(a) (5), (8), or (9);".

SEC. 502. TITLE 28, UNITED STATES CODE.

Section 586(a)(3) of title 28, United States Code, is amended in the matter preceding subparagraph (A) by inserting "12," after "11,".

Mr. HEFLIN. Mr. President, I move to reconsider the vote.

Mr. SANFORD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HEFLIN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

MORNING BUSINESS

Mr. MITCHELL. Mr. President, I ask unanimous consent that there now be a period for morning business during which Senators may be permitted to speak.

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

BORIS YELTSIN'S ADDRESS TO CONGRESS

Mr. DOMENICI. Mr. President, as one Senator from the State of New Mexico, I was privileged to be in the halls of the House of Representatives late this morning for a joint session. All of us, Senators and Representatives, who were present got to hear what I believe was an extraordinary address. We got to hear the President of Russia, Boris Yeltsin, talk about his country and what it was in the past, what it is now, and what he hopes it will be.

He made some very profound statements. I want to read one that was very, very intriguing and interesting to me.

He said, "It is in Russia that the future of freedom in the 21st century is being decided. We are upholding your freedom as well as ours."

In a sense, Mr. President, he was saying, if Russia and the other Republics of the former Soviet Union can maintain democracy and freedom, they will have strengthened our democracy. The corollary would be, if they do not make it, and they are not free and do not have a democracy, they will have weakened our democracy. I think that is true. But I also think, from the standpoint of our interests, if our interests are what people are genuinely concerned about, then it seems to me that the failure of democracy in the former Soviet Union is not good for our country.

Such a failure will cost us a lot. It will diminish us. It will make us less successful in international trade. In a sense, the failure of democracy in Russia will diminish our leadership in the world and it will diminish Americans in the world, be it business America or other Americans.

FREE RUSSIA DESERVES MORE THAN APPLAUSE

So I rise today to say to my fellow Senators, it was exciting to join with you in round after round of applause for Boris Yeltsin. Indeed, it was absolutely gratifying to stand shoulder to shoulder with Senators as we cheered and applauded this brave and courageous leader. But I come to the floor tonight saying, all that is not enough. To praise him, to applaud him, to stand and, in a sense, give him the kind of response we gave this morning is good, but it is not enough.

We ought to get on with adopting and sending to the President of the United States the Freedom Support Act, which is pending here in the Senate, that puts together ways we can assist Russians in their quest to stabilize their victory for democracy and move toward the free market and liberty. It pulls together the various components as suggested by the President and suggested by Members of the Senate and the House on ways we can assist Russia and other former members of the Soviet bloc who have become free.

The time to act has come. I hope our leaders listened today to overwhelming support from the elected representatives of the people of this country for Boris Yeltsin and what he stood for and what he said. I hope our leaders will bring the freedom support bill to the floor so we can see if Senators will now vote where their applause was, vote like their adulation was today. We will find out what Senators think of the President of the United States and his plan in support of Russia. I think the time has come to get on with it.

YELTSIN'S COURAGE MAY PROVE CONTAGEOUS

In fact, I believe it is fair to question whether one deserves to be a member of a free parliament such as ours, called the Senate and the House, if they do not have the courage to vote for the kind of assistance package that is being asked of us for Russia, Ukraine, and those other free people. I clearly have doubt to what end we would be here if we are not ready to do that.

Mr. WARNER. Will the Senator yield for a question?

Mr. DOMENICI. I am pleased to yield.

Mr. WARNER. The Senator from New Mexico is well-known for his knowledge on economics. A group of us just had the privilege of being at the White House when the President and President Yeltsin signed a series of agreements. The President of the United States explicitly said there are two main benefits coming to the American people. Our people are in bad need of help.

First and foremost, it provides a basis for our present programs to reduce defense spending. And some of those reductions, hopefully, can be applied against the deficit which, in turn, will help our economy.

Second, the biggest potential market for American products in the whole world is in just one independent State, Russia, the Federation of Russia, not to speak of the Ukraine and others. The President pointed out the need for those people, struggling to achieve freedom and maintain it, the need for everything from toothbrushes to bicycles; unlimited possibilities for American business to go over there and meet the crying needs of the former Soviet people.

So I commend the Senator and I wish to associate myself with his remarks.

(Mr. WELLSTONE assumed the chair.)

AMERICA HELPS ITSELF BY HELPING RUSSIA

Mr. DOMENICI. Let me just say, Mr. President, contrary to what some have led the American people to believe, the largest world trader in terms of selling goods and services to the market places of the world is not Japan or Germany, it is America this year and last year. We thrive on that. Our Nation has never lived a good economic life when we were not selling to the world. In fact, we complain bitterly about people owning pieces of America. Well, for much of America's economic life, we owned pieces of businesses in all countries in the world. We did not seem to think that was so wrong. We sell, they sell.

So it seems to me, if we are looking for self-interest, obviously, if America gets in on the ground floor as the solid friend of the Russian people and their leaders, we cannot even calculate today the eventual economic benefit to our people. My estimate would be that Russia could be the largest market outside of North America, bar none, for United States goods, United States services, and that does not have much to do with the noncommercial exchange that will occur between our people which will just make both people stronger.

I thank the Senator for his comments and I yield the floor.

Mr. CRANSTON. Will the Senator yield?

Mr. DOMENICI. I am pleased to yield.

Mr. CRANSTON. Mr. President, I just wanted to express my total agreement with the remarks of the Senator from New Mexico and the Senator from Virginia.

That was a remarkable speech that we heard this morning. In my 24 years in the Senate, I have never heard the President of our country or some other country be interrupted so often, so many times, by applause and by standing ovations.

Plainly, it is not only in the interest of the Soviet people, but in the interest of the American people to proceed to approve the package of assistance that has been requested by President Bush. And I am doing all I can to see that we have the votes on this side of the aisle, and I gather you have the votes on that side of the aisle, to ensure that measure passes the Senate.

In addition to all the reasons that the Senator from New Mexico and the Senator from Virginia just gave for supporting this is the fact that Russia is one of the largest oil producers on Earth, perhaps the largest. And if total chaos should come to that country, that would interrupt oil supplies and do great damage to our economy.

Also, we have spent literally trillions of dollars defending ourselves and much of the rest of the world against communism, which might have spread further out of the Soviet Union. Now to invest relatively small sums to support democracy there and make sure that no new Communist dictatorship, no fascist dictatorship, no military dictatorship emerges there equipped with nuclear weapons is in our great interest.

So I am eager to work with the Senator from New Mexico and the Senator from Virginia and others in support of this measure.

Mr. DOMENICI. Mr. President, I thank the Senator from California.

I want to give a couple more observations, and then I note my friend from Texas is here.

I have been thinking about the U.S. Constitution and the freedom that it gave us and how it has served us over time.

It dawns on me that sometime people in our country lament and even complain about the burden of leadership in America in the world. Some say, "Why don't we come home and just worry about ourselves and just leave the rest alone?"

That Constitution of ours, I say to my friend from Texas, was such a profound document of freedom that it probably destined our people to be involved in getting the same freedom for people that were not Americans. It is a document of energy on behalf of freedom that resonates so much that we probably were destined to be part of seeing the rest of the world move our way. We may be destined to be a leader in that cause.

FOREIGN AND DOMESTIC REASONS TO SUPPORT THE FREEDOM SUPPORT ACT

That is what is happening in Russia. To an amazing extent they want to be like us, while retaining their Russian character. It seems to me that two selfish interests should convince people that a vote for this Freedom Support Act is a vote for America. One is, what if freedom fails? And what if this treaty on nuclear weapons goes down the drain because of that? How would we like 3,500 nuclear weapons, if they got down to that bottom rung, in the hands of a regime that had thrown out freedom lovers, friends of America? It seems to me we would be right back in somewhat of the muddle we have been in for 44 years of the cold war.

Second, it seems to me that when the United States is concerned about selling products in the world so our people can have better jobs, of investing our money in the world so we can profit from it along with those that we invest with and countries that we invest in, where could we find a better situation than this one if we will just do our share to encourage and push that country into setting into an operational government the tools that will let a free market operate?

That is essentially what this man was asking us to do today. He is com-

mitting that Russians are going to do what is necessary. Yeltsin is urging that western peoples do the little bit of governmental things around the edges of Russian reform. Our $650 million appropriated foreign aid money in that freedom support bill, if that becomes a reality, is not what is going to make this arrangement work. It is the courage for Yeltsin to make their ruble stabilized; it is the international private effort that is going to go into investing in businesses over there that are going to become businesses working with us or with other freedom loving people. Why is that not good for America?

It seems to me, we should help Russia on both counts, that their freedom enhances our freedom and it enhances our economy as their market benefits from solvency and credibility.

Mr. GRAMM. Will the distinguished Senator yield?

Mr. DOMENICI. I will be pleased to yield.

Mr. GRAMM. First, I would like to thank our colleague for coming to the floor and saying something about the speech by President Yeltsin. It was a profound speech, and I am happy to have lived to have heard it delivered.

Mr. DOMENICI. Absolutely.

Mr. GRAMM. It was more clear and convincing evidence that we have won the cold war, that we have not only torn down the Berlin wall and liberated Eastern Europe, but that we have dramatically transformed the Soviet Union, the old, evil empire that threatened our lives and our freedom for 45 years.

It is imperative that we help Russia and the countries of Eastern Europe build their economy and promote their freedom, because our freedom is at stake in the process. If I have a frustration, it is not that we are talking about an assistance package. It is that, in my opinion, we are responding to a revolutionary change in the world with a fairly status quo response. In fact, if you took all the foreign aid given by all the countries in the world—$100 billion last year roughly—and gave it to Russia, it would be a drop in the bucket as compared with their development needs.

There is only one mule that is capable of pulling that wagon, and that mule is trade, supplemented by foreign investment.

Mr. DOMENICI. Absolutely.

Mr. GRAMM. I think it is important that we develop a proposal. I want to be sure it is going to work. I am very concerned about the IMF underwriting the value of the ruble. I have very grave doubts about our ability to make that work. But I want to do something.

But, let me tell you, I believe we should go far beyond what we are talking about—or are going to be talking about if and when we get around to debating it. We ought to be sending, today, a negotiator to every capital of the former Soviet empire to begin to negotiate a free-trade agreement.

Why should we replicate all the mistakes made in the Third World? Who would be imperiled? What industry would be imperiled by a free-trade agreement with the Russian Republic? Where could they outcompete the United States?

I think we must have dramatic approaches to deal with this problem, and I think what Boris Yeltsin convinced us of today is, No. 1, that he is serious. I wish our Government had the commitment to free enterprise that, apparently, the Russian Republic has today.

The bad ideas are being debated here, not there.

Second, I am convinced they are willing to do what it takes to develop their country. I want to do what it takes here to promote the trade, the commerce, the investment. I want to do this not just to help them but to help ourselves.

I thank our colleague for bringing this up for discussion.

Mr. DOMENICI. Mr. President, I want to close by thanking my friend from Texas for his kind remarks about me. More important, I thank him for the good ideas he has contributed to the U.S. Senate and whoever has lent an ear tonight.

I believe our Senate leaders are on the threshold of arranging to bring this freedom support bill to the floor. At least from what I hear they are. I hope so. I urge that they do so. Frankly, if there are Senators who cannot vote for it—certainly there are not Senators who are going to vote against it because it is not a dramatic enough document.

Mr. GRAMM. That is right.

Mr. DOMENICI. Clearly, we can work more drama into the bill on the floor if we like. But if there are some who for some reason cannot vote for it, so be it. There are less than a third of us running for reelection this year. So if everyone running does not want to vote for it, that is all right, too. But let us get the job of helping free Russia done.

THE WILL TO ACT IS MISSING

It seems to me we can get almost anything we want around here done quickly if we have the will to do it. So I believe the will is here—in fact, I think if we had brought that bill up within 2 or 3 hours of Yeltsin's speech, we might have even reduced debate a few hours, and maybe 20 or 30 amendments would have been offered. We need to get it done so we can say to that brave leader of those Russian people: We believe that you are telling us the truth. We want to do what we can to make sure your freedom works and that your people up and down the line have something to show for it. We want Russians, too, to have some good things of life.

That is what we want them to have, along with their freedom. We want them to have automobiles and solid houses and, yes, air-conditioning, and ample light bulbs, and all the things we take for granted. That is what we want.

Mr. GRAMM. If my colleague will yield. We are producing quality products in each of those areas, and we are ready to sell to them. We will benefit by their prosperity and their freedom.

Mr. DOMENICI. Absolutely.

I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan.

WE HAVE BIG PROBLEMS HERE IN AMERICA AS WELL

Mr. RIEGLE. Mr. President, I thank the Presiding Officer. I want to follow up on this before Senator DOMENICI and Senator GRAMM leave the floor, because I want to comment on the issue that they have raised, not in direct reference to their remarks.

I think certainly there are enormous development problems now that face the Soviet Union. An effort has to be made, I think, by the rest of the world, in combination, to try to respond to that challenge.

That clearly is an issue that is before us. But there should not be any mistake about it, we have big problems here in America as well. We have all kinds of underdevelopment problems in our country. We need investment in infrastructure. We have a lot of unemployment. We have businesses failing. We have a huge trade deficit.

What I do not want to see is an effort where we are so solid and so committed that we are able to reach out to respond to the problems in some other country and not to respond to the problems in our own country at the same time. The American people, frankly, do not want that. They are sick of that.

So we cannot just have issues—every time there is a domestic policy issue, whether it is job training, unemployment extension, what have you—where that legislation is sidetracked or vetoed, and then all of a sudden something comes along to help another country, whether it is most-favored-nation trading status with China or a free trade agreement with Mexico or help for the Soviet Union, the old Soviet Union, or what have you; all of a sudden that goes on the fast track. That is something that we have the money for, there is the will for, the President wants it, he will sign it, he will push for it, and so forth.

But then when it comes down to getting a package that is going to respond to either widespread unemployment in America or the infrastructure shortfall in America, or too many businesses leaving the country going overseas, or huge trade deficits, and we try to get something done in that area, either there is no interest or there is a veto out there against it.

I feel very strongly that when we go ahead with an aid package for the Soviet Union we ought to have, connected to that, a response to some of the urgent problems—economic problems—here in this country.

You talk about people in the old Soviet Union wanting refrigerators and air-conditioners and all these things, and I am all for them having that aspiration. We have a lot of people in America that want those same things. It may be that all the Senators have them but there are a lot of people in Michigan and all the other 49 States who are going without a lot of things right now—very particularly going without jobs.

With respect to the notion about a free trade agreement—with all due respect I think that is utter nonsense—I will give you an illustration of it.

We have right now a trade situation with Communist China. They are going to have a trade surplus with the United States this year of roughly $15 billion in their favor. They are cheating in the currency area. They are using slave labor—that has been documented. We have a bad situation there. They are sucking $15 billion out of this country and all the jobs that go with it.

That helps Communist China. That does not help America. I do not want to see that same thing now cropping up some other place.

It is one thing if we have a balance of trade with somebody. But I will tell you this, I do not see right now where the income is going to come from on the other side. Maybe some in raw materials, but not of an amount sufficient to talk about taking a whole lot of products out of the United States and creating a whole lot of jobs in America.

That is not what has happened with Communist China. Communist China is sucking jobs out of America. And Mexico is sucking jobs out of America. We have an unemployment rate right now the highest it has been now in several years, 7.5 percent. People in the country are needing work.

I am all for participating in a measured way in a package of help to other countries that are in trouble, as long as the rest of the free world steps up and carries their fair share. I would like to see Japan in the lead because Japan is going to take at least $40 billion out of the United States this year in terms of the trade deficit that they have with us. So Japan alone is going to take $40 billion out of the United States. That is part of our unemployment problem here.

If we are going to do something to help the Soviet Union, I certainly expect to see Japan doing a lot more than we would be doing and help the Soviet Union at the same time.

But we cannot help people somewhere else if we are not helping our own people. Do you want to know why the presumed candidate from your State, in the State of Texas right now, I say to the Senator from Texas, is running first in the Presidential race? I am speaking in terms of Ross Perot, in terms of the polling data around the country. Because he is addressing the issue of our economic future and what is not being done in the United States of America.

So we cannot have just one eye open where we are looking at all the problems around the world, where we are quick to help the rest of the world, and turn our back on the rest of our own people. These things have to go in tandem.

That is one of the great deficiencies of this Presidency; that we have a President here for the rest of the world but no President for America. That is why the people are upset. That is why there is a political rebellion going on in this country.

We have a war going on in America right now. You see it in the crime statistics, you see it in the unemployment, you see it with college graduates who cannot finds jobs, you see it with people with engineering degrees driving taxi cabs or circulating resumes and cannot find work. The same with teachers who ought to be teaching and cannot find work in teaching because there are not enough jobs to go around.

We've had enough of this business of turning our back on America. So when you bring that bill to the floor I want you to be prepared at the same time to do something to help solve the economic problems in America.

If somebody says to me, well, that we cannot do them both at once, that we cannot keep these thing in tandem, that we have urgent problems overseas to solve and we will have to do that first and then some other time, later on down the line, maybe next year, we will do something about dealing with the problems in America, I do not think that is right. I think these things have to move together, they have to move in tandem.

I think it is an insult to the American people to say that we cannot do something about solving America's urgent economic problems and that we are going to put the needs of some other part of the world ahead of our own national needs. I think these things have to go together. They have to go in tandem and that is what the people want. If you put this out to a public opinion expression across the country, I guarantee you that the American people will say, look, if we are going to go out there now and do something to help somebody else with some legitimate problems that they have, then you act at the same time to deal with the problems of this country.

So I do not want to see a bill coming in here, whether it is tomorrow or next week or next month, that has help for some other part of the world and is turning its back on the problems of America. You bring in a package that takes care of both problems at once and, if not, be prepared then to have me, and I hope others, offer something at the time that will deal with the problems here in America.

You want to vote against helping America, then so be it. At least there will be a record and it will be there for everybody to see. But I do not want to see one more foreign policy initiative coming through here when we are turning our back on the American economic problems at the very same time. So bring them together. Bring them together and let us act on them together. I think that has to be the test.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mr. GRAMM. Mr. President, we are turning our backs on America in the Senate everyday, but we are not doing it because we are not spending money. We are turning our backs on America everyday because despite the fact that the President asked for a bill to get tough, grab criminals and drug thugs by the throat, over 1,080 days ago, we have not yet adopted that bill. It was killed by a Democratic bill that not only does not address the crime problem but that overturns 22 Supreme Court decisions that have strengthened law enforcement in the last 15 years.

We are not addressing America's problems because we will not vote on the balanced budget amendment to the Constitution. Our colleague from Michigan seems to think that we can make the program that failed in the Soviet Union work in the United States; that all we have to do is spend a little more money on all of these old tired programs that do not work and suddenly we are going to reach prosperity. I reject that.

As far as looking at the world through one eye, no nation on Earth has ever failed by practicing free and fair trade. No nation has ever truly succeeded with protectionism. I hear our colleague talking about all this money being sucked out of the country. What are the Japanese doing with this money? Are they burying this $40 billion in a mattress somewhere? No, they are investing it back in the United States. And why is it being invested here? It is being invested here because we are running a $400 billion deficit and Government is borrowing 50 cents out of every dollar raised on the American capital markets. As a result, we have higher real interest rates than we should and people are sending their money to invest here. They are doing so because our Government is squandering our money.

I reject the idea that we have no stake in freedom in the former Soviet Union, the Russian Republics we are talking about today. Their development and their prosperity affect our

development and our prosperity. Mexico's economic prosperity affects our own. We cannot be poorer by having Mexico richer. We cannot be poorer by promoting economic growth in the Soviet Union.

My problem with what we are about to do in terms of the proposed aid package is that it is a Band-aid. We need a revolutionary change. That is why I am for free trade with the Russian Republics. I reject the idea that we cannot compete.

I get tired on the one hand of hearing people stand up here and talk about those terrible Japanese politicians who say that Americans are dumb and lazy and then on the other hand hearing the same people talk as if they believe that those Japanese politicians are right, as if we really cannot compete, as if we cannot in a free trade agreement compete with the Russian Republics. I reject that idea. Economic growth comes through trade. We cannot be a world power by building a wall around America and hiding behind it.

Let me say, since Ross Perot's name has been brought up, there may be many tides that carry America forward, but protectionism is not going to be one of them. It is an old siren song that has been preached on the floor of the Senate and in legislative bodies throughout the world, but it is not the tide of the future. I never cease to be amazed by how someone like President Yeltsin this morning understands so clearly that only trade and free enterprise and competitive capitalism can build a sound future, and yet find that there are so many people in this great Congress who are absolutely committed to the opposite program.

President Yeltsin this morning not only talked about freedom and about destroying weapons. He rejected the very philosophy and values that we hear espoused on the floor of the Senate day after day after day. Socialism is dead in this world. Every place except Havana, Cuba, North Korea, and the United States Congress has rejected the idea. It has not died here. Here we find still alive and well one of the last bastions, of this old tired and rejected idea that politicians can make better decisions than ordinary people.

Congress is going to solve the problem by keeping all this competition out. Congress is going to solve the problem by rebuilding industries. Congress is going to solve the problem by deciding where our investment goes in this national economic planning, that is nothing more than socialism wrapped in computer paper. That formula failed in Eastern Europe, that formula failed in the Soviet Union, and it would fail in American if we were so foolish as to go back and practice it.

I believe that the world demands that America be the leader. I reject this idea that we cannot be the leader of the world and be the master of our own destiny. If we want to help Americans, let us adopt a crime bill and let us do it today. Let us adopt a balanced budget amendment to the Constitution. Let us try enterprise zones.

We are going to employ free enterprise to rebuild the Russian Republics and Eastern Europe, and yet our colleagues in the Democratic Party will not allow us to use that same system to rebuild our own cities. I do not understand it. We seem perfectly willing to practice capitalism everywhere except in the United States of America.

I say, if we are going to prosper, we are going to have to put our system to work. We are not failing today in our inner cities because we are not spending the money. We are failing because we are not applying ideas that work. We will benefit from trade that comes from helping to rebuild Russia and Eastern Europe. Our prosperity and our freedom depend on it.

I feel perfectly comfortable saying that everybody who lives in Texas in small towns, big cities, has a stake in a growing prosperity in Russia, in more trade. I believe our freedom and our prosperity will be fostered. I reject the idea that we cannot be a world leader and be the master of our own house. It is lack of ideas, it is lack of vision, that has produced problems and misery in America. It is not lack of money.

The PRESIDING OFFICER. The Senator from Oklahoma is recognized.

BIOLOGICAL DIVERSITY CONVENTION

Mr. NICKLES. Mr. President, I rise in support of the President's decision that it is in the best interests of the United States that the United States not be a signatory to the Biological Diversity Convention.

During the Rio Conference, the Biological Diversity Convention was the primary focus of those who wish to accuse the administration of a lack of leadership in world environmental issues. Despite the willingness of the United States to sign the Framework Convention on Climate Change, the other multilateral treaty open for signature at the Rio Conference, the United States is still being maligned for not signing the Biological Diversity Treaty. Worse, allegations persist that the United States opposes international efforts to protect endangered species.

The truth is, the United States strongly supports the principle of maintaining biological diversity, both domestically and internationally. In fact, the United States was an early proponent of an international convention to protect biodiversity in developing countries—yet another environmental area in which the United States has been a world leader in terms of domestic action.

The reasons the United States is not signing the Biological Diversity Convention are grounded not in the positive provisions that would protect biodiversity, but in the provisions of the Convention the relate to treatment of intellectual property rights, biotechnology and, once again, the language concerning financial obligations and responsibilities.

These problematic provisions are almost side issues to the protection of endangered species and habitat. However, these problematic provisions are the heart of the agenda of the developing nations at Rio. They want our money with only vague accountability and they want our technology for free, without any understanding of the effectiveness of private sector investment to assist in meeting biodiversity goals. These same two issues, wanting to have funding without strings and technology without royalties, have also been major stumbling blocks in the Agenda 21 provisions. Agenda 21 is a nonbinding environmental action plan. The Biological Diversity Convention, however, is an enforceable treaty.

The Biological Diversity Treaty would essentially coerce the transfer of technology by the United States and other developed countries to the developing countries. Article 16(2) of the treaty would obligate the United States to transfer not only the commercially available products of technology, but also the technology itself to developing countries, without regard to intellectual property rights.

I remind my colleagues that the United States has been pressing for appropriate international recognition of intellectual property rights for the past 5 years in the Uraguay round of the GATT negotiations. This very issue—treatment of intellectual property rights—has been one of the two biggest hurdles for agreement during the GATT negotiations. Why should we throw away our basic position of 5 years on this critical issue just to say we will sign this particular environmental treaty?

Biotechnology has a promising future in assisting in many of the goals of the Biological Diversity Convention and of Agenda 21—disease and drought resistant crops, for example. Biotechnology is also an important technology in which the United States has a clear competitive advantage. Under the Biological Diversity Convention, the U.S. biotechnology industry would be harmed in the same way as any U.S. industry trying to provide products to the developing countries pursuant to the Biological Diversity Convention—the proprietary process information would have to be given free to the developing country along with the product. That is not right. That is wrong.

However, in this convention, the biotechnology industry has been singled out for special regulation and criticism. Under the guise of concern for the safety of biotechnology products,

the convention would authorize preimport approval of products produced by the United States using its biotechnology capabilities. Signing this treaty would be handing the rest of the world a new trade barrier for U.S. high-technology products. For those who have been frustrated by the European farm subsidy issue, this convention's open invitation to reject United States agricultural products should be of real concern.

Mr. President, I ask unanimous consent to place into the RECORD at this point two letters supporting the position of the President not to sign the Biological Diversity Convention. One letter is from the Pharmaceutical Manufacturers Association and the other is from the Industrial Biotechnology Association. Both letters strongly oppose the language in the convention dealing with intellectual property rights.

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

PHARMACEUTICAL MANUFACTURERS ASSOCIATION,
Washington, DC, June 9, 1992.

The PRESIDENT,
The White House,
Washington, DC.

DEAR MR. PRESIDENT: On behalf of the research-based pharmaceutical industry, I am writing to thank you for the strong position you have taken in support of intellectual-property rights by refusing to sign the proposed Convention on Biological Diversity.

Patent protection is the foundation of the research-based pharmaceutical industry. Without such protection, there simply would be no pharmaceutical industry—and no new drugs to cure disease, ease suffering and prolong life. Unlike many U.S. industries, the U.S. pharmaceutical industry continues to increase its investment in research and development. This year, the industry will spend almost $11 billion on R&D, 13.5 percent more than last year. Our member companies have doubled their investment in research and development every five years since 1970. As a result, America's research-based pharmaceutical industry leads the world in discovering and developing new and better drugs. Our industry, according to the March 9, 1992 issue of Fortune magazine, is America's most internationally competitive industry. None of this would be conceivable without the assurance of strong patent protection. As it is, our companies continue to lose billions of dollars a year in sales to patent pirates who operate in countries that lack adequate patent protection.

The proposed Convention on Biological Diversity would undermine the great progress your Administration has made in encouraging other countries—most recently and notably Mexico and China—to strengthen their patent laws. The unclear language relating to "technology transfer" and equitable sharing appear to be code words for compulsory licensing and other forms of property acquisition. Your sensitivity to these matters is most gratifying.

Our industry considers your continuing strong support for protection of both the environment and intellectual-property rights as an indication of your commitment to ensuring American competitiveness in the international arena.

Respectfully,

GERALD J. NOSSINGHOFF.

INDUSTRIAL BIOTECHNOLOGY ASSOCIATION,
Washington, DC, June 8, 1992.

Hon. GEORGE BUSH,
President of the United States, The White House, Washington, DC.

DEAR MR. PRESIDENT: The Industrial Biotechnology Association commends you for refusing to sign the Convention on Biological Diversity which would have committed this country to a course of action which threatens the U.S. biotechnology industry.

The biotechnology industry would support the treaty if its provisions were limited to conservation of biological diversity. Unfortunately, the treaty also contains provisions permitting developing countries to disregard the patent rights of biotechnology companies and mandates that companies transfer their inventions to developing countries on "concessional," "preferential," and "most favorable" terms. It would then allow both government institutions and the private sector of developing countries to market U.S.-developed biotechnology products in competition with the companies that developed them.

In addition, the treaty contains regulatory provisions that would tend to delay the development of new products.

By singling out biotechnology for unfavorable treatment with regard to regulation of intellectual property, the treaty not only constitutes a threat to continued U.S. leadership in biotechnology, it also undermines the very incentives which serve to encourage the development of technologies that would preserve biological diversity.

IBA represents 136 companies engaged in biotechnology research and development. Collectively our members represent more than 80% of all private biotechnology research investment in the U.S. Thank you for acting to protect the technology and the jobs thereby affected. Your stand is one of political courage and foresight.

Very truly yours,

RICHARD D. GODOWN.
President.

Mr. NICKLES. I ask my colleagues to reflect whether they would sigh any treaty that undermines the U.S. historic and well-founded position on intellectual property rights and expressly damages one of the most important U.S. high-technology advantages—the biotechnology industry. This Senator would certainly subject such a treaty to very critical examination. If the administration were to send the Biological Diversity Convention to the Senate for ratification, there would be overwhelming concern, perhaps overwhelming opposition, to signing this treaty. But the fact that this Biological Diversity Convention would authorize developing nations to ignore or restrict intellectual property rights is, as I have mentioned, not the only problem with this treaty.

The financing provisions are yet another attempt by the developing world to obligate the developed world, especially the United States, to pay them to meet environmental goals without any strings attached. The convention would treat the role of the Global Environment Facility, run in part by the World Bank and over which the donating countries such as the United States exercise considerable control, quite differently than the way the GEF would be used according to an agreement reached by the GEF participants only a month ago. Under the Biological Diversity Convention, the signatory nations would manage the funds, presumably by majority vote. The majority consists of developing countries, not developed countries like the United States. In order to protect the American taxpayers, the President is absolutely right in wanting to retain some control over how taxpayer money will be spent. The majority vote of the developing world would hardly be a process that would protect the American taxpayer.

Moreover, the language of article 20 of the convention conditions any responsibilities of the developing world to implement their commitments under the convention only after the industrialized nations first effectively implement their financial resource commitments. In other words, under the convention, the developing world does not have to act at all to protect biological diversity until the industrialized countries have given them funds without oversight and technology without royalties.

Moreover, article 20 states that, and I quote, "economic and social development and eradication of poverty are the first and overriding priorities of the developing country parties."

What then would we be obligating the United States to fund under this treaty? When would the developing countries be sufficiently developed that they would use our financial aid and technological assistance for the environmental purpose of protecting biological diversity? The goal of the United States is, and should be, to encourage economic self-sufficiency and sustainable growth rather than prolong the tragic financial dependency of the developing countries embodied in this convention.

In my view, the Biological Diversity Convention is not an acceptable treaty, and would not withstand Senate scrutiny if it were signed by the President. One of the burdens of leadership is standing alone, of keeping your wits about you when all those around you are losing theirs.

Looking behind the simple descriptions of this convention, compels this Senator to conclude that the President is exactly correct in refusing to sign it.

I urge my colleagues to review the text of the convention and the State Department's concerns, and then to decide for themselves.

Mr. President, I would like at this point to enter into the RECORD an editorial from the New York Times dated Friday, June 5, the title of which is "Not-So-Bad Boy of Biodiversity." It states, I will quote two lines:

The treaty will start a valuable conservation effort but it contains subsidiary clauses that could erode important American inter-

ests going far beyond saving endangered species.

The treaty has been read by a few to give poor countries the right to determine how much money the rich countries must contribute.

Again, this is not from the administration. This is from the New York Times. That was dated June 5.

Here is an editorial from USA Today, dated June 9, entitled "Bush Is Right Not To Sign Environmental Treaty."

The so-called biodiversity treaty is long on good intentions.

But the price demanded of the U.S.A. is too high and the promise of meaningful results is too low.

Bush should resist pressure from home and abroad to sign the treaty and work for changes.

Mr. President, I agree wholeheartedly. I ask unanimous consent to have these two editorials printed in the RECORD.

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

[From the New York Times, June 5, 1992]

NOT-SO-BAD BOY OF BIODIVERSITY

Critics are quick to cast the United States again as an environmental bad boy for refusing to sign the biodiversity treaty today at the world environmental summit meeting in Rio de Janeiro. But the Bush Administration should not be judged too harshly. The treaty will start a valuable conservation effort but it contains subsidiary clauses that could erode important American interests going far beyond saving endangered species.

The best course now for the U.S. is to warmly embrace the goals and most provisions of the treaty—and find ways to work around the nettlesome clauses. There will always be time to sign the treaty later if U.S. concerns prove exaggerated.

The need for a treaty is clear. The world's enormous store of life—some 10 million or more species of insects, microbes, plants, birds, animals and marine life—is shrinking. Species are disappearing at an unknown but apparently very high rate, largely because their habitats are being obliterated for development. Some people estimate that a quarter of the existing species may be wiped out over the next half-century. This would mean losing genetic stocks that might someday serve as the basis for better crops, medicines or other products.

The treaty that has emerged after arduous negotiations will at least begin to mitigate the mindless destruction. True, it sets no firm requirements for saving species and guarantees no level of funds. But it commits the signatories to develop national programs to conserve diversity, monitor species and establish protected areas.

What stuck in the craw of the Bush Administration were subsidiary clauses, especially those on financing. The treaty has been read by a few to give poor countries the right to determine how much money the rich countries must contribute. More worrisome is that the money will be allocated to conservation projects through a financing mechanism controlled by the parties to the treaty, mostly the poor countries. Donor countries would have little control over how the money was spent, a sharp break with usual practice.

There are also clauses that the Administration believes threaten the protection of patents and intellectual property rights. others imply that organisms modified by biotechnology need special regulation to insure safety, the very opposite of the Administration's approach.

All these obstacles can be surmounted. The Administration could submit memorandums setting forth its understanding of somewhat ambiguous language on patents and biotechnology. And it could wait until the financing mechanism is chosen before concluding that the treaty is inadequate. President Bush badly needs to make his commitment to environmental issues more credible. Even if he says "no" now in Rio, he can also keep the door open to affirming this important conservation effort.

[From USA Today, June 9, 1992]

BUSH IS RIGHT NOT TO SIGN ENVIRONMENTAL TREATY

Biodiversity treaty may sound good, but it demands too much of the USA and too little of others.

President Bush may be all alone this week in refusing to sign an Earth Summit treaty aimed at protecting endangered wildlife species.

He also happens to be right.

The so-called biodiversity treaty is long on good intentions. It offers under-developed countries economic aid in exchange for limiting the environmental damage they cause. It would protect dying species that might someday provide new medicines and foods.

But the price demanded of the USA is too high, and the promise of meaningful results is too low. The treaty would:

Deny the USA and other industrial nations control of the dollars they donate to conservation.

If the USA is going to spend money on conservation, it should be able to assure that the money is spent effectively.

Unwisely and unnecessarily force the emerging U.S. biotechnology industry—the undisputed world leader—to share confidential information and property rights with other countries.

Lead to international regulation of the genetic-engineering industry, impeding progress and endangering U.S. leadership in the field.

The treaty does all this without setting firm requirements for saving species.

Too much sacrifice; too few results. Bush should resist pressure from home and abroad to sign the treaty and work for changes.

Other developed countries pressing Bush to sign have less at stake. In fact, some could gain by opening up U.S. biotech efforts.

They also make weak arguments. Britain and Japan, for instance, say they share some of the same concerns but plan to sign anyway. If they have doubts, they should work for change.

President Bush should take the lead in advancing programs to prevent species from dying out. He should be willing to spend U.S. money and expertise to help avert environmental devastation.

But he should keep his name off this document until rightful U.S. concerns are addressed.

Mr. NICKLES. I yield the floor.

FOREIGN AID AND PROBLEMS IN AMERICA

Mr. RIEGLE. Mr. President, it is unfortunate that the discussion that was going on prior to the remarks of the Senator from Oklahoma was necessarily interrupted. I refer of course to the conversation or the discussion going back and forth between the Senator from New Mexico, and the Senator from Texas, and myself on the question of foreign aid and the question of responding to problems here in America.

So I want to add a few additional thoughts in response to the last comments from the Senator from Texas. And where there will be an interruption in the RECORD I think it is important that these facts be put upon the RECORD.

First of all, there is not a free trade system in the world today. People can talk about it. They can talk about it as a philosophic idea. But basically when you lay that concept against the reality of what is happening, it is really nonsense. We do not have free trade going on in the world today. We have a very carefully structured pattern of managed trade all around the world. Different countries do it different ways. The masters at it of course are Japan. That is one of the reasons why Japan last year had a $43 billion trade surplus with the United States, which means they drained $43 billion out of the United States in the trade account. And of course all the jobs that would go with that were also lost in our economy.

So if you look at what the cumulative trade deficit that we have had with Japan and the surplus that they have enjoyed in trade with us, has been just since the year 1980, if you go back to that point and see over the last decade what it has been, it is $460 billion.

So anyone who wonders where all the unemployment is coming from, all the plant closings in America, all the hardship, all the people that need health insurance coverage who do not have it, all the kids that need to go to college or go on for advanced work beyond high school but are not able to do it because their families cannot afford it. You wonder where all the money went. That is where a lot of the money went.

The way it works with respect to Japan, just as an illustration, is that they essentially closed their home market to the sale of American goods. They let a few things trickle in here and there, but in terms of the high cost, high value added items, they make sure that those things do not go into Japan in any amount worth talking about. At the same time Japan is shipping all of its surplus production to the United States.

There was a very extreme illustration of this not long ago in a different product area. That example had to do with rice grown here in the United States, because that is one thing we are very efficient in doing—growing rice here in America. We are much more efficient at it than the Japanese are in their country. They have a rice-producing industry, if you will, but it is a high-cost industry.

In order to protect that industry at home and protect those jobs, the Japanese will not allow American rice—even though it is cheaper, the quality is every bit as good if not better to go into Japan.

One day not terribly long ago there was a trade show in Japan where an American company had the audacity to bring in a couple of bags of American rice and put it on a table just so people could see it—just to see what it looked like. It created such a furor that the officials in the Japanese Government came and, in effect, arrested the bags of rice. They said you cannot leave the bags of rice there, on the table even to be looked at, because it is just too provocative. So the American company was required to remove the bags of rice. They could not even be seen, let alone sold on a fair trade open basis. That has been true of any number of other things.

The other thing that Japan does, just again to explode this myth of free trade, is to sell their products in the United States, in many cases, below cost. Because they sell below cost—another word for that is predatory pricing—they can come in and manage to establish an increased market share in a targeted product area. They do it, and back it up with resources from home until they target and destroy an American competitor, who of course cannot afford to do that over any great length of time.

They also employ another technique called Keiretsu. That is where Japanese firms will only buy from each other. So that even with the factories that Japan establishes here in the United States, say automobile plants, instead of allowing American automobile parts suppliers to be able to sell on a fair competitive basis parts to those Japanese auto plants in America, the Japanese firms will instead only give orders in many cases just to other Japanese auto supply companies. They do this with the thought in mind of crushing and destroying the American competitors in this area right here in our own country. And it is going on. I have held hearings on this. There is an abundant hearing record on that very issue.

So when I hear that sophistry about free trade from the Senator from Texas, I must say it gets very tiresome because the world does not operate that way. And any look at the facts illustrates that point.

Take the case of Europe. Europe decided that it would not be a doormat for Japan in the area of this unfair pattern of trading practices. Because they wanted to maintain a high level of employment, a job base, and a high level of manufacturing base in Europe, they decided to restrict the number of Japanese cars that could be shipped into Europe because of the problem of Japan keeping their own home market in Japan closed to European cars.

So the Europeans established a very low level of percentage of sales that Japan can have in Europe—not just for a few months or for a year or two, but stretching out through the rest of this decade to the year 2000.

Why have the Europeans done that? They have done it because it is necessary and it is intelligent strategy, and because Japan is not interested in fair and free trade. That is not the game they play. They play a manage-trade game.

So when someone comes in here and sort of puts forward a fairy-tale notion that we ought to play by a different set of rules from every other country in the world, I say yes, we can do that. We are doing that now, and we are losing our shirt. We are losing our future. We are losing the faith of the American people. That is one of the reasons why there is a political rebellion underway in the country right now.

There is a story today on the AP wire. I tore it off a little while ago. It came across the wire earlier today. Listen to this: "Voters say Ross Perot is the Presidential contender best able to handle the economy, an Associated Press poll finds. The economy remains the voters top concern. Overall, 42 percent of those polled chose Perot as the best candidate to handle the economy compared with 19 percent * * *" who chose President Bush. Bush has been in office now 3½ years. He was part of the Reagan-Bush administration for the 8 years before that. Now he gets a 19-percent rating selling the same kind of snake oil that I was listening to being advocated here by the Senator from Texas.

Look at this so-called free trade situation we have—presumably—with Communist China. What a joke. This free trade means that, this year, mainland China, run by hardline Communists, is going to have a trade surplus with the United States in their favor of about $15 billion. That means they are going to take and draw $15 billion out of our economy. That is where part of our economic strength is going, leaving here and going to Communist China. More important, all of the jobs connected with that activity, that might otherwise be here in the United States, disappear. In effect, those jobs are taken out of the United States and shipped to China.

I realize that some people get rich on this. I realize there are some people in the business sector managing some of this trade activity and are the lobbyists for these foreign interests and so forth, who are making fortunes. But they are making fortunes, in my view, by damaging the United States of America.

I am sick of it, and I think the American people are sick of it. That is why they are going to elect a new President this year. They are so sick of it that they may actually do something that is so unconventional and elect somebody outside of the two-party system, because the economic issue is so pressing and real in this country.

I listened to this talk on the floor by the Senator from Mexico about how important it is to help the people of the Soviet Union have air-conditioners, refrigerators, and whatever else he mentioned. I am all for them being able to afford what they can afford to earn. But I will tell you this: There are an awful lot of people in America today that cannot afford to buy a refrigerator, do not have air-conditioning, and cannot afford to buy air-conditioning.

I will tell you about a case of air-conditioning, if you want to hear one. The other day on national television, on one of the evening network television shows, they interviewed two American veterans of Desert Storm from a little over a year ago. These are veterans who went over and fought in the uniform of this country, put their lives on the line, and carried out that mission. They came back to the United States, went back into civilian life, and are today unemployed, cannot find a job, and are homeless and living in cardboard boxes here in the District of Columbia, the Nation's Capital.

I suppose that is air-conditioning, too, if you are living in a cardboard box because you are homeless. What is going on here? How is it that this Nation and this administration can find in its heart and in its strategies a way to have an economic strategy for every country in the world but our own?

There is a plan for Mexico. It is called a free trade agreement with Mexico. Mexico has already sucked a lot of jobs out of the United States, because workers down there are paid about 50-cents-an-hour, and there are no environmental standards. So the jobs have been rolling down there. We will have a free-trade agreement, and a lot more jobs will go to Mexico, while people in our country are desperate to find work.

There is a plan for Kuwait.

There is a plan for Communist China, called the most-favored-nation trading status. The administration was in here breaking arms left and right the other day to get that through here again, so the Chinese can run this big trade surplus and keep their people at work while ours are unemployed.

They want help for the old Soviet Union now. I understand the argument and the reasoning behind that. But how about some help for our own people? What about the people in America who are losing faith in their own Government?

It is not just the unemployment. We have 40 million people in this country tonight—that is the rough estimate, between 35 million and 40 million—that do not have any health insurance whatsoever, not a penny. Several million of

them are children, going without any health insurance protection in America today.

Well, where does that come on the list of priorities? Why should we not attach that item to any bill that comes through here to give money to the old Soviet Union?

Why, at a minimum, for example, should we not be providing health care protection for the children of America, or for the expectant mothers of America who do not have health insurance now, who are not getting prenatal care, which they need? Why not take something that is as fundamental and basic as that and at least attach that to the next request that comes through here to send money to some country across the ocean? Why should we not be doing that? How is it that we say to our own people, look, you go without, because we need to take the money and give it to somebody else in another country? How is it that we can keep saying that?

I will tell you how it is—because this administration is an elitist administration. It is an administration where a lot of people have the advantage of family trust fund income, and great wealth. They are insulated from the problems that affect rank-and-file people in this country. Their kids are not looking for summer jobs. Their kids have summer jobs. They are not worried about having a sick child and not being able to get health care because they lack health insurance, because they all have health insurance—essentially, a very good Government health insurance plan, I might say.

The things that are present in the lives of other people across the country that are desperate problems and that need solving are so far removed from the people in the top of the executive branch of Government today that they do not understand it. They do not understand their own country. In fact, they have more of an interest and understanding of other foreign countries. That is why the emphasis today is being placed on helping other countries and not on helping America.

We just cannot have that any longer. I want to see the rest of the world come along. I think we should play a responsible part around the world, although I do not think we should do it by ourselves. I think other countries ought to help do it.

When Japan is taking $43 billion a year out of the United States, they obviously are in a stronger position to help than we are right now. They are spending money on their infrastructure; we are not. They have a much lower unemployment rate than we do. They have fewer homeless people than we do. They do not have a rampant crime problem in Japan today; we do. They have their people covered by health insurance; we have nearly 40 million without any health insurance.

So they obviously can afford to do more right now than we can, especially because they are going to take $43 billion out of the United States this year, essentially through unfair trading practices that our administration here is not really doing anything about.

These are real issues. This is what is going on in America today. We cannot continue this detachment from these realities. We cannot keep coming up with economic programs for every other country in the world and not have an economic program for people right here in America.

We have had major problems in our inner cities. We saw an example in Los Angeles after the Rodney King verdict, and we have seen outbreaks in other cities as well. We may see more of it this summer in other cities. The problems of inner-city youth today are desperate problems, and the problem, fundamentally, is that there is no economic hope or opportunity. There are no jobs to be had. There are not even McDonald's jobs to be had, because there are not enough to go around.

The unemployment rates among our inner-city youth—black, white, whatever the race—is running over 50 percent. Our country has turned its back on those young people. As a result, those young people increasingly feel no stake in our country, because they do not see the country showing any willingness to make any kind of a stake in them, in trying to make sure there is some job opportunity for them.

Now we are going to go ahead and make sure we have some employment strategy for the old Soviet Union. How do we do that, when, at the same time, we are turning our back on our own country's needs? I do not understand it. I just do not understand it.

I realize that when that happens, there are some people who will get very rich here in America—a handful of people, the ones that control some of the trading franchises, the people who are the lawyers and the lobbyists here in town that hustle for the foreign interests.

Oh, yes, they are going to make a lot of money and they are making a lot of money, obscene amounts of money. but our country is in serious trouble.

That is what the public is trying to say in these public opinion polls, and not just in the Presidential race where there is a very powerful manifestation of it now. There are polls that ask periodically whether or not the United States is on the right economic track going into the future or on the wrong economic track going into the future. Consistently in those polls now, taken by various polling companies of reputation, over 80 percent of the American people are coming back time after time after time saying America is on the wrong economic track going into the future.

And the people are right. We are on the wrong economic track. And we need a new economic strategy in America. And we have to stimulate job growth in America. The problem is urgent. It is at least as urgent as any problem in any other country.

People talk about our ability to be able to lead internationally. We cannot lead if we are not leading at home. If we are not strong here, if we do not have enough jobs to go around, if our society is not at peace with itself, we are not going to be able to offer any kind of a meaningful world leadership role.

It all comes back to the question of how well are we doing here at home, how strong are we here. Our country today is not united. It is not solid. It is not showing the kind of economic strength that we have to have.

There was a story on the front page of the Washington Post the other day. College graduates coming out of school today have the highest level of unemployment among college graduates thjat we have seen in recent times. Here are people that have sacrificed and their families have sacrificed, so they can get on through and get advanced degrees; they cannot find work.

As I mentioned before, we have engineers in this society by the thousands who cannot find jobs in engineering and who are having to take jobs well below their skill levels. They are driving taxi cabs, flipping hamburgers, doing what they have to do. Many of them just remain unemployed because they cannot find anything.

Now, what is No. 1 on our list? Let us find another country to help overseas. Recently, it was China. The other day it was Thailand. It is Mexico. You name the country, the Bush administration has a plan. Just do not name America because when it comes to America they do not think there is a problem and, therefore, they do not have a plan. That has to change.

I do not want to see a bill brought on this floor that does not also address the problems of America. I will be prepared to offer to any bill like that that comes along something that addresses the economic problems here in America at the same time. We will find out where people are on this thing, whether they are prepared to help our own people at least as much as we are prepared to help people in some other country.

Our Government has walked away from the American people. That is why there is all this disillusionment, why people are wanting to vote, why they want change, and why there is a political rebellion in the country. I think there should be, given what I have seen today.

It is time to concentrate on solving problems here in America—problems that come about when we do not pay attention to the economy.

(Mr. WOFFORD assumed the Chair.)

Mr. RIEGLE. Something else. A reference was made to crime legislation. We have a terrible crime problem in

America. People are being slaughtered in every city across the country and in the rural areas as well.

There is a story in the paper today about a young mother here in Washington, DC, who was driving home from church the other day, and was cut down by a bullet intended for someone else. We have an aide to one of the Senators just recently shot and killed on a street within four or five blocks of here. This kind of mayhem is rampant. We will have more people slaughtered in the city of Washington, DC, this year than are killed in that fashion in the entire country of Japan.

Something is wrong here in America, and it has to be fixed. Why is it that the focus is here on problems somewhere else around the world? We say we have great ideas, let us go solve their problems. The administration says, oh, wait, there is another spot around the world. They have problems; let us go over and solve their problems. Here is Kuwait and Iraq. Let us go off and solve their problems. Thailand. By all means let us help them. What about Mexico? Mexico has a big unemployment problem. We need a job program for Mexico. By all means let us have a jobs program for Mexico.

Meanwhile back here in the United States, the American people are crying out in every way they know how that our economy is in trouble and let us pay attention to things here at home.

It is time we had a President for America and not just a President for the world.

Maybe we need two Presidents, one who can play foreign policy and one who concentrates on what is going on here in America. It would be nice if we could get one President who could do both things. But we cannot have a situation where the emphasis is continually going on the problems outside of America, at the same time that the problems in America are being ignored and are getting worse.

We have to give our people hope. We have to have a new economic strategy in America. It has to be an investment strategy. We have to lift our productivity and that means the private sector. And the private sector and public sector has to work together.

I am talking about a concept called "Team America." That means that business, government, labor, and citizens ought to be working together as a team here in this country to create more jobs, to create better jobs, and to stop this backward slide where people are finding that they are having to work harder and harder to earn less and less and have less and less of a living standard. That is not the future we want for ourselves. But, that is the future we are getting.

Now again, I realize that someone in the executive branch of Government today who may be living off a great big, fat family trust fund does not think there is a problem. They will not think there is a problem because they do not have a problem. Just because they do not have a problem does not mean that there are not tens of millions of Americans who do have a problem.

As a matter of fact, the greed of some is what is responsible for the deprivation of so many others right here in our own society.

You look at these huge structural deficits throughout the Federal budget. It is not a mystery where those came from. They came from Reaganomics and supply side economics and the nonsense of the 1980's. It started out under the name of so-called budget discipline in the House, back in those days called Gramm-Latta. It was a complete nothing. It was brought later here and turned into the Gramm-Rudman-Hollings. It was a complete flop over here. We have the highest deficits we have ever had. The Federal budget deficit and debt just keeps ballooning all the time. Trickle-down does not work. Yes, it works for some. Let me change that. Trickle-down works for the people that get the money in the first place, but not to anybody beneath them in the economic pecking order. That is why the data compiled by the Federal Reserve Board show how the wealth is being increasingly concentrated at the top of the income scale in the United States. The money is going to the top but it is not coming back down and being shared across the country.

The middle class is shrinking. It is shrinking every single day. And it is not right that should happen. So anyone who is going to come in here and argue for building a middle class in some other country I think has first to have a plan about how we retain and build the strength of the middle class here in the United States and stop people who were in the middle class from sliding back into a lower income scale, many of them right now who are homeless.

These things have to be kept together. That is what the American people want and expect. And I will tell you this: We are going to vote on this. We have had other votes like this. We have had votes on Social Security here. And I remember them very well because I offered the amendments, particularly backing up to 1986 when the Reagan people were trying to make cuts in some of the basic programs that helped rank and file people across this country. They were trying to make deep cuts in Medicare and make deep cuts in Social Security. We had votes on those things and thank goodness that we did because we stopped those things from happening.

The people who voted the other way got sent home in the next election. We are going to have some votes on this. We are going to have an opportunity to vote here. We are going to have a chance to let people make it very clear where they are on this issue of helping America. And my hunch is that the American people have had enough of all of this preoccupation on foreign policy when the leaders have turned their backs on America's problems.

And I think people that vote that way on the issue of helping America and who plan to run for reelection, are going to find out about it when they take that voting record back to their home constituencies. That is the way it ought to be.

There was a kind of rough justice back in 1986, and a lot of people that bought into that sophistry went down the drain in 1986. I think after we get some of these votes recorded this time, there are going to be some people go down the drain in 1992.

That will be a healthy thing, because we need a change in orientation here. We need an economic plan for America. We are not going to withdraw from the rest of the world. That is not what I am saying, and I do not want that suggestion put on it. We have a big role to play in the rest of the world. But the biggest role we have to play is right here at home, in building a stronger America. Not in turning our backs on people, extinguishing economic hope for our own people, and having Desert Storm veterans of a year ago today being unemployed and living in cardboard boxes.

They do not need parades. They need jobs, and they deserve jobs. And I do not want their jobs going to Mexico, or going to the old Soviet Union, or going to China, or going to Kuwait, or going to any other place. They deserve the chance to work here in America, just like the sons and daughters of top officials of our Government in the executive branch, in the Cabinet, in the Senate, in the House, and throughout or Government system. Rank and file people deserve at least as much, at least as much.

So it is time to end the double standard and all the sophistry. A whole lot of ideas were trotted out as to how all these things were going to happen—trickle-down economics, thousand points of light. I will tell you that these two homeless and unemployed Desert Storm veterans who were on the news the other night would like one of those points of light to shine on them. That is where Government comes into the act here in this country.

I hear the administration say, well, wait a minute, we see a problem; we do not see it here in America, but we see a problem out there in another country and we have a grand plan to fix that problem. It is going to cost some money, going to have to have some sacrifice. The United States is going to have to get out there and lead the charge. Let us go on and do it. See the problem in Mexico, let us go help Mexico. See it in Kuwait, go help Kuwait, and so forth.

But they just cannot see the problems here at home, because they do not understand them, because the problems are not affecting them, and they just do not have any sense of urgency about it. It is a failure of leadership that is really breathtaking. That is why you see stories like this one I cited earlier. That is why on the economic rating today, this administration gets 19 percent. Out of 100 percent, it gets 19 percent. That is a pretty miserable rating after 11½ years. But it bears out what I am saying.

So, let us do these things in America. If we are going to help the rest of the world, then we should make sure that we are going to help America. If we are going to help some citizen in another land, then we should help some citizens in our own land. If we are going to provide jobs in another land, then let us provide jobs in America. If we are going to worry about providing somebody with a refrigerator or an air conditioner in another land, then let us worry about somebody in America. If we are going to worry about providing health care in some other land, then let us worry about providing health care here in America. I think our people deserve no less than that.

What is so ironic is that the rank and file—the average citizen—who today is carrying most of the load of this country, especially with the volunteer military force. In previous years, with other wars, and other war actions, you have a high percentage turnout of people from the high-income levels going into the military services and putting their lives on the line. There is much less of that today. We have a volunteer Army. And the volunteer Army tends to be sort of class oriented. You do not find so many of the wealthy people or their sons and daughters in there anymore. You find more of the people who are what is left of the middle class, many times the lower-income groups, that are the ones who are serving and putting their lives on the line.

At the very least, if we are going to ask somebody to put on the uniform for America and go to a foreign land and be prepared to fight and die or come back with, perhaps, a disability for the rest of their lives, then when they come back to America I would hope that we would have the grace and the decency to see to it that that person is accorded as much consideration and as much opportunity, as good a life as we are prepared to try to establish for some other person in some other country. But we are not doing that today. We have turned our back on our own people.

Yes, we want the service. Yes, we want people to go ahead, go out and carry the brunt of the responsibility when there are lives that have to be put on the line. But then when that is over, and the parades have been held, and so forth, which are appropriate to have, then do not come knocking on the door of the Federal Government for a job, for health care, or for a decent place to live. No, you make your way in the free trade system. You find a way to have a good life for yourself and to be able to make your way and establish a family and provide for your family in this good old free-trading system.

That is why the Japanese are laughing at us, ridiculing us. They cannot believe it. They cannot believe how stupid we have been to allow ourselves to be manipulated this way, year in and your out. They took $43 billion out last year. They have taken $460 billion out since 1980. You did not see any young Japanese men or women out there on those sand dunes in the Persian Gulf putting their lives on the line. You did not see them because they were not there. No, they preferred to have us do that.

And in our own society we made some preferences as to who we would prefer to have do that within our own society. Then when those veterans come back, having functioned in a heroic way, they have their Government say, well, thanks, we needed you then but we do not need you now. You make your own way. You see if you can find a job in the so-called free trading system.

Do you think that does not create cynicism and a feeling that the country has turned its back? Of course it does, because that is what is happening.

So we cannot have any more of it. And I do not want to see the President send down one more bill where we are taking something out of the hides of the American people to help somebody in the other countries, unless at the same time we are standing up to bat to do something about helping our own people.

I am going to finish with this and then I will yield the floor. But it relates directly to this, at least in my mind.

I chair the Health Subcommittee on the Senate Finance Committee. We are trying to get a national health care plan in place. We desperately need one that will control costs for everybody that has health insurance—a plan to bring those costs down so they are not just skyrocketing and wrecking peoples' financial situations. And we need a plan to extend coverage out to those people in our society that do not have any health insurance coverage at all.

So we have had lots of hearings. We had hearings in Michigan. We have had hearings here. We are gathering an enormous wealth of information to demonstrate why it is essential that we go ahead and enact a sensible national health insurance plan that controls costs and provides for coverage for everybody in our country. Every other major nation has found a way to do this. We can. It is time that we do it.

At one hearing out in Michigan, we had a young woman come and testify named Cheryl Eichler. She was a lovely, lovely young woman in her twenties. She looked frail the day she came because she actually left a hospital bed to come and testify. She came because she felt so strongly about the need for national health insurance coverage.

Cheryl was a young woman working in a responsible position in a 7-Eleven store. She made about $12,000 a year. She had a serious medical problem called Crohn's disease. This is a disease that can be treated if you get to the doctor on time, or if you get the medical procedures you need on time. But in order to do that, you have to have health insurance, and she did not have any health insurance. She did not get any through her employer because she did not qualify at her employment level to get health insurance, and she did not earn enough to be able to buy private insurance for herself.

Of course, once it was established that she had a medical problem, namely this Crohn's disease, she was in effect uninsurable. In other words, the insurance companies do not want the people who really need the health insurance. So they were not interested in covering her in any case.

She came in and she told her story as to the problems she had encountered: How she had delayed going to the doctor because she did not have the money, about the terrible pain and the difficulty, and how finally when she went in the operations that she had, and so forth. It was as touching a testimony as I have heard, and I have heard a lot of witnesses over 26 years now of service here in the Congress.

Within about 6 months of her testimony that day—which was so riveting, and so powerful, and so designed to try to tell the story so that other people would not have to go through the degrading, terrible, painful difficulty that she had gone through—within 6 months Cheryl Eichler died. I am convinced that she would be alive today if she had the health care that she needed when she needed it.

And we could have done that in this country. We could have done that for her. We could be doing it for everyone. The Japanese are doing it for their people. The Germans are doing it for their people. The Canadians are doing it for their people. Here in our country we have just decided, by our inaction, that our people are not important enough to have done for them.

So Cheryl Eichler died. And I think it is really a crime. It is a crime against her. It is a crime against the future of this country that her life was lost, and could have been saved if she had just gotten the basic health care that she needed.

We know that the same situation is true right now with women who de-

velop the early stages of breast cancer. If we can detect that with a mammogram early, then in most cases now we know how to deal with that problem. And we can prevent that cancer from spreading and worsening—spreading until women, many of them at a young age, are killed by cancer. Yet we are not doing it. We are not doing it because we do not attach a high enough value to that problem or to those people in our society.

That has to stop. That has to change. I mean, that is the cry that the American people are sounding all across this country. They do not want any more of that. They want us to become a modern, decent Nation where we care about our own people and where we concentrate on basic things.

First, we have to do things like making sure there are enough jobs to go around so that people are not fighting each other over too few jobs. There should be enough jobs so that everyone is able to work and earn a living and make a contribution to the country and to provide for themselves and provide for their family.

There should be basic health insurance in place so parents do not have to lay awake at night worrying themselves sick about a child that may have a fever or have some other symptom that indicates they need to go to the doctor, but because they do not have much money or they do not have health insurance they are reluctant to go. And they hold off. That is happening all across this country tonight.

Why should that be? Why are the children of America not as important as the children of Japan, or Germany, or Canada? They are. But the selfishness and the blindness of some of our leaders in our Government who can see those problems when they are in their own family circle but cannot see them when they are out across town or in another community or in some other family prevents us from dealing with the problems. Oh, they may know in some abstract way the problem is out there. And in some abstract way they may care about it. But they do not care enough about it to do something about it.

That is why you run for President, in my view. You run for President to be President. And you run to be President to do things to help your country and to help your people live better lives.

Yes, there are some foreign policy responsibilities that go with it. But, I do not think they come first. And I do not think they come in place of your basic responsibility, your most fundamental responsibility—which is to look after the interests and the well-being of your own people. All of the people. Not just some. Not just some in your party or some who have your orientation. But to look after all 250 million-odd American people so that they have a decent chance and a decent way to live.

If somebody wants the job for any purpose other than that, then they are not right for the job. And they should not get to be President. They should not even be considered in a serious way for President. We should only consider people for President who see that responsibility as the basic operating premise of the job and who will bring their ideas and their commitment. People who will roll up their sleeves to go to work on those issues that really affect what is going on in the lives of our people, and who will really secure a decent future for our people in the broadest sense across the country. That is what is missing. That is what has been lost.

So, when I hear tonight, earlier, as I did, all of this great enthusiasm for helping still yet another country and giving full weight to the needs of another country, and why those needs should properly be met and put that ahead of these personal problems and unmet needs in America, I feel it is wrong. It is just as wrong as it can be.

And it is wrong to a child in America today, growing up in a situation of deprivation—whether it is a young child who is black, in the inner city, where the problems, I think, in many cases are the worst because then you have the racism poured in on top of it. Or it is a white child somewhere out in a rural area where there is no income to speak of in the family, where the educational opportunity is meager or, in a sense, so substandard that it cannot possibly make any difference in their life, where there is no real access to health care or preventive medicine, or bad nutrition because there is very little money even for decent food. We have children like that that number in the millions in our country tonight, throughout our society. We are not concentrating on them. In effect, they have been written off. And it is not right. And it has to change.

America in some respects may have lost part of its soul during the 1980's, with respect to these kinds of issues—with all of the philosophic things that were tossed out there about supply-side economics and trickle down. You know, that philosophy that if people are poor it must be because they want to be. If people are on welfare it must be that that is what they prefer for themselves.

We heard a lot of that nonsense coming from very wealthy people who were living in the lap of luxury and did not have the foggiest understanding of what life is like for poor people in any meaningful way. That was sort of used as a way to disconnect from those problems.

Well, America has to get back in touch with itself. We have to get reconnected to one another. We have to have an authentic Team America concept, where we understand that everybody in this country is important. They are a creature of God. I would think there is a moral foundation for it, to start with. And beyond that, they are American citizens, equal in importance to every other American citizens from the President right on down the line.

They have a right under our laws and under our conception as a country to the fundamental things that the Bill of Rights and the Constitution speak about. And they have a right to an opportunity to some measure of a full life—to be everything that God intended that they might be, to develop their talents and to live decently, and in a decent society.

So when the bill comes in to help people in another land, let us make sure that we are prepared at the same time to help people who live in this land, this land we love. Let us love and care about our fellow citizens. Let us see that they have the kind of chance that we want for ourselves and for our own children. That has to start here first. If it is going to be an authentic overseas and have any meaning, then it has to be real at home first.

That is our challenge. I put that challenge to my colleagues who spoke earlier tonight, because, frankly, I did not really hear anything said about the American agenda and responding to the need of America. They will have a chance to vote on that issue shortly.

I thank the Chair, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. RIEGLE. Mr. President, I ask unanimous consent that the Senate proceed to executive session to consider the following nominations: Calendar Nos. 586, 587, 644, 645, and all nominations placed on the secretary's desk in the Coast Guard.

I further ask unanimous consent that the Senate proceed to their immediate consideration; that the nominees be confirmed, en bloc; that any statements appear in the RECORD as if read; that the motions to reconsider be laid upon the table, en bloc; that the President be immediately notified of the Senate's action; and that the Senate return to legislative session.

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

The nominations considered and confirmed, en bloc, are as follows:

ENVIRONMENTAL PROTECTION AGENCY

Christian R. Holmes IV, of California, to be an Assistant Administrator of the Environmental Protection Agency.

Christian R. Holmes IV, of California, to be Chief Financial Officer, Environmental Protection Agency. (New position.)

IN THE COAST GUARD

The following officers of the U.S. Coast Guard for appointment to the grade of rear admiral:

Gregory A. Penington.

Paul E. Versaw.

William C. Donnell.

The following officers of the U.S. Coast Guard Reserve for promotion to the grade of rear admiral:

Fred S. Golove.

George R. Merrilees.

The following officer of the U.S. Coast Guard reserve for appointment to the grade of rear admiral (lower half):

Robert E. Sloncen.

NOMINATIONS PLACED ON THE SECRETARY'S DESK IN THE COAST GUARD

Coast Guard nominations beginning William I. Norton, and ending George S. Karavitis, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of March 12, 1992.

Coast Guard nominations beginning Richard B. Gaines, and ending Michael A. Megan, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of April 1, 1992.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. McCathran, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE

At 3:17 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the bill (S. 250) to establish national voter registration procedures for Federal elections, and for other purposes; without amendment.

The message also announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 2660. An act to authorize appropriations for the United States Holocaust Memorial Council, and for other purposes.

The message further announced that the House has agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 331. A concurrent resolution authorizing the use of the Capitol grounds for the Greater Washington Soap Box Derby.

MEASURES REFERRED

The following bill was read the first and second times by unanimous consent, and referred as indicated:

H.R. 2660. An act to authorize appropriations for the United States Holocaust Memorial Council, and for other purposes; to the Committee on Energy and Natural Resources.

ENROLLED BILL SIGNED

The PRESIDENT pro tempore (Mr. BYRD) announced that on today, June 17, 1992, he has signed the following enrolled bill which was previously signed by the Speaker of the House:

H.R. 2507. An act to amend the Public Health Service Act to revise and extend the programs of the National Institutes of Health.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC-3440. A communication from the Chairman of the Pennsylvania Avenue Development Corporation, transmitting, pursuant to law, the audited financial statements of the Corporation for fiscal year 1991; to the Committee on Governmental Affairs.

EC-3441. A communication from the Secretary of Education, transmitting, pursuant to law, the semiannual report of the Office of Inspector General, Department of Education, for the period ended March 31, 1992; to the Committee on Governmental Affairs.

EC-3442. A communication from the Secretary of Veterans Affairs, transmitting, pursuant to law, the semiannual report of the Office of Inspector General, Department of Veterans Affairs, for the period ended March 31, 1992; to the Committee on Governmental Affairs.

EC-3443. A communication from the Secretary of the Postal Rate Commission, transmitting, pursuant to law, rules of practice and procedure; to the Committee on Governmental Affairs.

EC-3444. A communication from the President of the American Council of Learned Societies, transmitting, pursuant to law, the annual report of the Council for fiscal year 1991; to the Committee on the Judiciary.

EC-3445. A communication from the Secretary of Education, transmitting, pursuant to law, final regulations—Foreign Periodicals Program; to the Committee on Labor and Human Resources.

EC-3446. A communication from the Secretary of Education, transmitting, pursuant to law, final regulations—Chapter 1 Migrant Education Program; to the Committee on Labor and Human Resources.

EC-3447. A communication from the Secretary of Education, transmitting a draft of proposed legislation to reauthorize and improve educational opportunities for individuals who are deaf, and for other purposes; to the Committee on Labor and Human Resources.

PETITIONS AND MEMORIALS

The following petitions and memorials were laid before the Senate and were referred or ordered to lie on the table as indicated:

POM-401. A concurrent resolution adopted by the Legislature of the State of Hawaii; to the Committee on Agriculture, Nutrition, and Forestry.

"HOUSE CONCURRENT RESOLUTION 15

"Whereas, Guam, Hawaii's Pacific Island neighbor, has been invaded by a menace, commonly referred to as the brown tree snake, which can grow up to ten feet in length; and

"Whereas, according to an article in the Wall Street Journal, the brown tree snake, which numbers three million on Guam (14,000 snakes per square mile) and outnumbers the population by as much as 22 to 1, has become a serious threat to Guam's infrastructure and environment; and

"Whereas, the brown tree snake has caused the eradication of nine out of twelve species of Guam's native birds since 1975, and has been blamed for 250 power outages a year and millions of dollars of damage to power lines and electrical facilities; and

"Whereas, this snake purportedly has crawled through sewer lines, in and out of toilets, and into homes in an attempt to find food; and

"Whereas, the snakes are mildly poisonous and 53 cases of snake bite, which includes the near death of four infants, have been treated at the Guam Memorial Hospital emergency room between 1986 and 1989; and

"Whereas, thus far Hawaii has been free of snakes and must remain vigilant in preserving its environment, agriculture, and beauty against the unwelcome intrusion of this and other destructive pests; and

"Whereas, in the past 10 years at least six snakes have found their way to Hawaii either as stowaways in aircraft or cargo, or on aircraft in the wheelwells; and

"Whereas, snakes could also be inadvertently transported to Hawaii on commercial or military ships; and

"Whereas, because the brown tree snake movements from Guam to Hawaii and other Pacific regions will likely continue, the state Department of Agriculture is currently finalizing an Action Plan for the prevention, detection, and eradication of the brown tree snake in Hawaii; and

"Whereas, the Action Plan will establish cooperative relationships for research and technology transfer, coordinate activities, and delineate areas of responsibilities among the various state and federal agencies, as well as promote public education on the brown tree snake; and

"Whereas, on the federal level, the recently passed Defense Authorization bill authorized a program to suppress, control, and eradicate brown tree snakes by utilizing beagles to sniff out snakes in outgoing planes and sea freight on Guam—but unfortunately, the program has not received any funding; and

"Whereas, expansion and funding of this program to include Hawaii is necessary to protect Hawaii from the spread of unwanted pests; now, therefore,

"Be it resolved by the House of Representatives of the Sixteenth Legislature of the State of Hawaii, Regular Session of 1992, the Senate concurring, that the United States Congress be urged to pass legislation to expand and fund a program to prevent the infiltration of brown tree snakes to Hawaii; and

"Be it further resolved that a certified copy of this Concurrent Resolution be trans-

mitted to the President of the United States Senate, the Speaker of the United States House of Representatives, the Secretary of the United States Department of Agriculture, the Secretary of the United States Department of Defense, the Secretary of the United States Department of Interior, the Commissioner of the United States Customs Service, and the members of Hawaii's congressional delegation."

POM-402. A concurrent resolution adopted by the Legislature of the State of Louisiana; to the Committee on Armed Services:

"SENATE CONCURRENT RESOLUTION NO. 27

"Whereas, the Louisiana Army National Guard performs a vital service to the state of Louisiana when called upon to assist during periods of disasters such as hurricanes, tornados, and flooding; and

"Whereas, the Louisiana Army National Guard is an outstanding military organization as proven by its heavy involvement in Operation Desert Shield and Desert Storm when it activated more than ten percent of the total national guard that was mobilized; and

"Whereas, the state of Louisiana is one of only six states in the nation that makes a major investment in its soldiers through a state tuition exemption program which allows soldiers to attend a state funded college or university without paying tuition; and

"Whereas, the Louisiana Army National Guard has a long history of recruiting, training, and retaining a large quantity of high quality soldiers.

"Therefore, be it resolved that the legislature to Louisiana memorializes the Congress of the United States to petition the Secretary of Defense to compare the readiness and credentials of the Louisiana Army National Guard to other states before ordering a reduction in force.

"Be it further resolved that a copy of this Resolution shall be transmitted to the secretary of the United States Senate and the clerk of the United States House of Representatives and to each member of the Louisiana congressional delegation."

POM-403. A joint resolution adopted by the Legislature of the State of California; to the Committee on Armed Services:

"ASSEMBLY JOINT RESOLUTION NO. 65

"Whereas, The U.S.S. Missouri is currently homeported in Long Beach; and

"Whereas, The Base Closure Committee recommended, and Congress and the President approved, the closure of the Long Beach Naval Station; and

"Whereas, The United States Navy will be closing the Long Beach Naval Station over the next five years and all ships, including the U.S.S. Missouri will be relocated to other ports or put into storage; and

"Whereas, The U.S.S. Missouri is scheduled to be mothballed and towed to Bremerton, Washington early in 1992 for storage; and

"Whereas, The citizens of Long Beach desire to retain the U.S.S. Missouri in Long Beach, a "Navy Town" since 1919, to be berthed at an unused pier and open for public display; now, therefore, be it

"*Resolved by the Assembly and the Senate of the State of California, jointly*, That the members support keeping the U.S.S. Missouri in Long Beach, and urge all citizens to contact their federal representatives to request their assistance in keeping the U.S.S. Missouri in Long Beach; and be it further

"*Resolved*, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States."

POM-404. A concurrent resolution adopted by the Legislature of the State of Louisiana; to the Committee on Armed Services:

SENATE CONCURRENT RESOLUTION NO. 32

"Whereas, when the Congress of the United States passed the National Defense Authorization Act for Fiscal Year 1991, they amended Chapter 39 of Title 10, United States Code, by adding a new section which prohibits a member of a reserve component serving on active duty or full-time National Guard duty from serving with a unit of the Reserve Officer Training Corps program; and

"Whereas, by inserting this section into Title 10 of the United States Code, the Congress of the United States has failed to recognize that by doing so, they have hindered college and university ROTC programs immeasurably as this prohibition seriously degrades every school's ability to support and maintain their ROTC units; and

"Whereas, by this omission the Congress of the United States further hinders the relationship between colleges and universities and the military community; and

"Whereas, most importantly, this prohibition has drastically undermined the obligation that colleges and universities owe to their cadet corps.

"Therefore, be it resolved that the Legislature of Louisiana memorializes the Congress of the United States to amend that section of the National Defense Authorization Act for Fiscal Year 1991 and allow members of a reserve component serving on active duty or full-time National Guard members to serve with the Reserve Officers Training Corps program.

"Be it further resolved that a copy of this Resolution shall be transmitted to the secretary of the United States Senate and the Clerk of the United States House of Representatives and to each member of the Louisiana congressional delegation."

POM-405. A resolution adopted by the House of Representatives of the State of Hawaii; to the Committee on Commerce, Science, and Transportation:

"HOUSE RESOLUTION 20

"Whereas, the State of Hawaii has gone on record for the need for cable rate re-regulation; and

"Whereas, before the 1984 Cable Act went into full effect, Hawaii's cable industry and consumers enjoyed sixteen years of balanced rate regulation at the state level; and

"Whereas, as a result of this balanced approach to rate regulation, Hawaii became one of the first states to be ninety-nine per cent cabled with many areas reaching seventy per cent penetration and one large community attaining a penetration of ninety-three per cent; and

"Whereas, since deregulation in 1984, cable rates have risen geometrically, upsetting the balance that had existed for years and exacerbating problems that have threatened the welfare of the consuming public; and

"Whereas, in the eight years since 1984, Hawaii's cable systems have raised rates by as much as ninety-nine per cent, making Hawaii no exception to this national trend; and

"Whereas, all sources of competition presumed under the 1984 Cable Act have failed to materialize; and

"Whereas, although nonexclusive cable franchises have been mandated by law in Hawaii, the realities of cost, financing, limited pole space, and the presumption of renewal all combined to create natural monopolies for existing cable systems in Hawaii; and

"Whereas, in addition to the need for cable rate regulation, it is in the public interest to provide competition for existing cable TV services; and

"Whereas, for example, the introduction of newer technologies, such as an integrated broadband network, would provide consumers with greater choices of video program suppliers and preferred services—advantages that would be extended ultimately to all consumers, rural and urban, so as to avoid a divided society of information "haves" and "have nots" and

"Whereas, in addition, the establishment of a statewide fiber optic network would serve as a vital component to Hawaii's future public and continuing education structures; and

"Whereas, also, the implementation of a highly-featured telephone network capable of video transmission would be an asset to international competitiveness for the United States and economic development within the states; and

"Whereas, adequate accounting and structural safeguards have been developed and are already in place in the state and federal jurisdictions to protect against cross-subsidization from telephone customers; and

"Whereas, opening the cable industry in Hawaii to increased competition and restored rate regulation by state and local governments would benefit local viewers of cable television by providing them with new cable products at more competitive prices; now, therefore,

"Be it resolved by the House of Representatives of the Sixteenth Legislature of the State of Hawaii, Regular Session of 1992, that the United States Congress is urged to open the cable television industry to more competition in the marketplace and restore cable television rate regulation to state and local governments; and

"Be it further resolved that copies of this Resolution be transmitted to the President and Vice President of the United States, the Speaker of the United States House of Representatives, the President of the United States Senate, and to every member of the Congress and the Senate of the United States."

POM-406. A concurrent resolution adopted by the Legislature of the Commonwealth of Massachusetts; to the Committee on Commerce, Science, and Transportation:

CONCURRENT RESOLUTION

"Whereas, the Atlantic bluefin tuna is a renewable resource of historic importance to Massachusetts' commercial and recreational fishermen; and

"Whereas, Massachusetts continues to be a leader in conservation and wise use of all renewable marine fisheries resources including Atlantic bluefin tuna; and

"Whereas, Massachusetts tuna fishermen have gone on record in supporting conservation actions and harvest reductions proposed by the International Convention for the Conservation of Atlantic Tunas; and

"Whereas, the long-standing allocation scheme by gear types and user groups has adequately accommodated all the diverse tuna harvesting groups; and

"Whereas, in nineteen hundred and ninety-one, Massachusetts fishermen harvested one million three hundred and thirty-four thousand pounds of Atlantic bluefin tuna worth ten million four hundred thousand dollars to

the fishermen or forty-seven percent of the total available quota and has taken over fifty percent of the total United States quota in recent years; and

"Whereas, the proposed rule making recently issued by the National Marine Fisheries Service, under the guise of implementing the recommendations of the International Convention for the Conservation of Atlantic Tunas, actually constitutes an arbitrary reallocation of the tuna resource which would reduce tuna harvest in the general category by thirty-one percent and in the purse seine category by twenty-five percent, well beyond the ten percent reduction recommended by the International Convention for the Conservation of Atlantic Tunas; and

"Whereas, said proposed rule making would arbitrarily reallocate the reductions of general and purse seining category tuna quota from New England and Massachusetts to the angling category which occurs predominately outside Massachusetts, mostly within the Mid-Atlantic area; and

"Whereas, substantial harvest overages in recent years in the angling category have not been adequately controlled or reported by the National Marine Fisheries Service; and

"Whereas, the refocus of fishing effort from mature giant tuna to immature school and medium sized tuna has negative implications on overall fishing mortality rates; therefore be it

"Resolved, that the Massachusetts general court goes on record as opposing this proposed rule making by the National Marine Fisheries Service which would arbitrarily reallocate over three hundred and fifty tons of Atlantic bluefin tuna worth over five million five hundred thousand dollars from New England and specifically Massachusetts to the angling and in-season adjustment categories, thus depriving said Massachusetts commercial fishermen of significant revenue and Massachusetts recreational fishermen of significant recreational opportunity; and be it further

"Resolved, that a copy of these resolutions be forwarded by the Clerk of the House of Representatives to the National Marine Fisheries Service, the Secretary of Commerce, the President of the United States, the Presiding Officer of each branch of Congress, and to the Members thereof from the commonwealth."

POM-407. A resolution adopted by the House of Representatives of the State of Hawaii; to the Committee on Commerce, Science, and Transportation:

"HOUSE RESOLUTION 352

"Whereas, earthquakes are a national problem requiring a national solution; the United States Congress and the United States Geological Service have found that portions of all fifty states are vulnerable to the hazards of earthquakes, and that thirty-seven states are especially susceptible to major or moderate quakes; and

"Whereas, the next major earthquake may well hit east of the Rocky Mountains, especially along the New Madrid Fault in Missouri, where the strongest seismic events ever recorded in American history occurred in 1811 and 1812; and

"Whereas, a midwestern and eastern earthquake will do more damage than a California earthquake, due to the relatively loose and moist soil conditions and the proliferation of structures in the east and midwest that are not built to withstand major quakes; and

"Whereas, California is not the only western state at risk. Other especially high-risk earthquake states include Alaska, Washington, Oregon, Idaho, Utah, Montana, Nevada, Wyoming, Arizona, New Mexico, and Hawaii; and

"Whereas, the probable maximum loss of a great earthquake (8.0 or larger on the Richter Scale) is estimated at fifty to sixty billion dollars, including claims for workers' compensation, business interruption, property loss, and injuries; and

"Whereas, the recent Loma Prieta earthquake which devastated northern California provided a preview of the potential destruction in business and the financial community brought on by a great quake; and

"Whereas, regardless of where in the United States an earthquake actually occurs, the financial implications will be nationwide. Some examples include the following:

"(1) Infrastructure damage will affect the entire nation. Major quakes can rupture pipelines, severing the entire Eastern seaboard, down transmission power lines, block river traffic, and destroy interstate highways;

"(2) The municipal bond market would be impacted by the sudden sale of billions of dollars in bonds by insurance companies to pay claims. Local communities all across the country may find it difficult to enter the municipal bond market for some time after a major quake;

"(3) Policyholders nationwide would be impacted as some insurance companies would become insolvent and others would have insufficient reserves to write new coverage for conventional risk, such as auto and homeowners coverage; and

"(4) Taxpayers from the entire country would pay for disaster relief efforts. Taxpayers are currently paying for the four billion dollars federal rescue package passed by Congress in the aftermath of the recent California quake;

and

"Whereas, the current system of earthquake coverage is unacceptable to both the insurance industry and policyholders, inviting adverse selection and resulting earthquake insurance coverage being unaffordable for many and unavailable for those most susceptible to the perils of earthquakes; and

"Whereas, the recent Loma Prieta earthquake has shown how inefficiently the current coordination of federal and state relief funds operates, leaving many individuals without any assistance long after the earthquake has occurred; and

"Whereas, a prepaid insurance fund built up from premiums collected from homeowners and businesses throughout the nation should save the federal government money in the long run by reducing the need for disaster relief; and

"Whereas, insurance is a preferable protection against earthquakes over disaster aid because insurance:

"(1) Provides better incentive to reduce risk since people contribute to their own assistance in the form of premiums;

"(2) Provides more complete compensation for damages and is more equitable;

"(3) Gives people more control over their degree of protection;

"(4) Is more efficient in dispensing payments to victims; and

"(5) Is less expensive of the federal government in the long run;

"and

"Whereas, the principal beneficiaries of a federally cosponsored program would be the insurance policyholders themselves—America's homeowners and business owners who currently cannot afford earthquake insurance; such a program would also protect the nation's economic health, which would be jeopardized by the severe disruptions of a catastrophic earthquake; and

"Whereas, only a partnership between the federal government and the insurance industry will ensure the effective management of such an unpredictable and widespread risk; now, therefore,

"Be it resolved by the House of Representatives of the Sixteenth Legislature of the State of Hawaii, Regular Session of 1992, that this body memorialize the United States Congress to support legislation proposed in "The Earthquake Project," which would provide nearly universal earthquake insurance coverage for homeowners and create a federally backed financial reserve to protect the national economy from the severe financial shock resulting from a major quake; and

"Be it further resolved that certified copies of this Resolution be transmitted to the President of the United States Senate, the Speaker of the United States House of Representatives, and the members of Hawaii's congressional delegation."

POM-408. A resolution adopted by the Twenty-First Guam Legislature; to the Committee on Energy and Natural Resources:

"RESOLUTION NO. 325

"Be it resolved by the Legislature of the Territory of Guam:

"Whereas, the Honorable Ron de Lugo, Chairman of the House Subcommittee on Insular Affairs, concerned about and fully aware of the judicial needs and desires of the people of Virgin Islands, as well as other U.S. Flag territories, has introduced House Resolution 4901 which amends the Organic Act of the Virgin Islands to require that Presidential nominations to vacant judgeships in the Federal District Court for the Virgin Islands be selected from a list of five qualified candidates provided by the Governor of the Virgin Islands; and

"Whereas, the conditions and problems in the Virgin Islands with its Federal District Court are parallel to and similar with, if not identical, to the same conditions and problems confronted by the people of Guam with the Federal District Court of Guam; and

"Whereas, the people of Guam are now in the process of realizing full self-government by determining their own destiny in a political relationship defined as a commonwealth of the United States of America, this Commonwealth Act, embodied in H.R. 98, setting out the desire of the people of Guam to achieve full judicial independence by the establishment of their own judicial system and by drawing from their own island community to meet personnel needs; and

"Whereas, the importance of Guam's Federal District Court, in the schema of administration and enforcement of federal statutes, is magnified by the geographical separation of Guam from the continental United States, the multitude of highly sensitive court related matters not being capable of being handled or resolved through available electronic telecommunications systems for fear of compromising on-going litigation and the court's mandate to stringently protect the integrity and dignity of its system; and

"Whereas, the present vacancy in the judgeship of the District Court of Guam, which has lasted for an inordinate length of time awaiting a Presidential appointment and Senate confirmation, has created untenable and unacceptable delays in the resolution of active cases, both civil and criminal, and makes it difficult for other matters to

proceed because of pending litigation, despite the commendable efforts of visiting and temporarily appointed judges, the value of continuity in judgeships being paramount, particularly in complex cases where protracted court proceedings may be required for the proper administration of justice; and

"Whereas, although Americans in the continental United States directly influence the selection of federal judges through their election of members of the Senate, who traditionally have recommended nominations to the President, and through their election of the President, the people of Guam do not enjoy the privilege of electing either Senators or the President and thus are denied a voice in the selection process from the traditional recommendation to the President to the final advice and consent of the Senate; and

"Whereas, the judicial system is one of the cornerstones of American democracy, all laws being effectuated through judicial interpretation, and, thus, continuity in the courts must be protected by insuring that vacancies in the judgeships are expeditiously filled; now, therefore, be it

"Resolved, that the Twenty-First Guam Legislature does hereby on behalf of the people of Guam support the enactment of HR 4901 to amend the Organic Act of the Virgin Islands by requiring that Presidental appointments of Federal judges be from a list of five qualified individuals provided by the Governor of the Virgin Islands, and does hereby respectfully memorialize the Congress of the United States to do pass and the President of the United States to do enact said HR 4901 as expeditiously as possible; and be it further

"Resolved, that, the Legislature does also on behalf of the people of Guam request that HR 4901 be further amended to likewise amend the Organic Act of Guam and extend the same provisions for Federal appointments in the territory to the people of Guam through their Governor; provided, however, that such amendment to Guam's Organic Act not affect the process whereby the current nominees to Federal positions in Guam are appointed, which process should go forward without further delay; and be it further

"Resolved, that the Speaker certify to and the Legislative Secretary attest the adoption hereof and that copies of the same be thereafter transmitted to the Speaker of the House of Representatives; the President of the Senate; to the Honorable Ron de Lugo, Chairman, House Subcommittee on Insular Affairs; to the Honorable George Miller, Chairman, House Committee on Interior and Insular Affairs; to the Honorable J. Bennett Johnson, Chairman, Senate Committee on Energy and Natural Resources; to the Attorney General of the United States; to the Honorable George Bush, President of the United States; and to the Governor of Guam."

POM-409. A concurrent resolution adopted by the Legislature of the State of South Carolina; to the Committee on Foreign Relations:

"CONCURRENT RESOLUTION 4613

"Whereas, public concern about protecting the global environment continues to grow as evidence mounts of the long-term damage being done to the Earth by global climate change, toxic waste, freshwater and ocean pollution, and loss of biological diversity; and

"Whereas, environmental problems are inextricably linked with economic and trade policies; and

"Whereas, states have many critical responsibilities with respect to supporting responsible economic development as well as for environmental protection and natural resource management, including land-use planning, transportation, solid and hazardous waste management, and procurement policies; and

"Whereas, the General Assembly of this State has also supported national initiatives which enable states to develop and implement successful economic development and environmental protection programs; and

"Whereas, the General Assembly of South Carolina recognizes that problems such as global climate change, diminishing biological diversity, and ocean pollution can only be solved with cooperation at all levels of government from the local to the international; and

"Whereas, in June of 1992, the world's leaders will gather in Rio de Janeiro, Brazil, for the United Nations Conference on Environment and Development (UNCED), otherwise known as the Earth Summit, to define new and bold steps to achieve solutions to the planet's environmental and economic development problems; and

"Whereas, the Earth Summit will pay special attention to concerns regarding global climate change, toxic waste, diminishing biological diversity, and ocean and freshwater resources.

"Now, therefore, be it resolved by the House of Representatives, the Senate concurring: That the General Assembly of the State of South Carolina, by this resolution, endorses the goals and objectives of the Earth Summit, particularly with respect to the creation and adoption of global agreements which will result in policies and mechanisms to protect the global environment and enhance the ability of nations to develop equitably their natural and human resources.

"Be it further resolved that the General Assembly of this State calls upon the President of the United States to join his counterparts from around the world at the Earth Summit and to instruct United States negotiators to work with other national delegations in crafting an international protocol on global climate change that would reduce this nation's emissions of carbon dioxide by twenty percent by the year 2000 and thus reestablish the role of the United States as a leader in managing the planet's resources for present and future generations.

"Be it further resolved that copies of this resolution be forwarded to the President of the United States, the President of the United States Senate, and the Speaker of the United States House of Representatives, all at Washington, D.C., and to the United States Ambassador to the United Nations, at the United Nations, New York City."

POM-410. A concurrent resolution adopted by the Legislature of the State of Hawaii; to the Committee on Foreign Relations:

"HOUSE CONCURRENT RESOLUTION 280

"Whereas, 'Japan-bashing' and 'America-bashing' are colloquialisms for the nonfactual, emotionally-based generalizations, comments, and accusations made by Americans against Japanese and by Japanese against Americans; and

"Whereas, 'Japan-bashing' and 'America-bashing' have most recently been brought forth out of the highly volatile union of the disagreement over the trade imbalance between the two world powers and the uncertainty created by the economic recession in America; and

"Whereas, such rhetoric has infected the tongues of the young and the old, the rich and the poor, the progressive and the conservative, and the common and the uncommon of both countries alike; and

"Whereas, some leaders of the United States and Japan degenerated to the level of name-calling, stereotyping, and tasteless remarks; and

"Whereas, hurtful epithets when tolerated and spoken by anyone against members of any other group—whether based on race, religion, gender, physical ability, or sexual orientation—can promote and encourage bigotry, discrimination, and hate crimes against the targeted group (e.g., Japanese Americans) or similar groups that may be perceived to be akin to the targeted group (e.g., Filipino Americans, Korean Americans, Chinese Americans, Taiwanese Americans, Vietnamese Americans, and others); and

"Whereas, powerful and influential individuals of both nations who set examples for their people, further legitimize racism, bigotry, and hate-crimes against targeted groups by engaging in irresponsible behavior or by not moving swiftly and forcefully to denounce such behavior; and

"Whereas, the brutal murder of Yasuo Kato, a Japanese American investment counselor, by a Caucasian American who claimed Japan's business practices caused him to lose his job, is but a single instance of the escalating number of hate-crimes being perpetrated against Asian Americans; and

"Whereas, the history of Japanese in America extends over 100 years and is rich in acts of unconditional patriotism and selfless service by Japanese Americans on behalf of America; and

"Whereas, the epitome of Japanese American patriotism transpired during World War II when the courageous men of the famed 442nd Regimental Combat Team, despite many of their friends and relatives being forcibly and unjustifiably imprisoned in relocation camps, asked not what their country could do for them, but instead played a herculean role in the liberation of France, were part of the most decorated American battalion in World War II, and without having to be asked, showed their country what they could do for it; and

"Whereas, fifty years after the start of World War II, Japanese Americans and other Asian Americans are sometimes subject to persecution by their fellow countrymen, who during times of prosperity have tolerated Japanese Americans and touted them as the 'model minority,' and who during periods of economic hardship and instability have ostracized and brutalized their Japanese American and other Asian American brothers and sisters; and

"Whereas, the recent statutory report 'Civil Rights Issues Facing Asian Americans in the 1990s,' which was released by the United States Commission on Civil Rights, revealed that racism, bigotry, and violence against Asian Americans is increasing and has become 'a serious national problem'; and

"Whereas, all forms of racism severely undermine U.S.-Japan relations at a critical period in the history of mankind when America and Japan, as two of the mightiest nations on this planet, must unite, not only with each other, but also with the other countries of the world, both old and newly independent, to negotiate and shape global policy on trade, the environment, energy, human rights, and relations between countries; and

"Whereas, as over 22 percent of Hawaii's residents are Japanese American and at least 60 percent are of Asian or Pacific Islander ancestry, the State of Hawaii has a substantial interest in Pacific Basin affairs; and

"Whereas, as the Pacific bridge linking the United States with Japan and the rest of Asia, the State of Hawaii has a geographic interest in a healthy and viable U.S.-Japan relationship; and

"Whereas, it is all too easy for some of Hawaii's residents to mistakenly believe that the events occurring in Hawaii's sister states or in foreign lands, and the sentiments expressed by others elsewhere, do not affect them because of Hawaii's geographic isolation; and

"Whereas, as a result, some of Hawaii's residents may give "Japan-bashing" or "America-bashing" only fleeting fascination when it is imperative that they be acutely cognizant of, and concerned with, national and world affairs and trends, since these happenings do directly affect Hawaii residents when they travel to the mainland, Japan, or other nations, and when the children of Hawaii choose to matriculate at a school or participate in other programs and activities outside the Islands; and

"Whereas, Hawaii's people need only recall the racial discrimination suffered by Bruce I. Yamashita, an Island Son whose efforts to correct the injustices that were done unto him by the United States Marine Corps were supported by this Legislature in H.C.R. No. 22 during the Regular Session of 1991; now, therefore,

"Be it resolved by the House of Representatives of the Sixteenth Legislature of the State of Hawaii, Regular Session of 1992, the Senate concurring, that in view of the concern, expressed in this Resolution, the President of the United States, the Prime Minister of Japan, the United States Congress, the Japanese Diet, all the State Legislatures, all the Japanese Prefectural Governments, and leaders of the business communities of both nations are respectfully urged to join in a concerted bilateral effort to support and accomplish, among other things, the following:

"(1) Condemning and ceasing further "Japan-bashing" and "America-bashing";

"(2) Increasing awareness of hate crimes and discrimination;

"(3) Combatting stereotypes and promoting understanding of minority cultures;

"(4) Reviewing, enacting, and enforcing laws that protect all people from discrimination in any form, such as bias-related intimidation and violence; and

"(5) Entering into open, sincere negotiations, free of name-calling and stereotyping, to reach a more agreeable trade policy between the United States and Japan;

"and be it further resolved that the Office of International Relations develop and coordinate a program that will build transnational understanding and communications in the State of Hawaii, such as:

"(1) Facilitating greater contact and interchange between members of the international community and residents of the state;

"(2) Encouraging meetings and forums between foreign officials and representatives of the state government; and

"(3) Offering its facilities and resources, such as the East-West Center, the Spark M. Matsunaga Institute for Peace, and the Neil S. Blaisdell Complex to host negotiations, international trade shows, symposiums, and other activities to promote the furtherance of U.S.-Japan relations; and

"Be it further resolved that certified copies of this Concurrent Resolution be transmitted to the President of the United States, the Prime Minister of Japan, the President of the United States Senate, the President of the Japanese Senate, the Speaker of the United States House of Representatives, the Speaker of the Japanese House of Representatives, each of the presiding officers of the legislative bodies of each State of the United States of America, each of the presiding officers of the legislative bodies of each Prefecture in Japan, the American Embassy in Japan, the Japanese Embassy in America, members of Hawaii's Congressional delegation, the Japanese Consulate in Hawaii, and the chief executive officers of the 10 largest American and Japanese corporations."

POM-411. A joint resolution adopted by the Legislature of the State of Alabama; to the Committee on the Judiciary:

"SENATE JOINT RESOLUTION 17

"Whereas, the Legislature of the State of Alabama notes that the citizens of our great nation have long been attempting to pull in the reins of federal spending and have long desired the highest degree of integrity and accountability from elected officials; and

"Whereas, on September 25, 1789, the 1st Congress of the United States convened in New York City and submitted to the Legislatures of the several states of proposed amendment to the United States Constitution designed to check the considerable power of the Congress to vary the compensation of its members; and

"Whereas, the aforementioned amendment was presented for adoption by the outstanding constitutionalist, member of the 1st Congress, and later, fourth President of our nation, James Madison; and

"Whereas, believing that fiscal irresponsibility at the federal level poses one of the greatest threats which face our Nation, we firmly believe that constitutional restraint is vital to bring the fiscal discipline and the accountability of elected officials which is necessary to restore public confidence in the federal government; and

"Whereas, this little known and scarcely advertised 202 year old proposal has received renewed attention, since it has been learned that it is still viable, and the Legislatures of the states of Delaware, Maryland, North Carolina, South Carolina, Vermont, and Virginia ratified it between the years 1789 and 1791; the General Assembly of the State of Ohio ratified it in 1873; the Legislature of the State of Wyoming ratified it in 1978; and the Legislatures of the states of Alaska, Arizona, Arkansas, Colorado, Connecticut, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Louisiana, Maine, Minnesota, Montana, Nevada, New Hampshire, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Tennessee, Texas, Utah, West Virginia, and Wisconsin ratified it from 1983 to present; and legislation to ratify it has received the approval of the Senate of the State of California, the House of Representatives of the State of Illinois, the Senate of the State of Michigan, and the House of Representatives of the State of Missouri; and

"Whereas, among other appropriate avenues of pursuit, Article V of the United States Constitution also provides for that great and noble document to be amended by the adoption of a particular proposal by a vote of two-thirds (⅔) of the members present in the two chambers of the United States Congress, which must then be ratified by the Legislatures of three-fourths (¾) of the several states, and that was and remains the case with the original proposed Second Amendment which this resolution would ratify on behalf of the State of Alabama; and

"Whereas, in 1939, The United States Supreme Court ruled in the case of Coleman v. Miller that if Congress submits a proposed amendment to the state Legislatures without any deadline within which those Legislatures must act, then the proposal in question remains as pending business before those Legislatures and they may, at their discretion, continue to consider its merits; now therefore,

"Be it resolved by the Legislature of Alabama, both Houses thereof concurring, That the original proposed Second amendment to the United States Constitution stipulating a delay in variations in the compensation of members of the United States Congress which reads as follows: "Article the Second. . . No law, varying the compensation for the services of the Senators and Representatives, shall take effect, until an election of Representatives shall have intervened." be and the same hereby is ratified by the Legislature of the State of Alabama.

"Be it Further Resolved, That properly inscribed copies of this resolution be forwarded by the Secretary of the Alabama Senate to the Archivist of the United States in Washington, D.C., to the Vice-President of the United States as the presiding officer of the United States Senate, to the Speaker of the United States House of Representatives, and to both United States Senators and all United States Representatives from the State of Alabama with the request that it be reprinted in full in the Congressional Record.

POM-412. A joint resolution adopted by the Legislature of the State of Illinois; to the Committee on the Judiciary:

"HOUSE JOINT RESOLUTION—CONSTITUTIONAL AMENDMENT 2

"Whereas, The First Congress of the United States of America, at its first Session begun and held March 4, 1789, sitting in New York, New York, in both Houses, by a constitutional majority of two-thirds thereof, adopted the following proposition to amend the Constitution of the United States of America in the following words, to wit:

"Resolved, by the Senate and House of Representatives of the United States of America in Congress assembled, two thirds of both Houses concurring, that the following [Article] be proposed to the Legislatures of the several States, . . . which [Article], when ratified by three fourths of the said Legislatures, to be valid to all intends and purposes, as part of the said Constitution, viz.:

"[An Article] in addition to, and Amendment of the Constitution of the United States of America, proposed by Congress, and ratified by the Legislatures of the several States, pursuant to the fifth Article of the original Constitution.

"Article the second . . . No law, varying the compensation for the services of the Senators and Representatives, shall take effect, until an election of Representatives shall have intervened."; and

"Whereas, Article V of the Constitution of the United States allows the ratification of the proposed Amendment to the United States Constitution by the General Assembly of the State of Illinois; and

"Whereas, Article V of the Constitution of the United States does not dictate a time limit on ratification of an Amendment submitted by Congress, and the First Congress specifically did not provide any time constraint for ratification of the above-quoted Amendment; and

"Whereas, The Supreme Court of the United States in 1939 ruled in the landmark case of *Coleman v. Miller* that Congress is the final arbiter on the question of whether too much

time has elapsed between Congress' submission of a particular Amendment and the most recent State Legislature's ratification of same if Congress did not specify a deadline on the proposal's consideration; and

"Whereas, Section 11 of Article IV of the Constitution of The State of Illinois provides that "(C)hanges in the salary of a member (of the Illinois General Assembly) shall not take effect during the term for which he has been elected."; and

"Whereas, The General Assembly of the State of Illinois finds that the proposed Amendment is still meaningful and necessary as part of the United States Constitution and that the present political, social and economic conditions are the same as or are even more demanding today than they were in the eighteenth century when the proposed Amendment was submitted for its adoption; and

"Whereas, the proposed Amendment to the United States Constitution has already been ratified by the Legislatures of the following States on the dates indicated, to wit:

"Alaska on May 5, 1989 (135 *Cong. Rec.* H5486, S8054);

"Arizona on April 3, 1985 (131 *Cong. Rec.* H2060, S4750);

"Arkansas on March 5, 1987 (134 *Cong. Rec.* H3721, S7518);

"Colorado on April 18, 1984 (131 *Cong. Rec.* S17687; 132 *Cong. Rec.* H6446);

"Connecticut on May 13, 1987 (133 *Cong. Rec.* H7406, S11891);

"Delaware on January 28, 1790;

"Florida on May 31, 1990 (136 *Cong. Rec.* H6198, S10091);

"Georgia on February 2, 1988 (134 *Cong. Rec.* H2638, S5239);

"Idaho on March 23, 1989 (135 *Cong. Rec.* H1893, S7911);

"Indiana on February 19, 1986 (132 *Cong. Rec.* H1634, S4663);

"Iowa on February 7, 1989 (135 *Cong. Rec.* H836, S3509–10);

"Kansas on April 5, 1990 (136 *Cong. Rec.* H1689, S9170, E1740–41);

"Louisiana on July 6, 1988 (134 *Cong. Rec.* H5783, S9939);

"Maine on April 26, 1983 (130 *Cong. Rec.* H9097, S11017);

"Maryland on December 19, 1789;

"Minnesota on May 22, 1989 (135 *Cong. Rec.* H3258, H3678, S7655–56, S7912);

"Montana on March 11, 1987 (133 *Cong. Rec.* H1715, S6155);

"Nevada on April 26, 1989 (135 *Cong. Rec.* H2054, S10826);

"New Hampshire on March 7, 1985 (131 *Cong. Rec.* H1378, S3597);

"New Mexico on February 13, 1986 (132 *Cong. Rec.* H827, S2207–8, S2300);

"North Carolina on December 22, 1789;

"Ohio on May 6, 1873 (70 *Ohio Laws* 409–10);

"Oklahoma on July 10, 1985 (131 *Cong. Rec.* H7263, S13504);

"Oregon on May 19, 1989 (135 *Cong. Rec.* H5692, H5972, S11123–24, S12150);

"South Carolina on January 19, 1790;

"South Dakota on February 21, 1985 (131 *Cong. Rec.* H971, S3306);

"Tennessee on May 23, 1985 (131 *Cong. Rec.* H6672, S10797, S13504);

"Texas on May 25, 1989 (135 *Cong. Rec.* H2594, S6726–27);

"Utah on February 25, 1986 (132 *Cong. Rec.* S6750, S7578; 133 *Cong. Rec.* H9866);

"Vermont on November 3, 1791;

"Virginia on December 15, 1791;

"West Virginia on March 10, 1988 (134 *Cong. Rec.* H2492, S4784–85);

"Wisconsin on June 30, 1987 (133 *Cong. Rec.* H7406, S12948, S13359); and

"Wyoming on March 3, 1978 (124 *Cong. Rec.* 7910, 8265–66; 133 *Cong. Rec.* S12949); therefore be it

"Resolved, by the House of Representatives of the Eighty-Seventh General Assembly of the State of Illinois, the Senate Concurring Herein, that the foregoing proposed Amendment to the Constitution of the United States is ratified by the General Assembly of the State of Illinois; and be it further

"Resolved, That the Secretary of State of Illinois shall transmit certified copies of this resolution to the Archivist of the United States, to the Vice-President of the United States and to the Speaker of the United States House of Representatives with a request that it be printed in full in the Congressional Record.

"Passed by the House, May 5, 1992, by a vote of three-fifths of its Members."

POM–413. A concurrent resolution adopted by the Legislature of the State of Hawaii; to the Committee on Labor and Human Resources:

HOUSE CONCURRENT RESOLUTION 34

"Whereas, RU–486, a major new drug, has been in use in France since 1988, has more recently been approved for use in Great Britain and is likely to be marketed soon in the Scandinavian countries; and

"Whereas, when prescribed with another drug, RU–486 has been shown to be an effective, safe and non-invasive treatment for the termination of early pregnancy; and

"Whereas, research continues under the auspices of a task force of the World Health Organization on RU–486's potential for contraceptive use, and

"Whereas, RU–486, has also been found to be useful in easing labor and an effective treatment for Cushing's syndrome; and

"Whereas, the medical community has identified RU–486, as a promising treatment for a number of other conditions, including some breast and brain cancers, prostate cancer, endometriosis, ovarian cancer, osteoporosis and AIDS; and

"Whereas, before RU–486 can be made available for use in the United States it must be subjected to clinical trials by the Federal Drug Administration; and

"Whereas, the drug's maker, Roussel-Uclaf, and its parent company, Hoechst, have indicated that they will not ask to market the drug in this country because of the perceived political climate and their fear of a possible boycott of all their other products; and

"Whereas, the FDA has given no indication that it will conduct such tests and in 1989 banned the importation of RU–486 for personal use; and

"Whereas, RU–486 has been used safely over 80,000 times in France where there has been only one fatality in a high risk patient; and

"Whereas, the ban not only denies Americans access to an important drug, it has also caused most American research in this area to come to a stop; and

"Whereas, The American Medical Association, the American Public Health Association, the American College of Obstetricians and Gynecologists, and the American Association for the Advancement of Science have formally recognized the importance of RU–486 and have acted to support the testing of RU–486 and related agents in the United States; and

"Whereas, the Hawaii State Legislature, together with the above organizations, supports freedom of medical research for American scientists and decries barriers to access to promising drugs and important new technologies; and

"Whereas, political considerations should not stand in the way of the right of American women to have access to the least invasive and safest care available in terminating early pregnancies; now, therefore

"Be it resolved by the House of Representatives of the Sixteenth Legislature of the State of Hawaii, Regular Session of 1992, the Senate concurring, that the Hawaii State Legislature urges the President of the United States and the Congress to rescind the ban imposed by the Food and Drug Administration and support the use of RU–486 and other related agents for all appropriate research and, if indicated, clinical trials; and

"Be it further resolved that certified copies of this Resolution be transmitted to the President of the United States, the President of the United States Senate, the Speaker of the House of Representatives, Hawaii's congressional delegation, to the manufacturer of RU–486, Roussel-UCLAF, 35 Boulevard des Invalides 75007, Paris France and to the Commissioner of the Federal Food and Drug Administration."

POM–414. A resolution adopted by the Senate of the State of Hawaii; to the Committee on Labor and Human Resources:

"SENATE RESOLUTION 16

"Whereas, RU–486, a major new drug, has been in use in France since 1988, has more recently been approved for use in Great Britain and is likely to be marketed soon in the Scandinavian countries; and

"Whereas, when prescribed with another drug, RU–486 has been shown to be an effective, safe and non-invasive treatment for the termination of early pregnancy; and

"Whereas, research continues under the auspices of a task force of the World Health Organization on RU–486's potential for contraceptive use; and

"Whereas, RU–486 has also been found to be useful in easing labor and an effective treatment for Cushing's syndrome; and

"Whereas, the medical community has identified RU–486 as a promising treatment for a number of other conditions, including some breast and brain cancers, prostate cancer, endometriosis, ovarian cancer, osteoporosis and AIDS; and

"Whereas, before RU–486 can be made available for use in the United States it must be subjected to clinical trials by the Federal Drug Administration; and

"Whereas, the drug's maker, Roussel-Uclaf, and its parent company, Hoechst, have indicated that they will not ask to market the drug in this country because of the perceived political climate and their fear of a possible boycott of all their other products; and

"Whereas, the FDA has given no indication that it will conduct such tests and in 1989 banned the importation of RU–486 for personal use; and

"Whereas, RU–486 has been used safely over 80,000 times in France where there has been only one fatality in a high risk patient; and

"Whereas, the ban not only denies Americans access to an important drug, it has also caused most American research in this area to come to a stop; and

"Whereas, The American Medical Association, the American Public Health Association, the American College of Obstetricians and Gynecologists, and the American Association for the Advancement of Science have formally recognized the importance of RU–486 and have acted to support the testing of RU–486 and related agents in the United States; and

"Whereas, the Hawaii State Senate, together with the above organizations, sup-

ports freedom of medical research for American scientists and decries barriers to access to promising drugs and important new technologies; and

"Whereas, political considerations should not stand in the way of the right of American women to have access to the least invasive and safest care available in terminating early pregnancies; now, therefore

"Be it resolved by the Senate of the Sixteenth Legislature of the State of Hawaii, Regular Session of 1992, that the Senate urges the President of the United States and the Congress to rescind the ban imposed by the Food and Drug Administration and support the use of RU-486 and other related agents for all appropriate research and, if indicated, clinical trials; and

"Be it further resolved that certified copies of this Senate Resolution be transmitted to the President of the United States, the President of the United States Senate, the Speaker of the House of Representatives, Hawaii's congressional delegation, to the manufacturer of RU-485, Roussel-UCLAF, 35 Boulevard des Invalides 75007, Paris France and to the Commissioner of the Federal Food and Drug Administration."

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. BYRD, from the Committee on Appropriations:

Special Report entitled "Allocation to Subcommittees of Budget Totals from the Concurrent Resolution for Fiscal Year 1993" (Rept. No. 102-296).

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. NUNN, from the Committee on Armed Services:

The following-named officer for appointment to the grade of general on the retired list under the provisions of Title 10, United States Code, section 1370:

To be general

Gen. Charles C. McDonald, [redacted] U.S. Air Force.

The following-named officer for reappointment to the grade of general while assigned to a position of importance and responsibility under Title 10, United States Code, Section 601:

To be general

Gen. Ronald W. Yates, [redacted] U.S. Air Force.

The following-named officer for appointment to the grade of lieutenant general on the retired list under the provisions of Title 10, United States Code, section 1370:

To be lieutenant general

Lt. Gen. Clifford H. Rees, Jr. [redacted] U.S. Air Force.

The following-named officer for appointment to the grade of general while assigned to a position of importance and responsibility under Title 10, United States Code, Section 601(a):

To be general

Lt. Gen John M. Shalikashvili [redacted] U.S. Army.

The following named officer for appointment to the grade of lieutenant general while assigned to a position of importance and responsibility under Title 10, United States Code, Section 601(a):

To be lieutenant general

Maj. Gen. Barry R. McCaffrey [redacted] U.S. Army.

Mr. NUNN. Mr. President, from the Committee on Armed Services, I report favorably the attached listing of nominations.

Those identified with a single asterisk (*) are to be placed on the Executive Calendar. Those identified with a double asterisk (**) are to lie on the Secretary's desk for the information of any Senator since these names have already appeared in the CONGRESSIONAL RECORD and to save the expense of printing again.

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

*Lt. Gen. Donald Snyder, USAF, for appointment to the grade of lieutenant general on the retired list (Reference No. 916)

*Lt. Gen. Charles J. Searock, Jr., USAF, for reappointment to the grade of lieutenant general (Reference No. 918)

*Lt. Gen. Henry J. Hatch, USA, to be placed on the retired list in the grade of lieutenant general (Reference No. 938)

*Lt. Gen. David J. Teal, USAF, for appointment to the grade of lieutenant general on the retired list (Reference No. 948)

*Lt. Gen. Jerome B. Hilmes, USA, to be placed on the retired list in the grade of lieutenant general (Reference No. 949)

*Lt. Gen. Frank F. Ledford, Jr., USA, to be placed on the retired list in the grade of lieutenant general (Reference No. 950)

*Lt. Gen. Charles McCausland, USAF, to be placed on the retired list in the grade of lieutenant general (Reference No. 962)

*Lt. Gen. Charles A. May, Jr., USAF, for appointment to the grade of lieutenant general on the retired list (Reference No. 1019)

*Lt. Gen. John T. Myers, USA, to be placed on the retired list in the grade of lieutenant general (Reference No. 1020)

*Lt. Gen. Charles P. Otstott, USA, to be placed on the retired list in the grade of lieutenant general (Reference No. 1035)

*Lt. Gen. Billy M. Thomas, USA, to be placed on the retired list in the grade of lieutenant general (Reference No. 1036)

*Maj. Gen. James L. Jamerson, USAF, to be lieutenant general (Reference No. 1091)

*Maj. Gen. Arlen D. Jameson, USAF, to be lieutenant general (Reference No. 1092)

*Lt. Gen. James W. Crysel, USA, to be placed on the retired list in the grade of lieutenant general (Reference No. 1173)

Total: 14.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. THURMOND:

S. 2858. A bill to suspend temporarily the duty on polyamide resin and synthetic staple fibers of nylon or other copolyamides; to the Committee on Finance.

S. 2859. A bill to suspend until January 1, 1995, the duty on certain photo-active compounds used in the manufacture of photo-resistance chemicals; to the Committee on Finance.

S. 2860. A bill to suspend until January 1, 1995, the duty on formulated fenoxaprop; to the Committee on Finance.

By Mr. INOUYE:

S. 2861. A bill to prohibit the Secretary of Agriculture from implementing a rule that would allow the importation of papayas into the contintental United States, Alaska, Puerto Rico, or the Virgin Islands of the United States from Costa Rica until certain conditions are met, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. GARN (for himself and Mr. HATCH):

S. 2862. A bill to establish the Canyons of the Escalante National Conservation Area, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. DODD:

S. 2863. A bill to protect children by directing the Consumer Product Safety Commission to require the labeling of certain toys and games; to the Committee on Commerce, Science, and Transportation.

By Mr. SARBANES (for himself, Mr. RIEGLE, Mr. GARN, and Mr. MACK):

S. 2864. A bill to reauthorize the Export-Import Bank Act of 1945, to encourage export promotion, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. KERRY (for himself and Mr. PELL):

S. Con. Res. 125. A concurrent resolution calling for a United States policy of strengthening and maintaining an International Whaling Commission moratorium on the commercial killing of whales, and otherwise expressing the sense of the Congress with respect to conserving and protecting the world's whale population; to the Committee on Foreign Relations.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. THURMOND:

S. 2858. A bill to suspend temporarily the duty on polyamide resin and synthetic staple fibers of nylon or other copolyamides; to the Committee on Finance.

S. 2859. A bill to suspend until January 1, 1995, the duty on certain photoactive compounds used in the manufacture of photoresistant chemicals; to the Committee on Finance.

S. 2860. A bill to suspend until January 1, 1995, the duty on formulated fenoxaprop; to the Committee on Finance.

SUSPENSION OF CERTAIN DUTIES

Mr. THURMOND. Mr. President, I rise today to introduce three bills which will suspend the duties imposed on certain chemicals used by the manufacturing industry. Currently, these chemicals are imported for use in the United States because there is no known domestic supplier or readily available substitute. Therefore, suspending the duties on these chemicals would not adversely affect domestic industries.

The first bill would temporarily suspend the duty on polyamide resin and synthetic stable fibers of nylon or other copolyamides until December 31, 1994. These chemicals are used in the production of plastics which are transparent, resistant to chemicals, easily moldable as well as stiff. Some common items made from these materials are fuel, air, and water filter bodies; faucet and shower handles; fashion eyeglass frames; some automotive and agricultural parts; as well as many other items.

The second bill would suspend until December 31, 1994, the duty on certain photoactive compounds used in the manufacture of photoresistant chemicals. The materials are blended with resins and dissolved in solvents to make a photoresist. This photoactive compound is sensitive to light and when exposed to light it can be developed similar to photographic film. The photoresist is used in manufacturing integrated circuit chips.

The third bill would suspend the duty on formulated fenoxaprop until December 31, 1994. Fenoxaprop is the active ingredient in a herbicide used on wheat and soybeans.

Mr. President, suspending the duty on these chemicals will benefit the consumer by stabilizing the costs of manufacturing the end-use products. Further, these suspensions will allow domestic producers to maintain or improve their ability to compete internationally. As previously stated, there is no domestic producer or source of these chemicals; therefore, no American company will be harmed. I hope the Senate will consider these measures expeditiously.

I ask unanimous consent that the text of the bills be printed in the CONGRESSIONAL RECORD immediately following my remarks.

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

S. 2858

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

SECTION 1. POLYAMIDE.

Subchapter II of chapter 99 of the Harmonized Tariff Schedule of the United States is amended by inserting in numerical sequence the following new heading:

"9902.39.09	Polyamide (CAS No. 79331–75–2) (provided for in subheading 3908.90.00)	Free	No change	No change	On or before 12/31/94."

SEC. 2. SYNTHETIC STAPLE FIBERS OF NYLON OR OTHER COPOLYAMIDES.

Subchapter II of chapter 99 of the Harmonized Tariff Schedule of the United States is amended by inserting in numerical sequence the following new heading:

"9902.55.03	Synthetic staple fibers of nylon or other copolyamides (CAS No. 25191–04–02) (provided for in subheading 5503.10.00)	Free	No change	No change	On or before 12/31/94."

SEC. 3. EFFECTIVE DATE.

The amendments made by this Act apply with respect to articles entered, or withdrawn from warehouse for consumption, on or after the 15th day after the date of the enactment of this Act.

S. 2859

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

SECTION 1. CERTAIN PHOTO-ACTIVE COMPOUNDS USED IN THE MANUFACTURE OF PHOTO-RESISTANT CHEMICALS.

Subchapter II of chapter 99 of the Harmonized Tariff Schedule of the United States is amended by inserting in numerical sequence the following new subheading:

"9902.31.12	1–Naphthalene Sulfonic Acid, 6-Diazo-5,6,Dihydro-5-Oxo-, Ester with Phenyl (2,3,4 Trihydroxyphenal) Methanone (Z-2000) (CAS No. 68510–93–0), 2-Diazo-1-Oxo-Naphthalene-4-Sulphonic-Acid, -P-cumyl Ester (SD-2484) (CAS No 52125–43–6), 1-Naphthalene Sulfonic Acid, 6-Diazo-5, 6-Hydro-5-Oxo-(Octahydro-4, 7-Methano-1H-Indene-2, 5-Diyl) Bis Methylene Ester (ER-1388) (CAS No. 88733–86–2), and 2,1,5-Diazonaphthoquinone Sulfonic Acid Ester with 2,3,4-Trihydroxy Benzo-phenone (ER-999) (CAS No. 5610–94–6) (provided for in subheading 2927.00.20).	Free	No change	No change	On or before 12/31/94".

SEC. 2. EFFECTIVE DATE

The amendment made by section 1 applies with respect to goods entered, or withdrawn from warehouse for consumption, on or after the 15th day after the date of the enactment of this Act.

S. 2860

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

SECTION 1. TEMPORARY DUTY SUSPENSION.

Subchapter II of chapter 99 of the Harmonized Tariff Schedule of the United States is amended by inserting in numerical sequence the following new heading:

"9902.31.12	Forumulated fenoxaprop (provided for in subheading 3808.30.10.	Free	No change	No change	On or before 12/31/94".

SEC. 2. EFFECTIVE DATE.

The amendment made by section 1 applies with respect to goods entered, or withdrawn from warehouse for consumption, on or after the 15th day after the date of the enactment of this Act.

By Mr. INOUYE:

S. 2861. A bill to prohibit the Secretary of Agriculture from implementing a rule that would allow the importation of papayas into the continental United States, Alaska, Puerto Rico, or the Virgin Islands of the United States from Costa Rica until certain conditions are met, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

IMPORTATION OF PAPAYAS

• Mr. INOUYE. Mr. President, I rise to introduce a bill to prohibit the Secretary of Agriculture from implementing a rule that would allow the importation of papayas into the continental United States, Alaska, Puerto Rico, or the Virgin Islands of the United States from Costa Rica until certain conditions are met.

I take this action in response to the Animal and Plant Health Inspection Service's [APHIS] proposal to allow untreated papayas from certain provinces in Costa Rica to be imported into the continental United States, Alaska, Puerto Rico, and the Virgin Islands of the United States. This proposed rule was published in the Federal Register on January 3, 1992. The papaya fruit fly exists in Costa Rica, and Hawaii is the only State having papaya production sufficient to sustain an infestation of the papaya fruit fly. Accordingly, the proposed rule specifically excludes direct shipment of Costa Rican papayas to Hawaii. This is not sufficient to protect one of Hawaii's largest diversified agricultural industries.

The proposed rule makes no provision for indirect shipments of Costa Rican papayas, potentially infested with papaya fruit fly, to Hawaii. It is important to note that this particular fruit fly is not established in Hawaii. Further, since the proposed rule involves untreated papayas, domestic papaya producers are at a competitive disadvantage since Hawaii papayas must undergo costly and oftentimes fruit damaging quarantine treatment. This is unfair. Foreign papaya growers are placed at a better position than our own farmers.

My bill prohibits import of untreated papayas from the provinces of Costa Rica to the continental United States, Alaska, Puerto Rico, and the Virgin Islands of the United States. This prohibition would remain in effect until APHIS approves and implements a quarantine treatment protocol for Costa Rican papayas, for papaya fruit flies, and also establishes and implements an effective inspection process for all domestic passengers and freight bound for Hawaii. Both conditions would ensure that there is only minimal risk of infesting Hawaii's papaya industry with the papaya fruit fly.

I urge my colleagues to support this measure.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2861

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

SECTION 1. IMPORTATION OF PAPAYAS FROM COSTA RICA.

The Secretary of Agriculture may not implement a proposed or final rule that would allow the importation of papayas into the continental United States, Alaska, Puerto Rico, or the Virgin Islands of the United States from Costa Rica until the Secretary establishes—

(1) a quarantine treatment protocol for papayas imported from Costa Rica to prevent the introduction of fruit flies;

(2) a program to prevent the introduction of fruit flies into Hawaii through the inspection of all passengers, freight, commercial vessels, commercial aircraft, commercial trucks, and railroad cars destined for Hawaii; and

(3) conditions for the importation of papayas from Costa Rica that are at least as stringent as the conditions prescribed in proposed section 319.56-2u of title 7, Code of Federal Regulations (19 Fed. Reg. 219).•

By Mr. GARN (for himself and Mr. HATCH):

S. 2862. A bill to establish the Canyons of the Escalante National Conservation Area, and for other purposes; to the Committee on Energy and Natural Resources.

CANYONS OF THE ESCALANTE NATIONAL CONSERVATION ACT

• Mr. GARN. Mr. President, I am pleased to rise today with my colleague, Senator HATCH to introduce a landmark piece of legislation for the people of southern Utah. The Canyons of the Escalante National Conservation Area would be Utah's first Bureau of Land Management administered National Conservation Area to be a showcase of multiple use land management. To me it potentially represents the best of all worlds. This measure is the product of substantial local public involvement and represents the views and interests of local residents of southern Utah.

Significantly, this National Conservation Area's size would be in excess of 500,000 acres. Nearly 330,000 acres will be managed for multiple use activities including mining, livestock grazing, fire control activities, the use of off-highway-vehicles, hunting, trapping and fishing, and many other outstanding recreational activities.

The Conservation Area would designate five areas of the Escalante River Drainage totaling some 170,000 acres as wilderness. By name these areas are Phipps-Death Hollow, North Escalante Canyons/The Gulch, Scorpion, Escalante Canyons Tract 5, and Steep Creek. These wilderness areas represent the highest quality lands deserving preservation in Garfield and Kand Counties in Utah.

Historic state water rights will be protected and no Federal reserved rights will be created. Continued low-level aircraft flights will be permitted based on historic flight patterns.

To provide for the long-term management of the area, the Secretary of the Interior would establish an advisory committee made up of local citizens whose purpose will be to assist the Secretary in creating a comprehensive management plan. The plan will emphasize public involvement and the socioeconomic consequences of the creation of this Conservation Area.

From a historical standpoint, I am extremely pleased that this legislation provides many opportunities for the protection of Utah's historical treasures. The trail used by Spaniards Dominguez and Escalante as well as the great exploration routes of the Mormon pioneers who settled the unbelievably desolate parts of southern Utah are just a few of the areas which will receive special management attention under this designation. Specifically, the bill creates a corridor called "Hole in the Rock" commemorating the epic Mormon pioneer journey across a rugged Colorado River canyon. The corridor will be managed by the Bureau of Land Management within the Glen Canyon National Recreation Area.

All told, I believe this is a balanced initial approach to managing these scenic lands which represent rich historical values to all Americans. I commend Garfield County Commissioner Louise Liston for her vision in pursuing this initiative as well as my colleague, Congressman JIM HANSEN, for his diligent pursuit of the idea in the House. Senator HATCH and I are hopeful that the Canyons of the Escalante National Conservation Area will become a reality some day soon.•

• Mr. HATCH. Mr. President, I am pleased to join with Senator GARN in the introduction of legislation that would establish the Canyons of the Escalante National Conservation Area.

This legislation is the result of months of negotiations between leaders in Garfield and Kane Counties, Utah, the Bureau of Land Management (BLM), and the Utah congressional delegation. It is an effort to protect some of Utah's most scenic country while guaranteeing that traditional uses of public lands are allowed to continue. Too often decisions concerning the management of Utah's public lands are made with little regard for the needs of the citizens that use those lands for their livelihoods. This legislation represents the interests of the Utah citizens that live near the proposed conservation area and is a balanced and thoughtful approach.

Mr. President, the lands that we propose to designate as a National Conservation Area are quite spectacular. The slickrock canyons and domes of the area surrounding the Escalante River drainage are recognized around the world for their beauty. To ensure that the most sensitive environments are protected, this legislation would designate five wilderness areas containing a total of nearly 170,000 acres. These lands are part of what the BLM has recommended as wilderness and I believe the lands meet the congressionally approved definition of wilderness. All other wilderness study area within the NCA would be released from further study.

Importantly, this legislation would also promote the traditional multiple uses of public lands in and adjacent to the Canyons of the Escalante River. The bill would ensure that the grazing of livestock would continue at historic levels and provide that hunting, trapping, fishing and other recreational activities continue. The legislation would also encourage the development and protection of the many historic sites within the NCA. The trail used by the Spanish fathers as they explored parts of the Southwest, the route used by Mormon pioneers as they settled southern Utah, and the remnants of the Anasazi Indian culture within the NCA would all receive special attention and management.

The NCA would be managed by the BLM and provide that agency with an opportunity to showcase some of the most scenic and unique lands that it manages.

While I am certain that this proposal will be controversial, I believe it is a responsible approach to managing the lands of the Escalante drainage. I look forward to working with the other members of the Utah delegation, the people of Utah, and others as we attempt to find solutions to the controversies over the management of our public lands.•

By Mr. DODD:

S. 2863. A bill to protect children by directing the Consumer Product Safety Commission to require the labeling of certain toys and games; to the Committee on Commerce, Science, and Transportation.

TOY INJURY REDUCTION ACT

Mr. DODD. Mr. President, today I am introducing the Toy Injury Reduction Act of 1992, which takes steps to reduce the number of toy-related injuries that occur each year.

All too many parents have experienced the horror of having their child choke on a toy or game piece. This measure would require that toys and games which have small parts, and which are intended for children between the ages of 3 and 7, have a clear and conspicuous cautionary label on their packages. The label must communicate that the contents include small parts which pose a hazard for children under the age of 3. It is a very straightforward solution that will enable parents to make informed purchases for their young children, whose safety must be guarded diligently.

Mr. President, Federal regulations already prohibit small toys and toys

that contain small parts from being marketed to children under 3. Some manufacturers comply with the current regulation by using voluntary age labeling that reads "for ages 3 and up." At first glance, that is a perfectly logical way to comply with the regulation. But what happens in the toy store, when a parent is choosing a toy for his or her child, is a textbook case of miscommunication.

When parents see the phrase "for ages 3 and up, "they think it refers to the child's intellectual ability. They do not know the history of toy regulations. They do not know that age labeling, when it is used, is there to dissuade people from purchasing the toy for a child under 3, who could choke on the small parts. The parent evaluating the toy knows only that their child is smart enough to play with toys meant for older children. So, well-intentioned parents purchase toys that contain small parts for their young children. No safety consideration is triggered by age labeling alone.

Toys can pose a very real threat to children. The threat becomes a reality all too often. In 1990 alone, at least 23 children died and an estimated 164,500 people were injured in toy-related accidents. Half of the injuries occurred to children under 5 years of age. These numbers are tragic—not only because any child's death or injury is sad—but particularly because these are toy-related injuries. Toys are supposed to be fun.

In response to these accidents, States across the country are considering legislation. Just last month, my own State of Connecticut became the first State to enact a toy labeling law. I followed the Connecticut debate closely and was impressed with the process, which reflected a cooperative effort between public and private interests. Lawmakers received input from consumer groups and other interested parties, but an important toy manufacturer, Lego Systems, provided assistance, as well.

The legislation which I am introducing today is modeled on the Connecticut law because I believe that law is a good one. The opportunity exists now to enact Federal legislation that not only will help inform parents about toy safety, but will reduce the possibility of manufacturers having to comply with potentially 50 different State laws on the same subject.

Some would argue that we should go even further than this proposal. As many know, I welcome discussion on this measure. In my view, however, this legislation does strike an important balance. It requires a visible label conveying the safety warning, but allows manufacturers the flexibility to position the message and design it as they see fit, so long as it meets the requirements. For example, manufacturers who sell products to customers who speak different languages, or who need to ensure that the safety message reaches their customers who cannot read, may choose to use pictures along with words. The important thing is that when a parent stands in the toy store and contemplates purchasing a toy for a child younger than 3, that parent understands there is a safety consideration for the child.

Mr. President, the Consumer Product Safety Commission could have addressed this problem on its own. The CPSC staff did in fact recommend that toy labeling regulations be adopted. Regrettably, the Commissioners chose to abandon the issue. In my view, we must require that toy labeling be absolutely clear. "For ages 3 and up" does not mean "buy it because your 2-year-old is smart." It may mean "danger—your child could choke from small parts." It's time Federal law protected children from these preventable and often tragic injuries.

Regulations cannot replace supervision of children and common sense. However, we can require informative labeling that allow parents to make good judgments.

Very briefly, Mr. President, in the context of everything else, this is not one of the most cataclysmic of issues in the country, unless, you happen to be a parent whose child was seriously injured or killed in a toy-related accident. In 1990 there were 23 toy-related deaths and over 164,000 serious toy-related injuries.

This legislation is a very modest proposal that would require cautionary labeling on certain toy packages. The Consumer Product Safety Commission already prohibits toys with small parts from being marketed to children under 3. One of the problems though is when parents see the voluntary age labels manufacturers use that say "for ages 3 and up," the parents conclude this has to do with the intellectual level of the child to enjoy the particular toy, the parent does not consider whether or not it is safe for a child under 3. So they unknowingly purchase toys that are unsafe for their young children.

In the past, what we have done on matters such as this is sort of insist on certain language and insist on certain symbols and the like.

This bill Mr. President, allows the manufacturers to come up with the most appropriate warning message for their packaging, so long as it conveys the information required.

I speak with some experience on this, in that my own State of Connecticut has adopted State legislation on this matter very similar to what I am proposing. The toy manufacturers, in my State particularly the Lego Co., were tremendously helpful in crafting the Connecticut legislation.

Now, the toy industry obviously is like any other, not overly enthusiastic about additional requirements on it. But our concern would be that if we end up with potentially 50 State statutes on this matter, it may work to the detriment of the industry itself.

We feel that this proposal, requiring cautionary labeling and allowing the manufacturers some flexibility, we can do something worthwhile at a very nominal cost to the industry. Hearings will be held on this matter in the near future, Mr. President, and I very much would enjoy to have suggestions from the industry and other interested parties on this legislation.

Mr. President, I wish to point out a staff person who has helped me tremendously on the toy safety bill. Tramell Alexander has worked tirelessly on this legislation and I want to commend her for her tremendous effort in bringing this bill to the position it is in today.

Mr. President, I ask unanimous consent that the text of the bill be included in the RECORD.

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

S. 2863

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 "Toy Injury Reduction Act".

SEC. 2. LABELING REQUIREMENT.

(a) GENERAL RULE.—

(1) The Consumer Product Safety Commission shall issue under the Federal Hazardous Substances Act a regulation for any toy or game intended for use by children at least 3 years of age but not older than 7, which—

(A) is manufactured for sale, offered for sale, distributed in commerce, or imported into the United States; and

(B) which includes a small part, as defined by the Commission;

to require that the packaging of such toy or game contain a conspicuous cautionary label described in paragraph (2).

(2) The cautionary label required under paragraph (1) for a toy or game shall clearly and specifically communicate that the contents include small parts which pose a hazard for children under the age of 3.

(3) No later than January 1, 1993, the Commission shall promulgate the regulation referred to in paragraph (1) and rules implementing the requirements of the regulation.

(b) ENFORCEMENT.—The Commission may use any remedy available to it under the Federal Hazardous Substances Act to enforce the requirements of the regulation issued under subsection (a).

SEC. 3. EFFECTIVE DATE.

Except in the case of section 2(a)(3), section 2 of this Act shall take effect on October 1, 1993. Section 2(a)(3) shall take effect on the date of the enactment of this Act.

By Mr. SARBANES (for himself, Mr. RIEGLE, Mr. GARN, and Mr. MACK):

S. 2864. A bill to reauthorize the Export-Import Bank Act of 1945, to encourage export promotion, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

EXPORT ENHANCEMENT ACT

Mr. SARBANES. Mr. President, I rise today to introduce the Export En-

hancement Act of 1992. This legislation would reauthorize the Export-Import Bank of the United States, whose charter expires on September 30, as well as the export promotion programs of the Commerce Department.

I am pleased that this legislation is being cosponsored by the chairman of the Senate Banking Committee, Senator RIEGLE, who has taken an active and long-run interest in U.S. export promotion and finance policy. In fact, Senator RIEGLE participated actively in two subcommittee hearings which I chaired and which helped us to develop many of the proposals in this bill. Senator GARN, the ranking Republican member of the Banking Committee, and Senator MACK, the ranking Republican member of the Banking Committee's Subcommittee on International Finance and Monetary Policy, which I chair, are also cosponsors of this legislation and were closely involved in its development. Senator ROCKEFELLER has also taken a strong interest in this bill.

Title I of the legislation reauthorizes the charter for the Export-Import Bank of the United States. The Subcommittee on International Finance and Monetary Policy held an oversight hearing on the Export-Import Bank on May 14. Testimony presented at the hearing by John Macomber, the President and Chairman of the Export-Import Bank, as well as leading representatives of U.S. exporters and commercial banks engaged in trade finance, made clear that foreign countries' export. As a result, there continues to be a need for the United States to have a strong and active Export-Import Bank to support sales of U.S. exports abroad.

It was only a few short years ago that the Reagan administration proposed the elimination of the Export-Import Bank on the ground that there was no need for such an institution. Fortunately that view seems to have been reversed, and the Eximbank appears to have made significant improvement under the leadership of President Macomber.

The legislation introduced would reauthorize the charter for the Export-Import for 5 years, through September 30, 1997. In addition, it would reauthorize the tied aid credit war chest of the Eximbank for 3 years, at its current authorization level of $500 million a year.

The three key issues that emerged in the hearing on May 14, and that are addressed within the OECD, Organization for Economic Cooperation and Development, to restrict the use of tied aid credits; the impact of credit reform on the loan guarantee programs of the Eximbank; and the problems encountered by the Eximbank in retaining experienced professional staff.

The tied aid credit agreement concluded within the OECD in February prohibits the use of tied aid credits in higher income countries and middle-income developing countries for projects that are financially viable. A project is considered financially viable if it has the capacity, with appropriate pricing determined on market principles, to generate cash-flow sufficient to cover the project's operating costs and to service the capital employed. The rationale is that if a project is not financially viable then it is truly a development project and may be eligible for concessional assistance.

Pursuant to the conclusion of the OECD agreement, the Eximbank announced a policy of using its tied aid credit war chest simply to enforce compliance with the agreement. In other words, if foreign governments are making extensive use of tied aid credit, but within the terms of the OECD agreement, then the Eximbank will not utilize its war chest.

This raises a couple of concerns. First, the Eximbank adopted a similar policy in 1988 and 1989 of using war chest simply to enforce the then existing OECD agreement. The result was that the war chest was virtually unused in both of those years while foreign governments continued to make extensive use to tied aid credits in support of exports from their countries.

Second, and particularly troubling, are the consequences of this policy for dealing with the lines of credit grandfathered under the new OECD agreement. Under the OECD agreement, credit lines notified prior to February 15, 1992 are grandfathered. Offers under these credit lines, subject to the old rules, may be extended through August 15, 1992 with a shelf life of 12 months. Thus deals could continue under the old rules for 18 months after the new rules go into effect.

The U.S. business community has raised concerns over this grandfather provision because it places U.S. companies in the position of having to compete for projects under the old OECD rules for up to a year and a half after the new rules are supposed to go into effect. This is particularly problematic because of the Eximbank's announced intention of using the war chest in the future only to enforce compliance with the agreement. Since the grandfathered lines of credit are permitted under the agreement, U.S. companies will have to compete for projects against foreign companies benefiting from tied aid credits with no possibility of receiving any tied aid credit support from the U.S. Eximbank.

As a result of these concerns, the Export Enhancement Act of 1992 amends the provision of the Export-Import Bank Act authorizing the Bank to match tied aid credits offered by another country by adding

> with special attention to match tied aid and partially untied aid credits extended by other governments—(i) in violation of the OECD arrangement; or (ii) in cases in which the Bank determines that United States trade or economic interests justify the matching of tied aid credits extended in compliance with the arrangement, including grandfathered cases.

The intent of this new provision is to make clear that the Eximbank has authority to match tied aid credits offered by other governments in compliance with the OECD agreement if the Bank determines it is in the U.S. economic interest to do so, with particular attention to cases of credits grandfathered under the OECD agreement.

A second issue of concern is the potential impact of credit reform on the loan guarantee program of the Eximbank. The budget agreement reached in 1990 contained a new method of accounting for Federal credit programs that has resulted in a higher subsidy cost for an Eximbank loan guarantee than for an Eximbank direct loan. As a result, exporters and commercial banks have expressed concerns that the lower subsidy costs of direct loans might lead the Eximbank to reduce or eliminate its loan guarantee program.

This would be an unfortunate result because the loan guarantee program of Eximbank has had an important influence on keeping private commercial banks in the business of trade finance. Commercial bank participation in trade finance expands the pool of available credit, and commercial banks provide an ease of access, a range of services, and financing for the 15 percent of a transaction not covered by Eximbank credits that the Eximbank itself cannot provide.

Thus far the Eximbank has indicated a clear intent to continue its loan guarantee program and to provide borrowers both a direct loan and loan guarantee option. Nevertheless, to provide statutory direction to the Eximbank on this issue, the legislation contains a provision requiring—

> That the Bank, in determining whether to provide support for a transaction under the loan guarantee, or insurance program, or any combination thereof, shall consider the need to involve private capital in support of United States exports as well as the cost of the transaction as calculated in accordance with the requirements of the Federal Credit Reform Act of 1990.

The third key issue relates to the compensation of Eximbank personnel. The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 [FIRREA] authorized the Federal financial regulatory agencies—the Federal Reserve Board, Federal Deposit Insurance Corporation, Comptroller of the Currency, National Credit Union Administration, Federal Housing Finance Board, and the Office of Thrift Supervision—to set compensation and benefits for their officers and employees independently of the Federal civil service guidelines. As a result, these agencies have been able to compensate their professional and management

employees at rates significantly above those available to Eximbank employees.

This has created a problem for the Eximbank which recruits from the same professional talent pool as the financial regulatory agencies. The Eximbank reports that it has experienced difficulty in competing for new staff with the regulatory agencies. Perhaps of greater concern, the Eximbank reports that it has lost some key experienced Eximbank professional staff to the financial regulatory agencies.

As a result, the legislation contains a provision which would authorize the Eximbank, within its existing budgetary resources, to provide additional compensation and benefits to Bank employees if similar compensation and benefits are being provided by Federal bank regulatory agencies.

Title II of the legislation reauthorizes the export promotion programs of the Commerce Department and addresses the broader issue of U.S. export promotion policy. The Banking Committee's Subcommittee on International Finance held a hearing on May 20 to review the range of export promotion programs sponsored by the Federal Government. Invited to testify at the hearing were representatives of the Commerce Department, Eximbank, Small Business Administration, Agriculture Department, Agency for International Development, and the Trade and Development Program.

The number of agencies represented at the hearing is an indication of a key problem confronting U.S. export promotion policy: the lack of coordination and an overall national strategy. This lack of coordination and overall strategy was commented upon by representatives of the General Accounting Office, the National Association of Manufacturers, and the National Governors Association, who also testified at the hearing.

In response to this problem, the legislation would provide a statutory base for the interagency Trade Promotion Coordinating Committee [TPCC], which until now has operated pursuant to Executive order. While the TPCC has, according to a GAO report, achieved some success, it lacks permanent status and its long-term effectiveness is yet to be demonstrated.

The TPCC would be chaired by the Secretary of Commerce. Its purpose would be to coordinate the export promotion and financing activities of the United States Government and develop a governmentwide strategic plan for carrying out Federal export promotion and financing programs. Members of the TPCC would include representatives of the Departments of Commerce, State, Treasury, Agriculture, Energy, and Transportation, as well as the U.S. Trade Representative, Small Business Administration, Agency for International Development, Trade and Development Program, Overseas Private Investment Corporation, and the Eximbank. The TPCC would be required to submit an annual report to Congress describing its strategic plan, the implementation of the plan, and any revisions made to the plan.

In order to improve the accessibility of U.S. export promotion programs to small-and medium-sized exporters around the country who are not able to come to Washington, the legislation directs the U.S. Foreign and Commercial Service to utilize its 69 domestic offices and its 130 foreign posts as one-stop shops for U.S. exporters. The offices would be required to provide exporters with information on all export promotion activities of the Federal Government, and assist exporters in identifying which Federal programs may be of greatest assistance and making contact with the Federal programs identified.

In addition, the legislation would specifically require the US&FCS to provide U.S. exporters with information on all financing and insurance programs of the Eximbank, including providing assistance in completing applications for Bank programs, and working with exporters to address any deficiencies in such applications. The Eximbank, in turn, would be required to provide full and current information on all of its programs and financing practices to the US&FCS and undertake a training program for US&FCS officers in Bank programs and practices. Senator ROCKEFELLER has been a leading proponent of increasing cooperation between the US&FCS and the Eximbank and utilizing the US&FCS district office network as an outreach arm of the Eximbank.

The legislation would also require the Secretary of Commerce to submit to Congress an annual report on the international economic position of the United States, and appear before the Senate Banking and House Foreign Affairs Committees annually to testify on the report. Senator RIEGLE has been the leading proponent of institutionalizing such an annual reporting requirement by the Commerce Secretary on the competitive position of the United States in the international marketplace. This report and annual hearings on it will enable Congress to strengthen oversight of this increasingly important issue.

Finally, the legislation would increase the number of foreign commercial service officers with the rank of Minister-Counselor from 8 to 12, and provide a 2-year authorization for the export promotion programs of the Commerce Department—$182 million for fiscal year 1993, and $190 million for fiscal year 1994.

Mr. RIEGLE. Mr. President, I am pleased to join Senator SARBANES in introducing the Export Enhancement Act of 1992. This legislation will renew and amend the charter of the Export-Import Bank of the United States and strengthen our overall export promotion efforts. In this new era of global economic competition, exports are crucial to our Nation's economic well-being. This bill is designed to enhance U.S. export competitiveness.

Export financing plays a critical role in export competitiveness. Through its reauthorization of the Eximbank and amendments it makes to that Bank's charter, this bill strengthens the export financing programs of the United States. The bill also reauthorizes the export promotion programs of the Commerce Department. Without such programs important growth markets and strategic export sectors may be lost to our competitors.

The bill, however, goes beyond simply reauthorizing existing export promotion and financing programs. In contrast to our principal competitors, the United States does not have a comprehensive, integrated export enhancement strategy. There are 10 executive agencies involved in either export promotion or financing activities. Yet, we have no strategic plan for coordinating these activities and ensuring the efficiency of these many Federal programs. A January 1992 report issued by the GAO found that export promotion programs do not receive funding based on a governmentwide strategy or set of priorities. Without an overall rationale, it is unclear whether export promotion resources are being channeled into areas with the greatest potential return.

In order to improve the coherence of our export promotion programs, this bill establishes permanently in statute the recently established Presidential interagency committee known as the Trade Promotion Coordinating Committee [TPCC]. This committee is chaired by the Secretary of Commerce and composed of representatives from the various agencies engaged in trade policy and export promotion and financing activities. This bill not only establishes the TPCC in law but also charges it to develop a governmentwide strategic plan for promoting and financing exports. Proper development and implementation of such a plan will ensure our export promotion and financing activities are being coordinated and that priorities are being set that will enable our Nation to get the maximum return for money we spend on such activities.

The bill also directs the U.S. Foreign and Commercial Service to utilize its 67 domestic offices and 129 foreign offices as one-stop shops for U.S. exporters. Our intention is to ensure that small- and medium-sized companies, not familiar with exporting, can get all the help they need in identifying relevant Federal programs in one easily accessible office. We have to get more American firms involved in exporting

and this provision is designed to help that happen.

The Department of Commerce has a key responsibility for strengthening our international trade and investment position. This bill raises the visibility of that important function by requiring the Secretary of Commerce to submit to the Congress an annual report on the international economic position of the United States and to appear annually before the Senate Banking Committee and the House Foreign Affairs Committee to testify on the report. Among other things, this provision will require the Commerce Secretary to report on the Department's efforts to promote the development of technologies and products critical to our industrial leadership and to increase exports of products using such technologies. The Secretary is also required to include in this annual report a summary of the work being done by the TPCC to implement a governmentwide strategic plan for coordinating all export promotion and financing activities of our Government. The annual report and hearing requirements are designed to focus attention on these important activities and ensure better congressional oversight of them.

Mr. President, I want to express my appreciation to Senator SARBANES for his leadership in this area and for working closely with me to ensure that many of the provisions to which I attach great importance are included in this bill. The oversight hearings which his International Finance Subcommittee held this year on the Export-Import Bank and our country's export promotion and financing activities led to the development of many of the provisions of this bill. I very much appreciate his personal attention to these issues to which we both attach so much importance. I would also like to thank Senator GARN and Senator MACK for their support and contributions to this bill. Senator ROCKEFELLER, who testified at one of our subcommittee hearings, also contributed ideas that are incorporated in this bill.

I look forward to marking up this important piece of legislation in the Banking Committee this week and hope for early consideration of it by the full Senate shortly thereafter. This is legislation we can and must enact this year.

ADDITIONAL COSPONSORS

S. 781

At the request of Mr. SARBANES, the name of the Senator from Maine [Mr. COHEN] was added as a cosponsor of S. 781, a bill to authorize the Indian American Forum for Political Education to establish a memorial to Mahatma Gandhi in the District of Columbia.

S. 1100

At the request of Mr. KERRY, the name of the Senator from Michigan [Mr. LEVIN] was added as a cosponsor of S. 1100, a bill to authorize the Secretary of Housing and Urban Development to provide grants to urban and rural communities for training economically disadvantaged youth in education and employment skills and to expand the supply of housing for homeless and economically disadvantaged individuals and families.

S. 1851

At the request of Mr. ROCKEFELLER, the name of the Senator from Massachusetts [Mr. KERRY] was added as a cosponsor of S. 1851, a bill to provide for a Management Corps that would provide the expertise of United States businesses to the Republics of the Soviet Union and the Baltic States.

S. 1931

At the request of Mr. STEVENS, the names of the Senator from Alaska [Mr. MURKOWSKI], the Senator from New Mexico [Mr. DOMENICI], and the Senator from Mississippi [Mr. LOTT] were added as cosponsors of S. 1931, a bill to authorize the Air Force Association to establish a memorial in the District of Columbia or its environs.

S. 1996

At the request of Mr. ROCKEFELLER, the name of the Senator from Connecticut [Mr. LIEBERMAN] was added as a cosponsor of S. 1996, a bill to amend title XVIII of the Social Security Act to provide for uniform coverage of anticancer drugs under the medicare program, and for other purposes.

S. 2027

At the request of Mr. CHAFEE, the name of the Senator from South Carolina [Mr. HOLLINGS] was added as a cosponsor of S. 2027, a bill to amend title XVIII of the Social Security Act to eliminate the annual cap on the amount of payment for outpatient physical therapy and occupational therapy services under part B of the medicare program.

S. 2041

At the request of Mr. GRASSLEY, the name of the Senator from Georgia [Mr. FOWLER] was added as a cosponsor of S. 2041, a bill to amend the Petroleum Marketing Practices Act to enhance competition, and for other purposes.

S. 2346

At the request of Mrs. KASSEBAUM, the name of the Senator from Missouri [Mr. DANFORTH] was added as a cosponsor of S. 2346, a bill to provide for comprehensive health care access expansion and cost control through standardization of private health care insurance and other means.

S. 2385

At the request of Mr. RIEGLE, the name of the Senator from California [Mr. CRANSTON] was added as a cosponsor of S. 2385, a bill to amend the Immigration and Nationality Act to permit the admission to the United States of nonimmigrant students and visitors who are the spouses and children of United States permanent resident aliens, and for other purposes.

S. 2426

At the request of Mr. DANFORTH, the name of the Senator from Georgia [Mr. NUNN] was added as a cosponsor of S. 2426, a bill to approve the President's rescission proposals submitted to the Congress on March 20, 1992.

S. 2484

At the request of Mr. KASTEN, the names of the Senator from Florida [Mr. MACK], the Senator from Florida [Mr. GRAHAM], and the Senator from Alaska [Mr. STEVENS] were added as cosponsors of S. 2484, a bill to establish research, development, and dissemination programs to assist State and local agencies in preventing crime against the elderly, and for other purposes.

S. 2515

At the request of Mr. DECONCINI, the name of the Senator from Hawaii [Mr. INOUYE] was added as a cosponsor of S. 2515, a bill to authorize the establishment of job training programs for unemployed veterans and persons who have been recently separated from the Armed Forces, to pay certain assistance and benefits to employers of such veterans and persons, such veterans and such persons to defray certain costs relating to the provision of such training, and for other purposes.

S. 2624

At the request of Mr. GLENN, the name of the Senator from Colorado [Mr. WIRTH] was added as a cosponsor of S. 2624, a bill to authorize appropriations for the Interagency Council on the Homeless, the Federal Emergency Management Food and Shelter Program, and for other purposes.

S. 2644

At the request of Mrs. KASSEBAUM, the name of the Senator from Kansas [Mr. DOLE] was added as a cosponsor of S. 2644, a bill to require the Secretary of Transportation to require passenger and freight trains to install and use certain lights for purposes of safety.

S. 2680

At the request of Mr. PRYOR, the name of the Senator from Georgia [Mr. FOWLER] was added as a cosponsor of S. 2680, a bill to amend title XVIII of the Social Security Act to require the Secretary of Health and Human Services to consult with State medical societies in revising the geographic adjustment factors used to determine the amount of payment for physicians' services under part B of the Medicare Program, to require the Secretary to base geographic-cost-of-practice indices under the program upon the most recent available data, and for other purposes.

S. 2704

At the request of Mr. BYRD, the name of the Senator from Colorado [Mr. WIRTH] was added as a cosponsor of S. 2704, a bill to prevent any foreign person from purchasing or otherwise acquiring the LTV Aerospace and Defense Company.

S. 2707

At the request of Mr. RIEGLE, the names of the Senator from North Dakota [Mr. CONRAD], the Senator from Nevada [Mr. BRYAN], the Senator from Virginia [Mr. WARNER], and the Senator from Florida [Mr. GRAHAM] were added as cosponsors of S. 2707, a bill to authorize the minting and issuance of coins in commemoration of the Year of the Vietnam Veteran and the 10th Anniversary of the dedication of the Vietnam Veterans Memorial, and for other purposes.

S. 2736

At the request of Mr. LIEBERMAN, the name of the Senator from Illinois [Mr. SIMON] was added as a cosponsor of S. 2736, a bill to prohibit the Secretary of Health and Human Services from taking any action with respect to certain alleged violations of the requirements of title IV of the Social Security Act.

S. 2763

At the request of Mr. ROTH, the names of the Senator from Utah [Mr. GARN], and the Senator from Alaska [Mr. STEVENS] were added as cosponsors of S. 2763, a bill to establish the Mike Mansfield Fellowship Program for intensive training in the Japanese language, government, politics, and economy.

S. 2810

At the request of Mr. GORE, the name of the Senator from North Dakota [Mr. BURDICK] was added as a cosponsor of S. 2810, a bill to recognize the unique status of local exchange carriers in providing the public switched network infrastructure and to ensure the broad availability of advanced public switched network infrastructure.

S. 2851

At the request of Mr. JOHNSTON, the name of the Senator from New Jersey [Mr. BRADLEY] was added as a cosponsor of S. 2851, a bill to provide for the management of Pacific yew on public lands, and on national forest lands reserved or withdrawn from the public domain, to ensure a steady supply of taxol for the treatment of cancer and to ensure the long-term conservation of the Pacific yew, and for other purposes.

SENATE JOINT RESOLUTION 278

At the request of Mr. DODD, the name of the Senator from New York [Mr. MOYNIHAN] was added as a cosponsor of Senate Joint Resolution 278, a joint resolution designating the week of January 3, 1993, through January 9, 1993, as "Braille Literacy Week."

SENATE JOINT RESOLUTION 303

At the request of Mr. PELL, the names of the Senator from Oregon [Mr. PACKWOOD] and the Senator from Florida [Mr. GRAHAM] were added as cosponsors of Senate Joint Resolution 303, a joint resolution to designate October 1992 as "National Breast Cancer Awareness Month."

SENATE JOINT RESOLUTION 307

At the request of Mr. MCCAIN, the name of the Senator from Oklahoma [Mr. BOREN] was added as a cosponsor of Senate Joint Resolution 307, a joint resolution designating the month of July 1992 as "National Muscular Dystrophy Awareness Month."

SENATE RESOLUTION 314

At the request of Mr. DECONCINI, the name of the Senator from West Virginia [Mr. ROCKEFELLER] was added as a cosponsor of Senate Resolution 314, a resolution concerning the provision of humanitarian aid to civilian populations in and around Sarajevo.

SENATE CONCURRENT RESOLUTION 125—RELATIVE TO A MORATORIUM ON COMMERCIAL WHALING

Mr. KERRY (for himself and Mr. PELL) submitted the following concurrent resolution; which was referred to the Committee on Foreign Relations:

S. CON. RES. 125

Whereas whales are marine resources of great aesthetic, educational, and scientific interest and are a vital part of the marine ecosystem;

Whereas the International Whaling Commission adopted in 1982 an indefinite moratorium on commercial whaling, which was scheduled to go into effect in 1986, establishing zero global catch limits for eleven species of whales;

Whereas despite the moratorium on commercial whaling, thousands of whales have been killed since its inception by the commercial whaling nations;

Whereas there remain great uncertainties as to the true status of whale populations due to the difficulty of studying them, their slow reproductive rate, and the unpredictability of their recovery even when fully protected;

Whereas the consequences of removing whale populations from the marine ecosystem are not understood and cannot be predicted;

Whereas whales are subject to increasingly grave environmental threats from nonhunting causes, such as pollution, loss of habitat, oil spills, and the use of large-scale driftnets, which underscore the need for special safeguards for whale protection;

Whereas, in addition, many of the more than 60 species of small cetaceans are subject to direct commercial harvest;

Whereas there is significant widespread support in the international community for the view that, for scientific, ecological, aesthetic, and educational reasons, whales should no longer be commercially hunted;

Whereas efforts made at the 1991 meeting of the International Whaling Commission to overturn the moratorium on commercial whaling were defeated; and

Whereas there is concern that, at future International Whaling Commission meetings, some countries will again press for an immediate resumption of commercial whaling on some stocks: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That it is the sense of the Congress that—

(1) United States policy should promote the conservation and protection of whale, dolphin, and porpoise populations;

(2) toward that goal, the United States should work to strengthen and maintain International Whaling Commission moratorium on the commercial killing of whales, and work toward a similar moratorium on the direct commercial harvest of dolphins and porpoises;

(3) the United States should work to strengthen the International Whaling Commission by reaffirming its competence to regulate direct commercial whaling on all species of cetaceans, and should encourage the Commission to utilize the expertise of its Scientific Committee by seriously considering the Committee's recommendations;

(4) the United States should, before the meeting of the International Whaling Commission in Glasgow, Scotland, in the summer of 1992, endorse the proposal of France to create a sanctuary in the oceans of the Southern Hemisphere in which commercial whaling shall be expressly prohibited; and

(5) in so promoting the conservation and protection of the world's whale populations, the United States should make the fullest use of diplomatic channels, appropriate domestic and international law, and all other available means.

Mr. KERRY. Mr. President, I am today submitting a concurrent resolution calling for a U.S. policy of strengthening and maintaining the international moratorium on commercial whaling which has been in effect since first declared by the International Whaling Commission [IWC] in 1986.

I take this action to strengthen the hand of our representatives to the annual meeting of the IWC to be held in Scotland at the end of this month. It is anticipated that whaling nations, including Japan, will seek to lift the moratorium at that time. I believe that would be a mistake and hope that U.S. negotiators will hold firm in support of the moratorium.

Mr. President, the decimation of whale populations throughout the oceans of the world is comparable only to the near extermination of the American buffalo from the Great Plains of the West. Year after year of relentless harvesting, coupled with steadily improved technology, has left virtually every significant species of whale seriously depleted, threatened or endangered. The blue whale, just for example, once numbered a quarter of a million; now it numbers about 1,000. The North American right whale—the most endangered of all the world's large whales—had declined from more than 50,000 to approximately 350 by the beginning of this century.

It is important to realize that the process of rebuilding a stock of marine mammal that has been devastated is not simple. You cannot simply throw a switch and revive a species whose biological viability has been put at risk. The right whale, for example, has been protected from commercial whaling for half a century but—although it has survived—its numbers have not grown.

The concurrent resolution I submit today includes a provision calling upon the United States to support a proposal

to be offered in Scotland by the Government of France to create a southern ocean whale sanctuary in Antarctic waters. These waters serve as a critical feeding ground for many endangered species of whales.

Finally, the concurrent resolution also urges action to end the direct harvesting of dolphins and porpoises for commercial purposes.

Mr. President, there may have been a time when whales held enormous value as a source of food, fuel and other commercial products. No one who has the privilege of representing New Bedford or Nantucket in the U.S. Senate could deny this. But that day has long since past. Today, the greatest economic value of the whale is in its existence; in its capacity to be seen—to be watched—swimming free in Massachusetts Bay or off the Florida coast or in the nearshore waters of the Pacific. Whale-watching generates an estimated $1 billion in tourist dollars in Massachusetts alone. And the message that sends to our citizens, and especially to our children, about respect for life and awe at the majesty of nature has educational value that far exceeds that.

I hope that the submission of this concurrent resolution today will strengthen all our resolve to ensure the continued protection of whales from commercial harvest, and their continued survival for the benefit of us all.

I note, in closing, that the concurrent resolution is comparable to House Concurrent Resolution 177, which was approved by the House of Representatives on May 19 of this year.

AMENDMENTS SUBMITTED

NATIONAL BANKRUPTCY REVIEW COMMISSION ACT

SANFORD AMENDMENT NOS. 2427 AND 2428

Mr. SANFORD proposed two amendments to the bill (S. 1985) to establish a Commission to review the Bankruptcy Code, to amend the Bankruptcy Code in certain aspects of its application to cases involving commerce and credit and individual debtors and add a temporary chapter to govern reorganization of small businesses, and for other purposes, as follows:

AMENDMENT NO. 2427

Amend the pending business in section 205 in the following manner:

(1) Delete subsection (b)(1) on page 16, line 15–line 21, and renumber subsections "(b)(2)" and "(b)(3)" as "(b)(1)" and "(b)(2)" accordingly.

(2) On page 18, line 23 add after "debtor" the following, "including, but not limited to, the proper use of disposable income".

(3) On page 19, line 9 add after "chapter" the number "11".

(4) On page 20, line 15 delete the word "shall" and insert the word "may".

(5) On page 20, lines 16–17 delete the sentence "Any waiver of the right to dismiss under this section is unenforceable.".

(6) On page 29, paragraph (B) found at lines 3–14, and insert the following,

(B) with respect to a class of claims of a kind described in section 507(a) (3), (4), (5), or (6), each holder of a claim of the class will receive cash or deferred cash payments of a value, as of the effective date of the plan, equal to the allowed amount of such claims; and".

AMENDMENT NO. 2428

At the end of sec. 206(g)(1)(A), add the following sentence:

"Nothing in the subsection (g) shall affect the court's existing authority to issue an injunction pursuant to an order approving a plan of reorganization."

HEFLIN AMENDMENT NO. 2429

Mr. HEFLIN proposed an amendment to the bill S. 1985, supra, as follows:

Amend the pending business in the following:

(1) On page 57, line 15, delete "unusual", and insert "extraordinary".

(2) In section 206, strike all of section (g)(9) on page 49, line 21, through page 51, line 2.

(3) In section 408, on page 90, line 8, add after "attorney", add the following: "in conformance with guidelines adopted by the Executive Office for United States Trustees pursuant to section 586(a)(3)(A) of title 28".

(4) In section 210, on page 55, line 3, delete "120-day", and insert "180-day".

(5) In section 205, on page 19, line 9, delete "this".

MITCHELL (AND OTHERS) AMENDMENT NO. 2430

Mr. MITCHELL (for himself, Mr. BYRD, Mr. SASSER, and Mr. WELLSTONE) proposed an amendment to amendment No. 2426 proposed by Mr. DANFORTH to the bill S. 1985, supra, as follows:

In lieu of the language proposed to be inserted, insert the following:

The Senate finds that—

(1) the growing national debt is a legacy of bankruptcy which will make America's economy steadily weaker and more vulnerable than it is today;

(2) to amass a national debt of $4,000,000,000,000 and an annual deficit of $400,000,000,000 is to breach trust with present and future Americans;

(3) the national interest in controlling the deficit takes precedence over partisan advantage;

(4) it is the responsibility of candidates for President and for Congress to discuss the deficit, if the priority issues facing our country (such as investing in human capital and physical infrastructure to promote economic growth) are to be effectively and honestly addressed;

(5) the American people will provide a mandate for governmental action, if given information and serious choices for deficit reduction that calls for shared sacrifice;

(6) The frequency and level of public comment on this issue by too many public officers and House and Senate candidates, including those who hold and seek the office of the President, have been insignificant and inadequate;

(7) by and large too many candidates, Members of Congress, and member of the media have ignored or trivialized this issue by suggestions such as that meaningful deficit reduction can be accomplished merely by attacking waste, fraud, and abuse.

(8) entitlement and interest spending are the fastest growing components of the Federal budget and are at an all-time high, largely due to the explosion of health costs;

(9) other than taxes devoted to Social Security pensions, the level of taxation relative to the United States economy has been lower in the last decade than it was in any year between 1962 and 1982;

(10) the existing reckless Federal fiscal policy cannot be addressed in a meaningful way without including consideration of restraining entitlements and increasing taxes, as well as reducing defense and domestic spending; and

(11) to suggest that meaningful deficit reduction can be accomplished without shared sacrifice constitutes deception of the American people:

It is the sense of the Senate that—

(1) public officials and candidates for public office should make proposals and engage in extensive and substantive discussion on reducing the deficit;

(2) the candidates for President should agree to a formal discussion that focuses entirely on the Federal budget deficit, its implications and solutions; and

(3) all candidates for office should affirm their support for this statement of principles and should resolve, in the course of their campaigns, to seek a mandate from the electorate with which they can effectively address the Federal budget deficit if elected.

AUDIO HOME RECORDING ACT OF 1991

DECONCINI AMENDMENT NO. 2431

Mr. RIEGLE (for Mr. DECONCINI) proposed an amendment to the bill (S. 1623) to amend title 17, United States Code, the implement a royalty payment system and a serial copy management system for digital audio recording, to prohibit certain copyright infringement actions, and for other purposes, as follows:

In lieu of the matter proposed to be inserted insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Audio Home Recording Act of 1991".

SEC. 2. IMPORTATION, MANUFACTURE, AND DISTRIBUTION OF DIGITAL AUDIO RECORDING DEVICES AND MEDIA.

Title 17, United States Code, is amended by adding at the end the following:

"CHAPTER 10—DIGITAL AUDIO RECORDING DEVICES AND MEDIA

"Subchapter A—Definitions, Prohibition of Certain Infringement Actions, and Rules of Construction

"Sec.
"1001. Definitions.
"1002. Prohibition on certain infringement actions.
"1003. Effect on other rights and remedies with respect to private home copying or otherwise.

"Subchapter B—Royalty Payments

"1011. Obligation to make royalty payments.
"1012. Royalty payments.
"1013. Deposit of royalty payments and deduction of expenses.

"1014. Entitlement to royalty payments.
"1015. Procedures for distributing royalty payments.
"1016. Negotiated collection and distribution arrangements.

"Subchapter C—The Serial Copy Management System

"1021. Incorporation of the serial copy management system.
"1022. Implementing the serial copy management system.

"Subchapter D—Remedies

"1031. Civil remedies.
"1032. Binding arbitration.

"Subchapter A—Definitions, Prohibition of Certain Infringement Actions, and Rules of Construction

"§ 1001. Definitions

"As used in this chapter, the following terms and their variant forms mean the following:

"(1)(A) an 'audiogram' is a material object (i) in which are fixed, by any method now known or later developed, only sounds (and not, for example, a motion picture or other audiovisual work even though it may be accompanied by sounds), and material, statements or instructions incidental to those fixed sounds, if any, and (ii) from which the sounds and material can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.

"(B) An 'audiogram' does not include a material object—

"(i) in which the fixed sounds consist entirely of spoken word recordings, or

"(ii) in which one or more computer programs are fixed, except that an audiogram may contain statements or instructions constituting the fixed sounds and incidental material, and statements or instructions to be used directly or indirectly in order to bring about the perception, reproduction, or communication of the fixed sounds and incidental material.

"(C) For purposes of this section, (i) a 'spoken word recording' is a sound recording in which are fixed only a series of spoken words, except that the spoken words may be accompanied by ancillary musical or other sounds, and (ii) the term 'incidental' means related to and relatively minor by comparison.

"(2) A 'digital audio copied recording' is a reproduction in a digital recording format of an audiogram, whether that reproduction is made directly from another audiogram or indirectly from a transmission.

"(3) A 'digital audio interface device' is any machine or device, now known or later developed, whether or not included with or as part of some other machine or device, that is specifically designed to communicate a 'digital audio interface signal' to a digital audio recording device, and that supplies a digital audio signal through a 'nonprofessional interface,' as those terms are used in the Digital Audio Interface Standard in part I of the technical reference document or as otherwise defined by the Secretary of Commerce under section 1022(b).

"(4) A 'digital audio recording device' is any machine or device, now known or later developed, or a type commonly distributed to individuals for use by individuals,whether or not included with or as part of some other machine or device, the digital recording function of which is designed or marketed for the primary purpose of, and that is capable of, making a digital audio copied recording for private use, except for—

"(A) professional model products and

"(B) dictation machines,- answering machines, and other audio recording equipment that is designed and marketed primarily for the creation of sound recordings resulting from the fixation of nonmusical sounds.

"(5)(A) A 'digital audio recording medium' is any material object, now known or later developed, in which sounds may be fixed where the media product is (i) in a form commonly distributed for ultimate sale to individuals for use by individuals (such as magnetic digital audio tape cassettes, optical discs, and magneto-optical discs), and (ii) primarily marketed or most commonly used by consumers for the purpose of making digital audio copied recordings by use of a digital audio recording device.

"(B) Such term does not include—

"(i) any material object that embodies a sound recording at the time it is first distributed by the importer or manufacturer, unless the sound recording has been so embodied in order to evade the obligations of section 1011 of this title; or

"(ii) any media product that is primarily marketed and most commonly used by consumers either for the purpose of making copies of motion pictures or other audiovisual works or for the purpose of making copies of nonmusical literary works, including, without limitation, computer programs or data bases.

"(6) 'Distribute' means to sell, resell, lease, or assign a product to consumers in the United States, or to sell, resell, lease, or assign a product in the United States for ultimate transfer to consumers in the United States.

"(7) An 'interested copyright party' is—

"(A) the owner of the exclusive right under section 106(1) of this title to reproduce a sound recording of a musical work that has been embodied in an audiogram lawfully made under this title that has been distributed to the public;

"(B) the legal or beneficial owner of, or the person that controls, the right to reproduce in an audiogram a musical work that has been embodied in an audiogram lawfully made under this title that has been distributed to the public; or

"(C) any association or other organization—

"(i) representing persons specified in subparagraph (A) or (B), or

"(ii) engaged in licensing rights in musical works to music users on behalf of writers and publishers.

"(8) An 'interested manufacturing party' is any person that imports or manufactures any digital audio recording device or digital audio recording medium in the United States, or any association of such persons.

"(9) 'Manufacture' includes the production or assembly of a product in the United States.

"(10) A 'music publisher' is a person that is authorized to license the reproduction of a particular musical work in a sound recording.

"(11) A 'professional model product' is an audio recording device—

"(i) that is capable of sending a digital audio interface signal in which the channel status block flag is set as a 'professional' interface, in accordance with the standards and specifications set forth in the technical reference document or established under an order issued by the Secretary of Commerce under section 1022(b);

"(ii) that is clearly, prominently, and permanently marked with the letter 'P' or the word 'professional' on the outside of its packaging, and in all advertising, promotional, and descriptive literature, with respect to the device, that is available or provided to persons other than the manufacturer or importer, its employees, or its agents; and

"(iii) that is designed, manufactured, marketed, and intended for use by recording professionals in the ordinary course of a lawful business.

"(B) In determining whether an audio recording device meets the requirements of subparagraph (A)(iii), factors to be considered shall include—

"(i) whether it has features used by recording professionals in the course of a lawful business, including features such as—

"(I) a data collection and reporting system of error codes during recording and playback;

"(II) a record and reproduce format providing 'read after write' and 'read after read';

"(III) a time code reader and generator conforming to the standards set by the Society of Motion Picture and Television Engineers for such readers and generators; and

"(IV) a professional input/output interface, both digital and analog, conforming to standards set by audio engineering organizations for connectors, signaling formats, levels, and impedances;

"(ii) the nature of the promotional materials used to market the audio recording device;

"(iii) the media used for the dissemination of the promotional materials, including the intended audience;

"(iv) the distribution channels and retail outlets through which the device is disseminated;

"(v) the manufacturer's or importer's price for the device as compared to the manufacturer's or importer's price for digital audio recording devices implementing the Serial Copy Management System;

"(vi) the relative quantity of the device manufactured or imported as compared to the size of the manufacturer's or importer's market for professional model products;

"(vii) the occupations of the purchasers of the device; and

"(viii) the uses to which the device is put.

"(12) The 'Register' is the Register of Copyrights.

"(13) The 'Serial Copy Management System' means the system for regulating serial copying by digital audio recording devices that is set forth in the technical reference document or in an order of the Secretary of Commerce under section 1022(b), or that conforms to the requirements of section 1021(a)(1)(C).

"(14) The 'technical reference document' is the document entitled 'Technical Reference Document for Audio Home Recording Act of 1991' in section 5 of this Act.

"(15)(A) The 'transfer price' of a digital audio recording device or a digital audio recording medium is—

"(i) in the case of an imported product, the actual entered value at United States Customs (exclusive of any freight, insurance, and applicable duty), and

"(ii) in the case of a domestic product, the manufacturer's transfer price (FOB the manufacturer, and exclusive of any direct sales taxes or excise taxes incurred in connection with the sale).

"(B) Where the transferor and transferee are related entities or within a single entity, the transfer price shall not be less than a reasonable arms-length price under the principles of the regulations adopted pursuant to section 482 of the Internal Revenue Code of 1986, or any successor provision to such section 482.

"(16) A 'transmission' is any audio or audiovisual transmission, now known or

later developed, whether by a broadcast station, cable system, multipoint distribution service, subscription service, direct broadcast satellite, or other form of analog or digital communication.

"(17) The 'Tribunal' is the Copyright Royalty Tribunal.

"(18) A 'writer' is the composer or lyricist of a particular musical work.

"(19) The terms 'analog format', 'copyright status', 'category code', 'generation status', and 'source material', mean those terms as they are used in the technical reference document.

"§ 1002. Prohibition on certain infringement actions

"(a) CERTAIN ACTIONS PROHIBITED—No action may be brought under this title, or under section 337 of the Tariff Act of 1930, alleging infringement of copyright based on the manufacture, importation, or distribution of a digital audio recording device or a digital audio recording medium, or an analog audio recording device or analog audio recording medium, or the use of such a device or medium for making audiograms. However, this subsection does not apply with respect to any claim against a person for infringement by virtue of the making of one or more audiograms, or other material objects in which works are fixed, for direct or indirect commercial advantage. For purposes of this section, the copying of an audiogram by a consumer for private, noncommercial use is not for direct or indirect commercial advantage, and is therefore not actionable.

"(b) EFFECT OF THIS SECTION.—Nothing in this section shall be construed to create or expand a cause of action for copyright infringement except to the extent such a cause of action otherwise exists under other chapters of this title or under section 337 of the Tariff Act of 1930, or to limit any defenses that may be available to such causes of action.

"§ 1003. Effect on other rights and remedies with respect to private home copying or otherwise

"Except as expressly provided in this chapter with respect to audio recording devices and media, neither the enactment of this chapter nor anything contained in this chapter shall be construed to expand, limit, or otherwise affect the rights of any person with respect to private home copying of copyrighted works, or to expand, limit, create, or otherwise affect any other right or remedy that may be held by or available to any person under chapters 1 through 9 of this title.

"Subchapter B—Royalty Payments

"§ 1011. Obligation to make royalty payments

"(a) PROHIBITION ON IMPORTATION AND MANUFACTURE.—No person shall import into and distribute in the United States, or manufacture and distribute in the United States, any digital audio recording device or digital audio recording medium unless such person—

"(1) records the notice specified by this section and subsequently deposits the statements of account and applicable royalty payments for such device or medium specified by this section and section 1012 of this title, or

"(2) complies with the applicable notice, statement of account, and payment obligations under a negotiated arrangement authorized pursuant to section 1016 of this title.

"(b) FILING OF NOTICE.—

"(1) GENERALLY.—The importer or manufacturer of any digital audio recording device or digital audio recording medium, within a product category or utilizing a technology with respect to which such manufacturer or importer has not previously filed a notice under this subsection, shall file a notice with the Register, no later than 45 days after the commencement of the first distribution in the United States of such device or medium, in such form as the Register shall prescribe by regulation; provided, however, that no notice shall be required with respect to any distribution occurring prior to the effective date of this chapter.

"(2) CONTENTS.—Such notice shall—

"(A) set forth the manufacturer's or importer's identify and address,

"(B) identify such product category and technology, and

"(C) identify any trade or business names, trademarks, or like indicia of origin that the importer or manufacturer uses or intends to use in connection with the importation, manufacture, or distribution of such device or medium in the United States.

"(c) FILING OF QUARTERLY STATEMENTS OF ACCOUNT.—

"(1) GENERALLY.—Any importer or manufacturer that distributed during a given quarter any digital audio recording device or digital audio recording medium that it manufactured or imported shall file with the Register, in such form as the Register shall prescribe by regulation, a quarterly statement of account specifying, by product category, technology, and model, the number and transfer price of all digital audio recording devices and digital audio recording media that it distributed during such quarter.

"(2) PERIOD COVERED.—The quarterly statements of account may be filed on either a calendar or fiscal year basis, at the election of the manufacturer or importer.

"(3) STATEMENTS OF ACCOUNT FOR THE FIRST THREE QUARTERS.—For the first three quarters of any calendar or fiscal year, such statement shall—

"(A) be filed no later than 45 days after the close of the period covered by the statement; provided, however, that any quarterly statement that would be due within three months and 45 days of the effective date of this chapter shall not be filed until the next quarterly statement is due, at which time a statement shall be filed covering the entire period since the effective date of this chapter;

"(B) be certified as accurate by an authorized officer or principal of the importer or manufacturer;

"(C) be accompanied by the total royalty payment due for such period pursuant to section 1012 of this title.

"(4) STATEMENT OF ACCOUNT FOR THE FOURTH QUARTER.—The quarterly statement for the final quarter of any calendar or fiscal year shall be incorporated into the annual statement required under subsection (d) of this section, which shall be accompanied by the royalty payment due for such quarter.

"(d) FILING OF ANNUAL STATEMENTS OF ACCOUNT.—

"(1) GENERALLY.—Any importer or manufacturer that distributed during a given calendar or fiscal year (as applicable) any digital audio recording device or digital audio recording medium that it manufactured or imported shall also file with the Register a cumulative annual statement of account, in such form as the Register shall prescribe by regulation.

"(2) TIMING AND CERTIFICATION.—Such statement shall be filed no later than 60 days after the close of such calendar or fiscal year, and shall be certified as accurate by an authorized officer or principal of the importer or manufacturer.

"(3) INDEPENDENT AUDIT.—The annual statement of account shall be audited in accordance with U.S. generally accepted auditing standards by an independent certified public accountant selected by the manufacturer or importer. The independent certified public accountant shall report whether the information contained therein is fairly presented, in all material respects, in accordance with the requirements of this chapter.

"(4) RECONCILIATION OF ROYALTY PAYMENT.—The cumulative annual statement of account shall be accompanied by any royalty payment due under section 1012 of this title that was not previously paid under subsection (c) of this section.

"(e) VERIFICATION.—

"(1) GENERALLY.—

"(A) The Register shall, after consulting with interested copyright parties, interested manufacturing parties, and appropriate representatives of the accounting profession, prescribe regulations specifying procedures for the verification of statements of account filed pursuant to this section.

"(B) Such regulations shall permit interested copyright parties to select independent certified public accountants to conduct audits in order to verify the accuracy of the information contained in the statements of account filed by manufacturers and importers.

"(C) Such regulations shall also—

"(i) specify the scope of such independent audits; and

"(ii) establish a procedure by which interested copyright parties will coordinate the engagement of such independent certified public accountants, in order to ensure that no manufacturer or importer is audited more than once per year.

"(D) All such independent audits shall be conducted at reasonable times, with reasonable advance notice, and shall be no broader in scope than is reasonably necessary to carry out the purposes of this subsection in accordance with U.S. generally accepted auditing standards.

"(2) VERIFICATION REPORT.—The accountant's report on the results of each such independent audit shall, in accordance with U.S. generally accepted auditing standards and the requirements of this chapter, set forth the procedures performed and the accountant's findings. The accountant's report shall be filed with the Register.

"(3) ACCESS TO DOCUMENTS IN EVENT OF DISPUTE.—In the event of a dispute concerning the amount of the royalty payment due from a manufacturer or importer resulting from a verification audit conducted under this section—

"(A) any interested manufacturing party audited pursuant to this subsection, and its authorized representatives, shall be entitled to have access to all documents upon which the audit results under this subsection were based; and

"(B) any representative of an interested copyright party that has been approved by the Register under subsection (h)(2) of his section shall be entitled to have access to all documents upon which the audit results under subsection (d) of this section were based, subject to the limitations of subsection (h)(2) of this section.

"(f) COSTS OF VERIFICATION.—

"(1) The costs of all verification audits that are conducted pursuant to subsection (e) of this section shall be borne by interested copyright parties, except that, in the case of a verification audit of a manufacturer or importer that leads ultimately to recovery of an annual royalty underpayment of 5-percent or more of the annual payment

made, the importer or manufacturer shall provide reimbursement for the reasonable costs of such audit.

"(2) Except as may otherwise be agreed by interested copyright parties, the costs of a verification audit conducted pursuant to subsection (e) of this section shall be borne by the party engaging the certified public accountant. Any recovery of royalty underpayments as a result of the audit shall be used first to provide reimbursement for the reasonable costs of such audit to the extent such costs have not otherwise been reimbursed by the manufacturer or importer pursuant to this subsection. Any remaining recovery shall be deposited with the Register pursuant to section 1013 of this title, or as may otherwise be provided by a negotiated arrangement authorized under section 1016 of this title, for distribution to interested copyright parties as though such funds were royalty payments made pursuant to this section.

"(g) INDEPENDENCE OF ACCOUNTANTS.—Each certified public accountant used by interested copyright parties or interested manufacturing parties pursuant to this section shall be duly licensed to practice as a certified public accountant and shall not be financially dependent upon interested copyright parties or interested manufacturing parties, respectively. The Register may, upon petition by any interested copyright party or interested certified public accountant on the ground that such accountant does not meet the requirements of this subsection.

"(h) CONFIDENTIALITY.—

"(1) GENERALLY.—The quarterly and annual statements of account filed pursuant to subsections (c) and (d) of this section, and information disclosed or generated during verification audits conducted pursuant to subsection (e) of this section, shall be presumed to contain confidential trade secret information within the meaning of section 1905 of title 18 of the United States Code. Except as provided in paragraphs (2), (3), and (4) of this subsection, neither the Register nor any member, officer, or employee of the Copyright Office or the Tribunal, may—

"(A) publicly disclose audit information furnished under this section or information contained in quarterly or annual statements of account, except that aggregate information that does not disclose, directly or indirectly, company-specific information may be made available to the public;

"(B) use such information for any purpose other than to carry out responsibilities under this chapter; or

"(C) permit anyone (other than members, officers, and employees of the Copyright Office and the Tribunal who require such information in the performance of duties under this chapter) to examine such information.

"(2) PROCEDURES FOR ACCESS TO BE PRESCRIBED BY REGISTER.—(A) The Register, after consulting with interested manufacturing parties and interested copyright parties, shall prescribe procedures for disclosing, in confidence, to representatives of interested copyright parties and representatives of interested manufacturing parties information contained in quarterly and annual statements of account and information generated as a result of verification audits.

"(B) Such procedures shall provide that only those representatives of interested copyright parties and interested manufacturing parties who have been approved by the Register shall have access to such information, and that all such representatives shall be required to sign a certification limiting the use of the information to—

"(i) verification functions under this section, and

"(ii) any enforcement actions that may result from such verification procedures.

"(3) ACCESS BY AUDITED MANUFACTURER.—Any interested manufacturing party that is audited pursuant to subsections (e) of this section, and its authorized representatives, shall be entitled to have access to all documents filed with the Register as a result of such audit.

"(4) ACCESS BY CONGRESS.—Nothing in this section shall authorize the withholding of information from the Congress.

"§ 1012. Royalty payments

"(a) DIGITAL AUDIO RECORDING DEVICES.—

"(1) the royalty payment due under section 1011 of this title for each digital audio recording device imported into and distributed in the United States, or manufactured and distributed in the United States, shall be 2 percent of the transfer price. However, only the first person to manufacture and distribute or import and distribute such device shall be required to pay the royalty with respect to such device.

"(2) With respect to a digital audio recording device first distributed in combination with one or more devices, either as a physically integrated unit or as separate components, the royalty payment shall be calculated as follows:

"(A) If the digital audio recording device and such other devices are part of a physically integrated unit, the royalty payment shall be based on the transfer price of the unit, but shall be reduced by any royalty payment made on any digital audio recording device included within the unit that was not first distributed in combination with the unit.

"(B) If the digital audio recording device is not part of a physically integrated unit and substantially similar devices have been distributed separately at any time during the preceding 4 quarters, the royalty payment shall be based on the average transfer price of such devices during those 4 quarters.

"(C) If the digital audio recording device is not part of a physically integrated unit and substantially similar devices have not been distributed separately at any time during the preceding 4 quarters, the royalty payment shall be based on a constructed price reflecting the proportional value of such device to the combination as a whole.

"(3) Notwithstanding paragraph (1) or (2) of this subsection, the amount of the royalty payment for each digital audio recording device or physically integrated unit containing a digital audio recording device shall not be less than $1 nor more than the royalty maximum. The royalty maximum shall be $8 per device, except that for a physically integrated unit containing more than one digital audio recording device, the royalty maximum for such unit shall be $12. During the 6th year after the effective date of this chapter, and no more than once each year thereafter, any interested copyright party may petition the Tribunal to increase the royalty maximum and, if more than 20 percent of the royalty payments are at the relevant royalty maximum, the Tribunal shall prospectively increase such royalty maximum with the goal of having no more than 10 percent of such payments at the new royalty maximum; provided, however, that the amount of any such increase as a percentage of the royalty maximum shall in no event exceed the percentage increase in the Consumer Price Index during the period under review.

"(b) DIGITAL AUDIO RECORDING MEDIA.—The royalty payment due under section 1011 of this title for each digital audio recording medium imported into and distributed in the United States, or manufactured and distributed in the United States, shall be 3 percent of the transfer price. However, only the first person to manufacture and distribute or import and distribute such medium shall be required to pay the royalty with respect to such medium.

"(c) RETURNED OR EXPORTED MERCHANDISE.—

"(1) In calculating the amount of royalty payments due under subsections (a) and (b) of this section, manufacturers and importers may deduct the amount of any royalty payments already made on digital audio recording devices or media that are—

"(A) returned to the manufacturer or importer as unsold or defective merchandise; or

"(B) exported by the manufacturer or importer or a related person—

within two years following the date royalties are paid on such devices or media.

"(2) Any such credit shall be taken during the period when such devices or media are returned or exported, and the basis for any such credit shall be set forth in the statement of account for such period filed under section 1011(c) of this title.

"(3) Any such credit that is not fully used during such period may be carried forward to subsequent periods. If any returned or exported merchandise for which a credit has been taken is subsequently distributed, a royalty payment shall be made as specified under subsection (a) or (b) of this section, based on the transfer price applicable to such distribution.

"§ 1013. Deposit of royalty payments and deduction of expenses

"The Register shall receive all royalty payments deposited under this chapter and, after deducting the reasonable costs incurred by the Copyright Office under this chapter, shall deposit the balance in the Treasury of the United States as offsetting receipts. All funds held by the Secretary of the Treasury shall be invested in interest-bearing United States securities for later distribution with interest under section 1014, 1015, or 1016 of this title. The Register may, in the Register's discretion, four years after the close of any calendar year, close out the royalty payments account for that calendar year, and may treat any funds remaining in such account and any subsequent deposits that would otherwise be attributable to the calendar year as attributable to the next succeeding calendar year. The Register shall submit to the Copyright Royalty Tribunal, on a monthly basis, a financial statement reporting the amount of royalties available for distribution.

"§ 1014. Entitlement to royalty payments

"(a) INTERESTED COPYRIGHT PARTIES.—The royalty payments deposited pursuant to section 1013 of this title shall, in accordance with the procedures specified in section 1015 or 1016 of this title, be distributed to any interested copyright party—

"(1) whose musical work or sound recording has been—

"(A) embodied in audiograms lawfully made under this title that have been distributed to the public, and

"(B) distributed to the public in the form of audiograms or disseminated to the public in transmissions, during the period to which such payments pertain; and

"(2) who has filed a claim under section 1015 or 1016 of this title.

"(b) ALLOCATION ROYALTY PAYMENTS TO GROUPS.—The royalty payments shall be divided into two funds as follows:

"(1) THE SOUND RECORDINGS FUND.—66⅔ percent of the royalty payments shall be allocated to the Sound Recordings Fund. 2⅔ percent of the royalty payments allocated to the Sound Recordings Fund shall be placed in an escrow account managed by an independent administrator jointly appointed by the interested copyright parties under section 1001(7)(A) of this title and the American Federation of Musicians (or any successor entity) to be distributed to nonfeatured musicians (whether or not members of the American Federation of Musicians) who have performed on sound recordings distributed in the United States. 1⅓ percent of the royalty payments allocated to the Sound Recordings Fund shall be placed in an escrow account managed by an independent administrator jointly appointed by the interested copyright parties under section 1001(7)(A) of this title and the American Federation of Television and Radio Artists (or any successor entity) to be distributed to nonfeatured vocalists (whether or not members of the American Federation of Television and Radio Artists) who have performed on sound recordings distributed in the United States. The remaining royalty payments in the Sound Recordings Fund shall be distributed to claimants under subsection (a) of this section who are interested copyright parties under section 1001(7)(A) of this title. Such claimants shall allocate such royalty payments, on a per sound recording basis, in the following manner: 40 percent to the recording artist or artists featured on such sound recordings (or the persons conveying rights in the artists' performances in the sound recordings), and 60 percent to the interested copyright parties.

"(2) THE MUSICAL WORKS FUND.—

"(A) 33⅓ percent of the royalty payments shall be allocated to the Musical Works Fund for distribution to interested copyright parties whose entitlement is based on legal or beneficial ownership or control of a copyright in a musical work.

"(B) The royalty payments allocated to the Musical Works fund shall be further allocated as follows: music publisher claimants shall be entitled to 50 percent of such payments and writer claimants shall be entitled to the other 50 percent of such payments.

"(C) Except to the extent inconsistent with the international obligations of the United States, the allocation specified in subparagraph (B) shall govern despite any contractual obligation to the contrary.

"(c) DISTRIBUTION OF ROYALTY PAYMENTS WITHIN GROUPS.—If all interested copyright parties within a group specified in subsection (b) of this section do not agree on a voluntary proposal for the distribution of the royalty payments within such group, the Tribunal shall, pursuant to the procedures specified in section 1015(c) of this title, allocate such royalty payments based on the extent to which, during the relevant period—

"(1) for the Sound Recordings Fund, each sound recording was distributed to the public in the form of audiograms; and

"(2) for the Musical Works Fund, each musical work was distributed to the public in the form of audiograms or disseminated to the public in transmissions.

"§ 1015. Procedures for distributing royalty payments

"(a) FILING OF CLAIMS AND NEGOTIATIONS.—

"(1) During the first 2 months of each calendar year after the calender year in which this chapter takes effect, every interested copyright party that is entitled to royalty payments under section 1014 of this title shall file with the Tribunal a claim for payments collected during the preceding year in such form and manner as the Tribunal shall prescribe by regulation.

"(2) All interested copyright parties within each group specified in section 1014(b) of this title shall negotiate in good faith among themselves in an effort to agree to a voluntary proposal for the distribution of royalty payments. Notwithstanding any provision of the antitrust laws, for purposes of this section such interested copyright parties may agree among themselves to the proportionate division of royalty payments, may lump their claims together and file them jointly or as a single claim, or may designate a common agent to receive payment on their behalf; except that no agreement under this subsection may vary the allocation of royalties specified in section 1014(b) of this title.

"(b) DISTRIBUTION OF PAYMENTS IN THE ABSENCE OF A DISPUTE.—Within 30 days after the period established for the filing of claims under subsection (a) of this section, in each year after the year in which this section takes effect, the Tribunal shall determine whether there exists a controversy concerning the distribution of royalty payments under section 1014(c) of this title. If the Tribunal determines that no such controversy exists, it shall, within 30 days after such determination, authorize the distribution of the royalty payments as set forth in the agreements regarding the distribution of royalty payments entered into pursuant to subsection (a) of this section, after deducting its reasonable administrative costs under this section.

"(c) RESOLUTION OF DISPUTES.—If the Tribunal finds the existence of a controversy, it shall, pursuant to chapter 8 of this title, conduct a proceeding to determine the distribution of royalty payments. During the pendency of such a proceeding, the Tribunal shall withhold from distribution an amount sufficient to satisfy all claims with respect to which a controversy exists, but shall, to the extent feasible, authorize the distribution of any amounts that are not in controversy.

"§ 1016. Negotiated collection and distribution arrangements

"(a) SCOPE OF PERMISSIBLE NEGOTIATED ARRANGEMENTS.—

"(1) Interested copyright parties and interested manufacturing parties may at any time negotiate among or between themselves a single alternative system for the collection, distribution, or verification of royalty payments provided for in this chapter.

"(2) Such a negotiated arrangement may vary the collection, distribution, and verification procedures and requirements that would otherwise apply under sections 1011 through 1015 of this title, including the time periods for payment and distribution of royalties, but shall not alter the requirements of section 1011 (a), (b), or (h)(4), section 1012 (a) or (b), or section 1014 (a) or (b) of this title.

"(3) Such a negotiated arrangement may also provide that specified types of disputes that cannot be resolved among the parties to the arrangement shall be resolved by binding arbitration or other agreed upon means of dispute resolution.

"(4) Notwithstanding any provision of the antitrust laws, for purposes of this section interested manufacturing parties and interested copyright parties may negotiate in good faith and voluntarily agree among themselves as to the collection, distribution, and verification of royalty payments, and may designate common agents to negotiate and carry out such activities on their behalf.

"(b) IMPLEMENTATION OF A NEGOTIATED ARRANGEMENT.—

"(1) No negotiated arrangement shall go into effect under this section until the Tribunal has approved the arrangement, after full opportunity for comment, as meeting the following requirements.

"(A) The participants in the negotiated arrangement shall include—

"(i) at least two-thirds of all individual interested copyright parties that are entitled to receive royalty payments from the Sound Recording Fund,

"(ii) at least two-thirds of all individual interested copyright parties that are entitled to receive royalty payments from the Musical Works Fund as music publishers, and

"(iii) at least two-thirds of all individual interested copyright parties that are entitled to receive royalty payments from the Musical Works Fund as writers.

"(B) For purposes of subparagraph (A) of this paragraph, the determination as to two-thirds participation shall be based on annual retail sales of audiograms in which musical works or sound recordings of musical works are embodied. One or more organizations representing any of the types of individual interested copyright parties specified in the first sentence of this subsection shall be presumed to represent two-thirds of that type of interested copyright party if the membership of, or other participation in, such organization or organizations includes two-thirds of that type of interested copyright party based on annual retail sales of audiograms in which musical works or sound recordings of musical works are embodied.

"(C) The implementation of the arrangement shall include all necessary safeguards, as determined by the Tribunal, which ensure that all interested copyright parties who are not participants in the arrangement receive the royalty payments to which they would be entitled in the absence of such an arrangement under sections 1013 and either 1014(c) or 1015(b), whichever is applicable. Such safeguards may include accounting procedures, reports and any other information determined to be necessary to ensure the proper collection and distribution of royalty payments.

"(2) Notwithstanding the existence of a negotiated arrangement that has gone into effect under this section, any interested manufacturing party that is not a party to such negotiated arrangement shall remain subject to the requirements of sections 1011 and 1012 and may fully satisfy its obligations under this subchapter by complying with the procedures set forth therein.

"(c) MAINTENANCE OF JURISDICTION BY TRIBUNAL.—Where a negotiated arrangement has gone into effect under this section, the Tribunal shall maintain jurisdiction and shall (1) hear and address any objections to the arrangement that may arise while it is in effect, (2) ensure the availability of alternative procedures for any interested manufacturing party or interested copyright party that is not a participant in the negotiated arrangement, (3) ensure that all interested copyright parties who are not participants in the arrangement receive the royalty payments to which they would be entitled in the absence of such an arrangement under sections 1013 and either 1014(c) or 1015(b), whichever is applicable, (4) ensure that it has adequate funds at its disposal, received either through the Copyright Office or through the entity administering the negotiated arrangement, to distribute to interested copyright parties not participating in the arrangement the royalty payments to which they are enti-

tled under section 1014(c) or 1015(b), including applicable interest, and (5) ensure that the requirements of section 1016(b)(1)(C) are met.

"(d) JUDICIAL ENFORCEMENT.—The Tribunal may seek injunctive relief in an appropriate United States district court to secure compliance with the requirements of subsection (c).

"Subchapter C—The Serial Copy Management System

"§ 1021. Incorporation of the serial copy management system

"(a) PROHIBITION ON IMPORTATION, MANUFACTURE, AND DISTRIBUTION.—

"(1) No person shall import, manufacture, or distribute any digital audio recording device or any digital audio interface device that does not conform to the standards and specifications to implement the Serial Copy Management System that are—

"(A) set forth in the technical reference document;

"(B) set forth in an order by the Secretary of Commerce under section 1022(b)(1), (2), or (3) of this title; or

"(C) in the case of a digital audio recording device other than a device defined in part II of the technical reference document or in an order issued by the Secretary pursuant to section 1022(b) of this title, established by the manufacturer (or, in the case of a proprietary technology, the proprietor of such technology) so as to achieve the same functional characteristics with respect to regulation of serial copying as, and to be compatible with the prevailing method for implementation of, the Serial Copy Management System set forth in the technical reference document or in any order of the Secretary issued under section 1022 of this title.

"(2) If the Secretary of Commerce approves standards and specifications under section 1022(b)(4) of this title, then no person shall import, manufacture, or distribute any digital audio recording device or any digital audio interface device that does not conform to such standards and specifications.

"(b) PROHIBITION ON CIRCUMVENTION OF THE SERIAL COPY MANAGEMENT SYSTEM.—No person shall import, manufacture, or distribute any device, or offer or perform any service, the primary purpose or effect of which is to avoid, bypass, remove, deactivate, or otherwise circumvent any program or circuit which implements, in whole or in part, the Serial Copy Management System in a digital audio recording device or a digital audio interface device.

"(c) ENCODING OF INFORMATION ON AUDIOGRAMS.—

"(1) No person shall encode an audiogram of a sound recording with inaccurate information relating to the category code, copyright status, or generation status of the source material so as improperly to affect the operation of the Serial Copy Management System.

"(2) Nothing in this subchapter requires any person engaged in the importation, manufacture, or assembly of audiograms to encode any such audiogram with respect to its copyright status.

"(d) INFORMATION ACCOMPANYING TRANSMISSIONS IN DIGITAL FORMAT.—Any person who transmits or otherwise communicates to the public any sound recording in digital format is not required under this subchapter to transmit or otherwise communicate the information relating to the copyright status of the sound recording. However, any such person who does transmit or otherwise communicate such copyright status information shall transmit or communicate such information accurately.

"§ 1022. Implementing the serial copy management system

"(a) PUBLICATION OF TECHNICAL REFERENCE DOCUMENT AND CERTIFICATION.—Within 10 days after the date of enactment of this chapter, the Secretary of Commerce shall cause to be published in the Federal Register the technical reference document along with the certification from the National Institute of Standards and Technology, as such certification appears in the report of the Committee on the Judiciary to the Senate on the Audio Home Recording Act of 1991, that the technical reference document sets forth standards and specifications that adequately incorporate the intended functional characteristics to regulate serial copying and are not incompatible with existing international digital audio interface standards and existing digital audio technology.

"(b) ORDERS OF SECRETARY OF COMMERCE.—The Secretary of Commerce, upon petition by an interested manufacturing party or an interested copyright party, and after consultation with the Register, may, if the Secretary determines that to do so is in accordance with the purposes of this chapter, issue an order to implement the Serial Copy Management System set forth in the technical reference document as follows:

"(1) FUNCTIONALLY EQUIVALENT ALTERNATIVES.—The Secretary may issue an order for the purpose of permitting in commerce devices that do not conform to all of the standards and specifications set forth in the technical reference document, if the Secretary determines that such devices possess the same functional characteristics with respect to regulation of serial copying as, and are compatible with the prevailing method for implementation of, the Serial Copy Management System set forth in the technical reference document.

"(2) REVISED GENERAL STANDARDS.—The Secretary may issue an order for the purpose of permitting in commerce devices that do not conform to all of the standards and specifications set forth in the technical reference document, if the Secretary determines that—

"(A) the standards and specifications relating generally to digital audio recording devices and digital audio interface devices have been or are being revised or otherwise amended or modified such that the standards and specifications set forth in the technical reference document are not or would no longer be applicable or appropriate; and

"(B) such devices conform to such new standards and specifications and possess the same functional characteristics with respect to regulation of serial copying as the Serial Copy Management System set forth in the technical reference document.

"(3) STANDARDS FOR NEW DEVICES.—The Secretary may issue an order for the purpose of—

"(A) establishing whether the standards and specifications established by a manufacturer or proprietor for digital audio recording devices other than devices defined in part II of the technical reference document or a prior order of the Secretary under paragraph (1) or (2) of this subsection comply with the requirements of subparagraph (C) of section 1021(a)(1) of this title; or

"(B) establishing alternative standards or specifications in order to ensure compliance with such requirements.

"(4) MATERIAL INPUT TO DIGITAL DEVICE THROUGH ANALOG CONVERTER.—

"(A) GENERALLY.—Except as provided in subparagraphs (B) through (D), the Secretary, after publication of notice in the Federal Register and reasonable opportunity for public comment, may issue an order for the purpose of approving standards and specifications for a technical method implementing in a digital audio recording device the same functional characteristics as the Serial Copy Management System so as to regulate the serial copying of source material input through an analog converter in a manner equivalent to source material input in the digital format.

"(B) COST LIMITATION.—The order may not impose a total cost burden on manufacturers of digital audio recording devices, for implementing the Serial Copy Management System and the technical method prescribed in such order, in excess of 125 percent of the cost of implementing the Serial Copy Management System before the issuance of such order.

"(C) CONSIDERATION OF OTHER OBJECTIONS.—The Secretary shall consider other reasoned objections from any interested manufacturing party or interested copyright party.

"(D) LIMITATIONS TO DIGITAL AUDIO DEVICES.—The order shall not affect the recording of any source material on analog recording equipment and the order shall not impose any restrictions or requirements that must be implemented in any device other than a digital audio recording device or digital audio interface device.

"Subchapter D—Remedies

"§ 1031. Civil remedies

"(a) CIVIL ACTIONS.—Any interested copyright party or interested manufacturing party that is or would be injured by a violation of section 1011 or 1021 of this title, or the Attorney General of the United States, may bring a civil action in an appropriate United States district court against any person for such violation.

"(b) POWERS OF THE COURT.—In an action brought under subsection (a) of this section, the court—

"(1) except as provided in subsection (h) of this section, may grant temporary and permanent injunctions on such terms as it deems reasonable to prevent or restrain such violation;

"(2) in the case of a violation of section 1011 (a) through (d) or 1021 of this title, shall award damages under subsection (d) of this section;

"(3) in its discretion may allow the recovery of full costs by or against any party other than the United States or an officer thereof;

"(4) in its discretion may award a reasonable attorney's fee to the prevailing party as part of the costs awarded under paragraph (3) if the court finds that the nonprevailing party has not proceeded in good faith; and

"(5) may grant such other equitable relief as it deems reasonable.

"(c) RECOVERY OF OVERDUE ROYALTY PAYMENTS.—In any case in which the court finds that a violation of section 1011 of this title involving nonpayment or underpayment of royalty payments has occurred, the violator shall be directed to pay, in addition to damages awarded under subsection (d) of this section, any such royalties due, plus interest calculated as provided under section 1961 of title 28, United States Code.

"(d) AWARD OF DAMAGES.—

"(1) SECTION 1011.—

"(A) DEVICE.—In the case of a violation of section 1011 (a) through (d) of this title involving a digital audio recording device, the court shall award statutory damages in an amount between a nominal level and $100 per device, as the court considers just.

"(B) MEDIUM.—In the case of a violation of section 1011 (a) through (d) of this title in-

volving a digital audio recording medium, the court shall award statutory damages in an amount between a nominal level and $4 per medium, as the court considers just.

"(2) SECTION 1021.—In any case in which the court finds that a violation of section 1021 of this title has occurred, the court shall award damages calculated, at the election of the complaining party at any time before final judgment is rendered, pursuant to subparagraph (A) or (B) of this paragraph, but in no event shall the judgment (excluding any award of actual damages to an interested manufacturing party) exceed a total of $1,000,000:

"(A) ACTUAL DAMAGES.—A complaining party may recover its actual damages suffered as a result of the violation and any profits of the violator that are attributable to the violation that are not taken into account in computing the actual damages. In determining the violator's profits, the complaining party is required to prove only the violator's gross revenue, and the violator is required to prove its deductible expenses and the elements of profit attributable to factors other than the violation.

"(B) STATUTORY DAMAGES.—

"(i) DEVICE.—A complaining party may recover an award of statutory damages for each violation of section 1021(a) or (b) of this title in the sum of not less than $1,000 nor more than $10,000 per device involved in such violation or per device on which a service prohibited by section 1021(b) of this title has been performed, as the court considers just.

"(ii) AUDIOGRAM.—A complaining party may recover an award of statutory damages for each violation of section 1021(c) of this title in the sum of not less than $10 nor more than $100 per audiogram involved in such violation, as the court considers just.

"(iii) TRANSMISSION.—A complaining party may recover an award of damages for each transmission or communication that violates section 1021(d) of this title in the sum of not less than $10,000 nor more than $100,000, as the court considers just.

"(3) WILLFUL VIOLATIONS.—

"(A) In any case in which the court finds that a violation of section 1011(a) through (d) of this title was committed willfully and for purposes of direct or indirect commercial advantage, the court shall increase statutory damages—

"(i) for a violation involving a digital audio recording device, to a sum of not less than $100 nor more than $500 per device; and

"(ii) for a violation involving a digital audio recording medium, to a sum of not less than $4 nor more than $15 per medium, as the court considers just.

"(B) In any case in which the court finds that a violation of section 1021 of this title was committed willfully and for purposes of direct or indirect commercial advantage, the court in its discretion may increase the award of damages by an additional amount of not more than $5,000,000, as the court considers just.

"(4) INNOCENT VIOLATIONS OF SECTION 1021.—The court in its discretion may reduce the total award of damages against a person violating section 1021 of this title to a sum of not less than $250 in any case in which the court finds that—

"(A) the violator was not aware and had no reason to believe that its acts constituted a violation of section 1021 of this title, or

"(B) in the case of a violation of section 1021(a) of this title involving a digital audio recording device, the violator believed in good faith that the device complied with section 1021(a)(1)(C) of this title, except that this subparagraph shall not apply to any damages awarded under subsection (d)(2)(A) of this section.

"(e) MULTIPLE ACTIONS.—

"(1) GENERALLY.—No more than one action shall be brought against any party and no more than one award of statutory damages under subsection (d) of this section shall be permitted—

"(A) for any violations of section 1011 of this title involving the same digital audio recording device or digital audio recording medium; or

"(B) for any violations of section 1021 of this title involving digital audio recording devices or digital audio interface devices of the same model, except that this subparagraph shall not bar an action or an award of damages with respect to digital audio recording devices or digital audio interface devices that are imported, manufactured, or distributed subsequent to a final judgment in a prior action.

"(2) NOTICE AND INTERVENTION.—Any complaining party who brings an action under this section shall serve a copy of the complaint upon the Register within 10 days after the complaining party's service of a summons upon a defendant. The Register shall cause a notice of such action to be published in the Federal Register within 10 days after receipt of such complaint. The court shall permit any other interested copyright party or interested manufacturing party entitled to bring the action under section 1031(a) of this title who moves to intervene within 30 days after the publication of such notice to intervene in the action.

"(3) AWARD.—

"(A) GENERALLY.—Except as provided in subparagraph (B), the court may award recovery of actual damages for a violation of section 1021 of this title pursuant to subsection (d)(2)(A) of this section to each complaining party in an action who elects to recover actual damages.

"(B) LIMITATIONS.—

"(i) If more than one complaining party elects to recover actual damages pursuant to subsection (d)(2)(A) of this section, only a single award of the violator's profits shall be made, which shall be allocated as the court considers just.

"(ii) If any complaining interested copyright party or parties elect to recover statutory damages pursuant to subsection (d)(2) of this section in an action in which one or more other complaining interested copyright parties have elected to recover actual damages, the single award of statutory damages permitted pursuant to paragraph (1) of this subsection shall be reduced by the total amount of actual damages awarded to interested copyright parties pursuant to subsection (d)(2)(A) of this section.

"(f) PAYMENT OF OVERDUE ROYALTIES AND DAMAGES.—The court may allocate any award of damages under subsection (d) of this section between or among complaining parties as it considers just. Any award of damages that is allocated to an interested copyright party and any award of overdue royalties and interest under subsection (c) of this section shall be deposited with the Register pursuant to section 1013 of this title, or as may otherwise be provided pursuant to a negotiated arrangement authorized under section 1016 of this title, for distribution to interested copyright parties as though such funds were royalty payments made pursuant to section 1011 of this title.

"(g) IMPOUNDING OF ARTICLES.—At any time while an action under this section is pending, the court may order the impounding, on such terms as it deems reasonable, of any digital audio recording device, digital audio interface device, audiogram, or device specified in section 1021(b) of this title that is in the custody or control of the alleged violator and that the court has reasonable cause to believe does not comply with, or was involved in a violation of, section 1021 of this title.

"(h) LIMITATIONS REGARDING PROFESSIONAL MODELS AND OTHER EXEMPT DEVICES.—Unless a court finds that the determination by a manufacturer or importer that a device fits within the exemption of subparagraph (A) or (B) of section 1001(4) of this title was without a reasonable basis or not in good faith, the court shall not grant a temporary or preliminary injunction against the distribution of such device by the manufacturer or importer.

"(i) REMEDIAL MODIFICATION AND DESTRUCTION OF ARTICLES.—As part of a final judgment or decree finding a violation of section 1021 of this title, the court shall order the remedial modification, if possible, or the destruction of any digital audio recording device, digital audio interface device, audiogram, or device specified in section 1021(b) of this title that—

"(1) does not comply with, or was involved in a violation of, section 1021 of this title, and

"(2) is in the custody or control of the violator or has been impounded under subsection (g) of this section.

"(j) DEFINITIONS.—For purposes of this section—

"(1) the term 'complaining party' means an interested copyright party, interested manufacturing party, or the Attorney General of the United States when one of these parties has initiated or intervened as a plaintiff in an action brought under this section; and

"(2) the term 'device' does not include an audiogram.

"§ 1032. Binding arbitration

"(a) DISPUTES TO BE ARBITRATED.—Any dispute between an interested manufacturing party and an interested copyright party shall be resolved through binding arbitration, in accordance with the provisions of this section, if—

"(1) the parties mutual agree; or

"(2) before the date of first distribution in the United States of the product which is the subject of the dispute, an interested manufacturing party or an interested copyright party requests arbitration concerning whether such product is or is not a digital audio recording device, a digital audio recording medium, or a digital audio interface device, or concerning the basis on which royalty payments are to be made with respect to such product.

"(b) ARBITRAL PROCEDURES.—

"(1) REGULATIONS FOR COORDINATION OF ARBITRATION.—The Register shall, after consulting with interested copyright parties, prescribe regulations establishing a procedure by which interested copyright parties will coordinate decisions and representation concerning the arbitration of disputes. No interested copyright party shall have the authority to request, agree to, or (except as an intervenor pursuant to subsection (c) of this section) enter into, binding arbitration unless that party shall have been authorized to do so pursuant to the regulations prescribed by the Register.

"(2) PANEL.—Except as otherwise agreed by the parties to a dispute that is to be submitted to binding arbitration under subsection (a) of this section, the dispute shall be heard by a panel of three arbitrators, with one ar-

bitrator selected by each of the two sides to the dispute and the third arbitrator selected by mutual agreement of the first two arbitrators chosen.

"(3) DECISION.—The arbitral panel shall render its final decision concerning the dispute, in a written opinion explaining its reasoning, within 120 days after the date on which the selection of arbitrators has been concluded. The Register shall cause to be published in the Federal Register the written opinion of the arbitral panel within 10 days after receipt thereof.

"(4) TITLE 9 PROVISIONS TO GOVERN.—Except to the extent inconsistent with this section, any arbitration proceedings under this section shall be conducted in the same manner, subject to the same limitations, carried out with the same powers (including the power to summon witnesses), and enforced in the courts of the United States as an arbitration proceeding under title 9, United States Code.

"(5) PRECEDENTS.—In rendering a final decision, the arbitral panel shall take into account any final decisions rendered in prior proceedings under this section that address identical or similar issues; and failure of the arbitral panel to take account of such prior decisions may be considered imperfect execution of arbitral powers under section 10(a)(4) of title 9, United States Code.

"(c) NOTICE AND RIGHT TO INTERVENE.—Any interested copyright party or interested manufacturing party that requests an arbitral proceeding under this section shall provide the Register with notice concerning the parties to the dispute and the nature of the dispute within 10 days after formally requesting arbitration under subsection (a) of this section. The Register shall cause a summary of such notice to be published in the Federal Register within 30 days after receipt of such notice. The arbitral panel shall permit any other interested copyright party or interested manufacturing party who moves to intervene within 20 days after such publication to intervene in the action.

"(d) AUTHORITY OF ARBITRAL PANEL TO ORDER RELIEF.—

"(1) TO PROTECT PROPRIETARY INFORMATION.—The arbitral panel shall issue such orders as are appropriate to protect the proprietary technology and information of parties to the proceeding, including provision for injunctive relief in the event of a violation of such order.

"(2) TO TERMINATE PROCEEDING.—The arbitral panel shall terminate any proceeding that it has good cause to believe has been commenced in bad faith by a competitor in order to gain access to proprietary information. The panel shall also terminate any proceeding that it believes has been commenced before the technology or product at issue has been sufficiently developed or defined to permit an informed decision concerning the applicability of this chapter to such technology or product.

"(3) TO ORDER RELIEF.—In any case in which the arbitral panel finds with respect to devices or media that were the subject of the dispute, that royalty payments have been or will be due under section 1011 of this title through the date of the arbitral decision, the panel shall order the deposit of such royalty payments pursuant to section 1013 of this title, plus interest calculated as provided under section 1961 of title 28, United States Code. The arbitral panel shall not award monetary or injuctive relief, as provided in section 1031 of this title or otherwise, except as is expressly provided in this subsection.

"(e) EFFECT OF ARBITRATION PROCEEDING ON CIVIL ACTIONS AND REMEDIES.—Notwithstanding any provision of section 1031 of this title, no civil action may be brought or relief granted under section 1031 of this title against any party to an ongoing or completed arbitration proceeding under this section, with respect to devices or media that are the subject of such an arbitration proceeding. However, this subsection does not bar—

"(1) an action for injunctive relief at any time based on a violation of section 1021 of this title; or

"(2) an action or any relief with respect to those devices or media distributed by their importer or manufacturer following the conclusion of such arbitration proceeding, or, if so stipulated by the parties, prior to the commencement of such proceedings.

"(f) ARBITRAL COSTS.—Except as otherwise agreed by the parties to a dispute, the costs of an arbitral proceeding under this section shall be divided among the parties in such fashion as is considered just by the arbitral panel at the conclusion of the proceeding. Each party to the dispute shall bear its own attorney fees unless the arbitral panel determines that a nonprevailing party has not proceeded in good faith and that, as a matter of discretion, it is appropriate to award reasonable attorney's fees to the prevailing party.".

SEC. 3. TECHNICAL AMENDMENTS.

(a) FUNCTIONS OF REGISTER.—Chapter 8 of title 17, United States Code is amended—

(1) in section 801(b)—

(A) by striking "and" at the end of paragraph (2);

(B) by striking the period at the end of paragraph (3) and inserting "; and"; and

(C) by adding the following new paragraph at the end:

"(4) to distribute royalty payments deposited with the Register of Copyrights under section 1014, to determine, in cases where controversy exists, the distribution of such payments, and to carry out its other responsibilities under chapter 10"; and

(2) in section 804(d)—

(A) by inserting "or (4)" after "801(b)(3)"; and

(B) by striking "or 119" and inserting "119, 1015, or 1016".

(b) DEFINITIONS.—Section 101 of title 17, United States Code, is amended by striking "As used" and inserting "Except as otherwise provided in this title, as used".

(c) MASK WORKS.—Section 912 of title 17, United States Code, is amended—

(1) in subsection (a) by inserting "or 10" after "8"; and

(2) in subsection (b) by inserting "or 10" after "8".

SEC. 4. EFFECTIVE DATE.

This Act, and the amendments made by this Act, shall take effect on the date of the enactment of this Act or January 1, 1992, whichever date is later.

SEC. 5. TECHNICAL REFERENCE DOCUMENT FOR AUDIO HOME RECORDING ACT OF 1991.

[Text of Technical Reference Document.]

SEC. 6. REPEAL OF SECTION 5.

Effective upon publication of the Technical Reference Document in the Federal Register pursuant to section 1022(a) of this title—

(a) section 5 of this Act shall be repealed, and

(b) section 1001(14) of this title shall be amended by striking "in section 5 of this Act" and inserting "as such document was published in the Federal Register pursuant to section 1022(a) of this title".

AUTHORITY FOR COMMITTEES TO MEET

SUBCOMMITTEE ON MERCHANT MARINE

Mr. RIEGLE. Mr. President, I ask unanimous consent that the Merchant Marine Subcommittee, of the Committee on Commerce, Science, and Transportation, be authorized to meet during the session of the Senate on June 17, 1992, at 2 p.m. on maritime reform.

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

COMMITTEE ON ARMED SERVICES

Mr. RIEGLE. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet on Wednesday, June 17, 1992, at 2 p.m., in open session, to receive testimony on the bomber "roadmap" and related bomber programs and on the tri-service standoff attack missile [TSSAM], in review of S. 2629, the Department of Defense authorization bill for fiscal year 1993.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. RIEGLE. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Wednesday, June 17, at 2:15 p.m. to hold a hearing on Treaty Doc. 102-30, the North Pacific Salmon Treaty.

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

COMMITTEE ON VETERANS' AFFAIRS

Mr. RIEGLE. Mr. President, the Committee on Veterans' Affairs would like to request unanimous consent to hold a markup on committee prints of bills relating to veterans' compensation (S. 2322), dependency and indemnity compensation (S. 2323), homeless veterans (S. 2512), education benefits (S. 2647), Native American veterans' home loan (S. 2528), employment and training (S. 2515), and health care (S. 2575, incorporating provisions from S. 2575, S. 2740, S. 2372, and S. 1424), and the fiscal year 1993 medical construction project-approval resolution. The markup will be held on June 17, 1992, at 10 a.m. in room 418 of the Russell Building.

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

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. RIEGLE. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate, Wednesday, June 17, 1992, at 10:30 a.m. to conduct a hearing on the condition of the thrift industry and the outlook for its future.

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

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. RIEGLE. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources

be authorized to meet during the session of the Senate, 2 p.m., June 17, 1992, to receive testimony from Jerry Langdon and William Liedtke, nominees to be members of the Federal Energy Regulatory Commission.

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

COMMITTEE ON FINANCE

Mr. RIEGLE. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the session of the Senate on June 17, 1992, at 9:30 a.m. to hold a hearing on comprehensive health care reform proposals.

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

ADDITIONAL STATEMENTS

TO CHANGE A CITY

• Mr. SIMON. Mr. President, a distinguished Nobel Prize winner from the University of Chicago is Dr. Leon Lederman, who has started a program of teaching teachers, inspiring them in the areas of science and mathematics to do better and to expect more from their students.

Recently, he spoke to the American Philosophical Society Symposium on the underclass about the work that he is doing and about the problems that he experiences at all levels of government and even from his own university.

He does not suggest that people do not have good intentions, but sometimes the structure stands in the way of doing anything that is new and valuable.

I ask to insert the Leon Lederman speech into the RECORD at this point.

The speech follows:

TO CHANGE A CITY

(By Leon M. Lederman)

An adage I read in a business brochure calls for the courage to change the things that can be changed, the serenity to accept those that cannot be, and the wisdom to know the difference. I am chronologically advantaged enough to recall a Presidential candidate in the 1930's tell us: "one third of a nation is ill-housed, ill-clothed and ill-fed." Of course this was Franklin Roosevelt and he was talking about the underclass of 1930. So many things have happened since then. As a nation, we have grown immensely more affluent by any measure you may choose, we have had long periods of intense concern about the poor, the underclass, minorities . . . we have legislated equality, ruled against segregation, we have "Brown vs. Board of Education," we have an extensive welfare system, Head Start programs, at least some Head Start, and, and other public. private initiatives too numerous to know. But the 1930's assessment is still with us and although only a fool would say we have not made any progress, there seems to be an invariant—one third of a nation (still!) . . .

This would seem to call for wisdom and serenity to conform to the adage but it is not always wisdom that shapes what one does . . . it wasn't wisdom that got me into the campaign I will tell you about. Frankly I'm not sure I know what it was. Perhaps it is arrogance, the arrogance of the scientist who has had some success in management or perhaps it's just unreasoned anger. I find myself being very angry these days but I'll try to control this and tell you what I know. It has to do with education. It has to do with public schools in large cities.

First I must tell you about my city—Chicago. With 410,000 students, it's the third largest school system in the nation. There are somewhat over 20,000 teachers and some 17,000 of them must teach some kind of math and science, largely in primary school. Like so many large cities, the school population is 88% minority, 12% Asian and white. So much for Brown vs. the Board of Education. Over 67% of the children come from families below the poverty level. The drop out rate is officially listed by the Board of Education as 45% but the more reliable estimate is that between 60 and 70% of the children never graduate from high school. For individual schools in the worst districts, the numbers can be in the high 80 percent. Chicago students do very poorly on national tests. Over half the high schools placed in the lowest one percentile of ACT scores.

Again, like all other cities in America, the streets and even the school corridors are unsafe—violence, drugs, gangs are part of the territory. Many school buildings are over 100 years old, they are over-crowded with gyms and corridors impressed into use as classrooms. Jonathan Kozol documents this so much more eloquently in his book, "Savage Inequalities." One interesting piece of data bearing on the resilience of the underclass fraction is the increase in births to single women compared to the total of live births.[1] In 1950, this was 2.9%, in 1990 it is 28%. What has this to do with education? Well one of the President's goals is that by the year 2000, all children will be ready for school. What does this mean? It means:

(1) supplemental nutrition problems for pregnant women and young children; (2) it means immunization; (3) it means prenatal care; (4) it means special attention to the babies born to poor women; and (5) it means encouraging, not discouraging family planning and sex education. Children that are part of these statistics have a high probability of being problem children in school: hyperactivity, low attention span, impaired hearing and vision, asthma and a variety of learning problems resulting from malnutrition and brain damage in utero—these children are not ready and very little is being done to change the numbers * * * "by the year 2000."

Out teachers tell us that one or two in a class can be handled without shortchanging the rest but more tends to lead to paralysis. Ernest Boyer's 1991 study indicates that 35% of the children in this nation are not ready for school when they enter kindergarten. With this as background, let's look again at Chicago," . . . the worst school system in the nation," according to William Bennett, former Secretary of Education.

Something interesting happened in Chicago in 1988—a movement lead by outraged parents, eagerly assisted by university people, the private sector and many other elements of the city sharing the view of the public schools as a tragic and no longer tolerable disaster, combined to pass the most radical school reform law in the nation. Today, at least in principle, Chicago has almost 600 new "corporations", the CEO (principal) is installed by a Board of Directors (local school councils—elected by citizens who live around the school) and he or she must run a successful operation or be dismissed. It is far too early to comment on this reform except for the obvious benefit of stirring up of interest by the parents and citizens in the process—in running for LSC, in voting and being, even in a limited way, enfranchised by the reform of the educational system.

I was drawn to the excited discussions of how to make school reform work after moving to The University of Chicago in 1989. Out of these discussions there arose an idea for how a group of interested parents, teachers, scientists and businessmen could intervene to make a difference. And so was created the Teacher's Academy for Math and Science which miraculously opened on the campus of IIT in mid-Chicago in September of 1990.

This private, not-for-profit entity was formally created by a Council of Presidents (all the Universities in Chicago) and has, on its board, teachers, principals, scientists from universities, from two national labs near Chicago, private sector leaders, executives of some of Chicago's leading corporations, museum directors, the Chicago Teachers' Union, Urban League and the Hispanic equivalent, UNO, and representatives of the Mayor and Governor.

The intervention we had designed was a massive retraining of the teachers—those 17,000 teachers who must teach math and science and who, for the most part, were never trained to do so.

This is a very large and very complex program. With good will all around, one has still to tread on cross-cultural, political and ethnic eggshells. Yet, it's the only program I know that has the scale to address the president's further goal of "being No. 1 by the year 2000." There are many reasons why the teachers in the Chicago Public School are inadequately trained and this raises a host of other problems . . . Let me simply quote: "in the broad sweep of educational history, teacher education does not emerge as a potent force—the conditions one needs for vigorous, coherent and self-renewing programs of teacher preparation are not in place." Even if they were, it would be at least a decade before this would show up with significant force to have an effect. When this happens, the Teachers' Academy, as now designed, will not be needed. But let me jump ahead here to assure you that our experience with the teachers has been very positive. We find that they care, they want to be better teachers, they hate to be required to teach things that they do not understand; there is a love of children there. In our view the ultimate tragedy is to have children arrive at school, having overcome whatever obstacles their lives provide, from their bed to the schoolroom, ready to learn only to discover in their child-wise way, that the teacher is merely and unhappily using time.

Our conviction is that the teacher is the key to a positive, zestful school experience and to deploying the newest techniques for teaching math and science: hands-on, activity based, children working together, talking and doing, the teacher not the authoritative giver of all wisdom but as mentor and guide. These new techniques act as a catalyst, engage the child and the teacher, and are designed to involve the parent or the grandparent. We didn't invent this: interventions of this kind were going on all over the country—one school here, two schools there, ten,

[1] I am indebted to Mr. Irving Harris for information on the pre-school problem.

twenty, fifty teachers. There were many programs going on in and around Chicago. The best ones had magical effects: teachers were re-enthused, children entranced by the learn-play activity were no longer sitting passively at their places, praying that they not be called upon. Now they work together in groups—wrong answers are just as welcome as correct ones—the objective is thinking skills. Here, through math and science, there is a key to true reform of the entire educational process.

Our plan was to "do" the whole city. Exploiting school reform, we would contract with the principal and the LSC. We quickly realized that the scale of our mission required in-service training that is, taking the teacher out of the classroom so we'd have to supply our own replacement teachers.

We hastily concocted a sixteen week intensive training program, realizing it would evolve in time. We supplemented this with afternoon, week-end and summer programs of follow-up enrichment, technology workshops, museum programs, every possible form of outreach. To get through 17,000 teachers, we planned to do 100 the first year, 1000 the second year and 2500 from then on until year eight when we could taper back to preservice teachers and follow-up programs.

Well, reality? We indeed managed 109 teachers the first year with about 1500 teachers attending our outreach programs. We are now in our second year. We are changing things and we'll be lucky if we get through 600 teachers. We have had over 3000 teachers attend our workshops and ancillary programs. We intend to have a full-time staff person in all the schools we cover for one year as one component of what amounts to a permanent follow-up program. However, we are frustrated by the difficulties of recruiting capable staff and even more by the inexplicable difficulty of securing funding.

Too many details. Let me summarize the status and my conclusions.

The good news: it works! Or to state it more carefully, it seems to show promise of working. In addition to built-in pretest and post-test measures, we record comments from teachers, principals and parents as well as our own in-school staff specialists. We measure hours of science and math taught in our schools and in the schools not yet involved and we have begun to compare truancy rates. In spite of a reasonable number of mistakes, the palpable enthusiasm of teachers who should be "burn-outs" and principals is evident. We are concentrating on K-4 now, next year we'll extend it to K-8.

If early school education can influence the cycle that traps so many minorities—the cycle of failure and drop-out, of poverty and crime, of teen age pregnancy and new candidates for the entrapment, then we have, I believe, shown a way to genuine change.

The bad news: It's an expensive program although the other things the City needs are even more expensive. When in full swing, the Chicago effort will need $30M a year . . . under present circumstances, the bulk can only come from the Federal Government. We were enthusiastically supported by DOE Secretary James Watkins and succeeded in getting start-up funds from the Department of Energy and the National Science Foundation. An early grant from David Hamburg's Carnegie Corporation was enormously helpful. Last year we raised $4M from the Feds, $2M from the state and about $2M from private sector contributions. This year the state (like so many other states) looks hopeless, the city even more so. Floods are also not helpful. Our expectations for Federal support have been scaled back from $15M to $6M or $7M. Support from foundations and businesses continues to be strong but it takes a huge effort to raise one or two million dollars if you are not Harvard or Stanford.

From the beginning we have received the following criticisms of our program: What good is it to fix teachers when the family support is lacking or when learning impairment is already so advanced that a great kindergarten teacher is too late . . . or when the buildings are so old and crumbling or when....? My response has always been that the critic is indeed correct but that if we waited for a total solution, nothing would ever start, so we'll continue with the teachers and encourage the critic to get busy on these other things. It seems absolutely clear to me that our society had better get serious about all these issues and we must do it soon.

I have thought deeply about how we do things in this country. Suppose that what we are doing makes sense. There are 25 cities like Chicago that could do similar things. We are not marketing the specific programs adopted although we are trying to document all of our efforts and mistakes. What is unique is the marshalling of all the intellectual resources of a community to a purpose. The commitment of University President(s), CEO's of major corporations, scientists, professional educators should be enough to sway a funding agency. However, conventional reviews by the professional bureaucrats is still the rule. To extend the kind of thing we are doing to 25 cities and perhaps to intervene in an equal number of poor rural areas would require something under $1 Billion. In Washington, they look at you as if you are really not with it—one billion dollars! But is this really too much to invest in the underclass—to provide a lifeline, an escape ladder out of ignorance and poverty?

Yes there is indeed a fiscal crisis yet the Republican president proposed and the Democratic Congress approved a military budget for 1993 which will allocate something like $140 billion dollars to defend Europe against an attack from the East! Is there any wonder at the irritation of the voters or the apparent frustration of legislators who are quitting or my own and, hopefully your personal anger?

My mood alternates—I oscillate from gratitude at getting any help at all (even $6 million is a huge sum of money) all the way to discouragement with the sheer weight of bureaucracy that one must penetrate in order to get anything done. This applies to the Federal Government, to the State, the City, the School System, even the University. The teacher enhancement initiative is very often greeted with great praise: "visionary," "bold," "practical" are some of the accolades. Yet, in spite of leaders at the highest level who do grasp the issues, it is also clear that they live under constraints and one still has to prevail way down in the bureaucracies where decisions are made and check are written. All over town one finds highly skilled professionals in the best sense of the world but also in the worst sense of the word. The rhetoric is echoed: "we must break the mold, we must have radical reform," but the real understanding of these words, the real sense of urgency, the awesome implications of an existing teachers corps in which, for example, only 35,000 out of 1 million elementary school teachers (3.5%!) are specifically trained for math and science teaching, these are rarely appreciated—no, there is no priority for the underclass, it creates a most discouraging block to action.

POSTSCRIPT: A CITIES INITIATIVE

There are many successful interventions; we read and hear about wonderful people who, by the force of their energy and creativity, will turn around an entire school or two. The pre-school initiatives are another case in point. But how do we begin a national deployment of what works? How do we pull together the crucial ingredients? Let me, at substantial risk, propose something really new. Suppose we define a Special Administrator for Cities, charged with the task of bringing the educational achievements of our larger inner cities up to the standards we want our nation to have. This must include teacher retraining, some equipment, e.g. computers, a large extension of Head Start and the other early intervention programs which are needed to make children ready for school. This Special Administrator must be educationally expert, nationally known, "street smart" and city-wise. Suppose this Special Administrator, appointed by the President with the concurrence of key Congressional committee chairs, is given a budget appropriation which allows the Administrator to encourage the formation of consortia of the kind I have described for Chicago. Cities would organize these not-for-profit groupings to apply for Federal funds. The matching could be 50% Federal, 50% State, City and private sector contributions. The grants might be for a period of five years whereupon the Federal contribution begins to be reduced as local sources increase. Total appropriations for this Cities Initiative might grow to something like $5B/year some of which may be reallocated from other agencies.

The Administrator could report to a Commission on the Cities which might include the Secretaries of Education, HHS, Energy, the NSF, NIH and NASA Directors as well as the President's Science Advisor and Domestic Council chair. The size of staff of the Administrator should be legally restricted since we want to keep this new (bypass) artery as free-flowing as possible. A proposal by a City should merely be authenticated e.g. the President personally asks and receives a pledge of deep commitment from the President of the local University, the CEO of the Corporation, the Chairperson of the City School Board, the Mayor and Governor, etc. No site visits or peer review or Washington second guessing is needed. Once a year, the Administrator would ask the relevant agencies to form a visiting committee to gauge and document progress, to insure fiscal integrity and to improve intercity sharing of experience and date. One could start with three cities and gradually work up to the twenty-five or so cities that contain a large fraction of what we have been calling the underclass. Let's find the courage to change things.•

NATIONAL WIRELESS TELECOMMUNICATIONS MONTH

• Mr. GORTON. Mr. President, the month of June is National Wireless Telecommunications Month. I would like to take this opportunity to mention a few of the cellular industry's many accomplishments.

Today America's roads are safer than a decade ago. This is an achievement which is in part due to the cellular telecommunications industry. The cellular industry has brought instantaneous communication to the fingertips

of millions of Americans traveling our highways each year. This year marks the first anniversary of the cellular industry's continuous safety campaign launched in cooperation with the national Highway Traffic Safety Administration [NHTSA].

The cellular industry's Buckle-Up and Talk Safely Program emphasizes to subscribers the importance of the proper use of cellular technology by encouraging users to rely upon both its hands-free and memory dialing capabilities. In addition the safety campaign promotes safe driving by urging drivers to buckle up and use safety belts.

Not only does the cellular industry promote safety belt usage, but it also encourages cellular subscribers to report suspected drunk drivers to local law enforcement officials. Thanks to this cooperative effort between NHTSA and the cellular industry there are now more than 8 million extra pairs of eyes available to assist police in their efforts to remove drunken drivers from our roads.

The campaign also stresses the importance of knowing how to use cellular technology during emergencies and life-threatening situations. Cellular carriers across the country have made a commitment to ensuring that systems are tied to existing 911 emergency networks. In areas where no landline system is available, cellular carriers are committed to creating cellular 911 networks. Clearly, the cellular industry is dedicated to safety.

Nationally an estimated 500,000 calls are placed each month by cellular subscribers to 911 and other emergency numbers. Callers are reporting drunk drivers, weather problems, vehicle breakdowns, fires, and traffic accidents. It is clear that countless Americans benefit greatly from cellular technology through its many contributions to highway safety.

Washington State is home to several of the Nation's leading cellular companies, McCaw Cellular Communications, U.S. West NewVector, and GTE are each recognized leaders in the cellular industry's work towards increasing safety. U.S. West NewVector, for example, recently launched Traffic Watch which allows its customers to call in for Seattle-area traffic reports. During rush hour traffic reports are updated on a minute-by-minute basis and customers can also call in their own traffic reports. Cellular One, a division of McCaw Cellular, provides similar service to its customers in cooperation with KIRO radio in the Puget Sound area.

Mr. President, I would like to congratulate the cellular industry on the first anniversary of its Buckle-Up and Talk-Safely safety campaign. It is important to acknowledge the dedication of the cellular industry to highway safety, not only in Washington State but in other States across the Nation. I applaud the dedication of the cellular industry to this campaign and encourage the industry to continue its commitment to highway safety.•

NOTICE OF DETERMINATION BY THE SELECT COMMITTEE ON ETHICS UNDER RULE 35, PARAGRAPH 4, PERMITTING ACCEPTANCE OF A GIFT OF EDUCATIONAL TRAVEL FROM A FOREIGN ORGANIZATION

• Mr. SANFORD. Mr. President, it is required by paragraph 4 of rule 35 that I place in the CONGRESSIONAL RECORD notices of Senate employees who participate in programs, the principal objective of which is educational, sponsored by a foreign government or a foreign educational or charitable organization involving travel to a foreign country paid for by that foreign government or organization.

The select committee received a request for a determination under rule 35 for Richard W. Day, a member of the staff of Senator SIMPSON, to participate in a program in China, sponsored by the Chinese People's Institute of Foreign Affairs, from July 4–19, 1992.

The committee has determined that participation by Mr. Day in this program, at the expense of the Chinese People's Institute of Foreign Affairs, is in the interest of the Senate and the United States.

The select committee received a request for a determination under rule 35 for John E. Lynn, a member of the staff of Senator JOHNSTON, to participate in a program in China, sponsored by the Chinese People's Institute of Foreign Affairs, from July 4–19, 1992.

The committee has determined that participation by Mr. Lynn in this program, at the expense of the Chinese People's Institute of Foreign Affairs, is in the interest of the Senate and the United States.

The select committee received a request for a determination under rule 35 for Julie Montgomery, a member of the staff of Senator PELL, to participate in a program in Taiwan, sponsored by the Chinese Culture University, from May 25–31, 1992.

The committee has determined that participation by Ms. Montgomery in this program, at the expense of the Chinese Culture University, is in the interest of the Senate and the United States.

The select committee received a request for a determination under rule 35 for Peter D. Caldwell, a member of the staff of Senator JEFFORDS, to participate in a program in Taiwan, sponsored by the Chinese Culture University, from May 25–31, 1992.

The committee has determined that participation by Mr. Caldwell in this program, at the expense of the Chinese Culture University, is in the interest of the Senate and the United States.

The select committee received a request for a determination under rule 35 for Andrew Samet, a member of the staff of Senator MOYNIHAN, to participate in a program in Mexico, sponsored by the Mexican Business Coordinating Council, Consejo Coordinator Empresarial [CCE], from May 24–27, 1992.

The committee has determined that participation by Mr. Samet in this program, at the expense of the CCE, is in the interest of the Senate and the United States.

The select committee received a request for a determination under rule 35 for Kathryn Gest, a member of the staff of Senator COHEN, to participate in a program in Germany and Czechoslovakia, sponsored by the Hanns Seidel Stiftung, from May 23–30, 1992.

The committee has determined that participation by Ms. Gest in this program, at the expense of the Hanns Seidel Stiftung, is in the interest of the Senate and the United States.

The select committee received a request for a determination under rule 35 for Karen Robb, a member of the staff of Senator DECONCINI, to participate in a program in Singapore, sponsored by the Singapore International Foundation in conjunction with the United States-Asia Institute, from May 23–29, 1992.

The committee has determined that participation by Ms. Robb in this program, at the expense of the Singapore International Foundation and the United States-Asia Institute, is in the interest of the Senate and the United States.

The select committee received a request for a determination under rule 35 for Alex Flint, a member of the staff of Senator DOMENICI, to participate in a program in Singapore, sponsored by the Singapore International Foundation in conjunction with the United States-Asia Institute, from May 23–29, 1992.

The committee has determined that participation by Mr. Flint in this program, at the expense of the Singapore International Foundation and the United States-Asia Institute, is in the interest of the Senate and the United States.•

BUDGET SCOREKEEPING REPORT

• Mr. SASSER. Mr. President, I hereby submit to the Senate the budget scorekeeping report prepared by the Congressional Budget Office under section 308(b) of the Congressional Budget Act of 1974, as amended. This report serves as the scorekeeping report for the purposes of section 605(b) and section 311 of the Budget Act.

This report shows that current level spending is below the budget resolution by $1.7 billion in budget authority and above by $3.6 billion in outlays. Current level is $2.9 billion above the reve-

nue floor in 1992 and $0.7 billion below the revenue floor over the 5 years, 1992–96.

The current estimate of the deficit for purposes of calculating the maximum deficit amount is $351.9 billion, $0.7 billion above the maximum deficit amount for 1992 of $351.2 billion.

The report follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 16, 1992.

Hon. JIM SASSER,
Chairman, Committee on the Budget, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The attached report shows the effects of Congressional action on the budget for fiscal year 1992 and is current through June 12, 1992. The estimates of budget authority, outlays, and revenues are consistent with the technical and economic assumptions of the Concurrent Resolution on the Budget (H. Con. Res. 121). This report is submitted under Section 308(b) and in aid of Section 311 of the Congressional Budget Act, as amended, and meets the requirements for Senate scorekeeping of Section 5 of S. Con. Res. 32, the 1986 First Concurrent Resolution on the Budget.

Since my last report, dated June 1, 1992, there has been no action that affects the current level of budget authority, outlays or revenues.

Sincerely,

ROBERT D. REISCHAUER.

THE CURRENT LEVEL REPORT FOR THE U.S. SENATE 102D CONGRESS, 2D SESSION AS OF JUNE 12, 1992

[In billions of dollars]

	Budget resolution (H. Con. Res. 121)	Current level [1]	Current level +/− resolution
ON-BUDGET			
Budget authority	1,207.7	1,269.0	−1.7
Outlays	1,201.7	1,205.3	+3.6
Revenues:			
1992	850.5	853.4	+2.9
1992–96	4,836.2	4,835.5	−0.7
Maximum deficit amount	351.2	351.9	+0.7
Debt subject to limit	3,982.2	3,844.9	−137.3
OFF-BUDGET			
Social security outlays:			
1992	246.8	246.8	
1992–96	1,331.5	1,331.5	
Social security revenues:			
1992	318.8	318.8	
1992–96	1,830.3	1,830.3	

[1] Current level represents the estimated revenue and direct spending effects of all legislation that Congress has enacted or sent to the President for his approval. In addition, full-year funding estimates under current law are included for entitlement and mandatory programs requiring annual appropriations even if the appropriations have not been made. The current level of debt subject to limit reflects the latest U.S. Treasury information on public debt transactions.

Note: Detail may not add due to rounding.

THE ON-BUDGET CURRENT LEVEL REPORT FOR THE U.S. SENATE 102D CONGRESS, 2D SESSION SENATE SUPPORTING DETAIL FOR FISCAL YEAR 1992 AS OF CLOSE OF BUSINESS JUNE 12, 1992

[In millions of dollars]

	Budget authority	Outlays	Revenues
ENACTED IN PREVIOUS SESSIONS			
Revenues			853,364
Permanents and other spending legislation	807,567	727,184	
Appropriation legislation	686,331	703,643	
Mandatory adjustments [1]	(1,041)	1,105	
Offsetting receipts	(232,542)	(232,542)	
Total previously enacted [2]	1,260,314	1,199,389	853,364
ENACTED THIS SESSION			
Emergency Unemployment Compensation Extension (Public Law 102–244)	2,706	2,706	
American Technology Preeminence Act (Public Law 102–245)			(3)
Technical Correction to the Food Stamp Act (Public Law 102–265)	(3)	(3)	
Further Continuing Appropriations, 1992 (Public Law 102–266) [4]	14,178	5,724	
Extend Certain Expiring Veterans' Programs (Public Law 102–291)	(4)	(4)	
1992 Rescissions (Public Law 102–298)	(8,154)	(2,499)	
Total enacted this session	8,727	5,928	(3)
Total current level	1,269,041	1,205,318	853,364
Total budget resolution [5]	1,270,713	1,201,701	850,501
Amount remaining:			
Over budget resolution		3,617	2,863
Under budget resolution	1,672		

[1] Adjustments required to conform with current law estimates for entitlements and other mandatory programs in the Concurrent Resolution on the Budget (H. Con. Res. 121).

[2] Excludes the continuing resolution enacted last session (Public Law 102–145) that expired March 31, 1992.

[3] Less than $500,000.

[4] In accordance with Section 251 (a)(2)(D)(i) of the Budget Enforcement Act, the amount shown for Public Law 102–266 does not include $107,000,000 in budget authority and $28,000,000 in outlays in emergency funding for SBA disaster loans.

[5] Includes revision under Section 9 of the Concurrent Resolution on the Budget (see p. S4055 of "Congressional Record" dated March 20, 1992).

Note: Detail may not add due to rounding.•

TRIBUTE TO MUNFORDVILLE

• Mr. McCONNELL. Mr. President, I rise today to recongize Munfordville, a small town located in central Kentucky.

Munfordville is a community with high hopes for the future. Despite the fact that the town has experienced little growth recently, the residents believe that this is a time for building. There are several beautification projects that have been completed and have done a great deal to improve the town's appearance. The courthouse just had 200,000 dollars' worth of renovations that enhanced the historical flavor of town square. Other projects include the planting of new flowers and trees around the community.

The people of Munfordville hope that these new improvements will help make their town more attractive to industries looking for new locations. Other measures that have been taken to lure businesses to the area are an improved sewage treatment plant that will be able to handle added factories, and a newly built industrial building. The town even hired someone full time to recruit industry.

Developing more community leaders is another way Munfordville residents have worked to make their town better. The chamber of commerce is planning a leadership program to begin in January 1993. In addition, the Hart County school system has lowered their dropout rate from 60 percent to 2 and 3 percent, an accomplishment that has won them State and national awards.

Munfordville is an example of a community working together. It is for this reason that I would like to recognize this town.

Mr. President, would you please submit the following article from the Louisville Courier-Journal into today's CONGRESSIONAL RECORD.

The article follows:

MUNFORDVILLE

(By Cynthia Crossley)

Munfordville's history has been shaped in large part by its geography.

The rolling terrain of what is now Hart County lured settlers and, decades later, Civil War generals, by offering impressive panoramas—and a commanding view of an enemy's approach.

The Green River bisects Hart County and that led to construction of a railroad bridge, which became part of a key supply route during the Civil War.

Because of the bridge, a battle was fought at Munfordville. And for decades after the war, residents indulged in skirmishes of their own—skirmishes that divided Hart County between its northern and southern halves.

"The river has been the battleground," said Bob Becker of the Hart County Historical Society.

This rivalry crystallized between Munfordville, the county seat, and Horse Cave, a once-prosperous tourist town that enjoys a place in Kentucky's cave country on Hart county's southern border. At one time, each town had its own chamber of commerce and school system.

When the public schools were consolidated into the Hart County system in 1970, Horse Cave jumped county lines and joined with Cave City in Barren County to form Caverna Independent Schools. This led to an intense basketball rivalry, and gave some romances a "West Side Story" flavor.

"If someone from Hart County was going with someone from Caverna, there would be fighting. It was real bad." said Lesia Logsdon, a secretary at the Hart County News-Herald.

Today, the school rivalries have cooled, (When several people from both Munfordville and Horse Cave mentioned this year's Mr. Basketball, Tick Rogers, they all said he was from Hart County, not just Munfordville.) But there is still a division in other aspects of life.

According to Hart County Historical Society president Ruth Becker, Munfordville residents tend to go to Elizabethtown both to shop the malls and for medical care at Hardin Memorial Hospital, Horse Cave residents seek treatment at Caverna Memorial Hospital south of town, and shop in Bowling Green.

"They do this even though the two towns, Munfordville and Horse Cave, are only 10 miles apart," she said.

This lack of unity "I think has hurt the county," said Bob Becker.

Over the years Hart County has recruited few industries. Its agriculture-based economy has been plagued with double-digit unemployment. In Munfordville, the two big employers are Louisville Bedding, a mattress-pad maker, and the school system.

Horse Cave has had more success recruiting industries, and has a small but growing tourist trade.

But Horse Cave's success have not been enough to make Hart County prosper, and parts of Munfordville are much the worse for wear.

The courthouse fell unexpectedly into the spotlight in 1990 when a highly publicized trial was transferred to Hart Circuit Court. Signs of dilapidation at and near the courthouse made some local residents wince (especially when that dilapidation showed up on television).

As soon as the trial ended, the county began working on plans to renovate the courthouse, which was built in 1929. They poured $200,000 into the building and the improvements were dramatic.

Contractors repaired the roof and bricking, repainted the window trim and installed new carpeting throughout. The building now sports new doors with brass handles. The first-floor hallway gained a large brass chandelier with candlestick lights.

With the improved appearance of the courthouse, the historical flavor of the buildings surrounding the square came back into focus.

Two residents, Charlie Williams and Stokes Baird IV, have worked from time to time since their college days, along with the Munfordville Women's Club, on beautification projects. One effort got many of the downtown buildings spruced up. Another has been to plant flowers and trees.

"Munfordville has more elm trees than nearly any town you'll ever be in," said Williams, the city attorney. That's partly because the city has been buying a new kind of elm that Williams said is resistant to Dutch elm disease.

From the Green River bridge on Munfordville's southern approaches, one can see a neat procession of mostly restored buildings and historic homes marching uphill to define Munfordville's town center. The historical society offers a walking tour of the town to show off buildings left from the days of town founder Richard Munford, including some of his brick homes and the Munford Inn, built of logs in 1801 and now maintained by the Munfordville Women's Club.

While such improvements don't go far toward solving Hart County's economic problems, many residents are optimistic that things are starting to change.

When County Judge-Executive Vince Lang first ran for the office in 1985, he campaigned on the theme of reuniting the county. After his election, he started working to merge the Munfordville and Horse Cave Chambers of Commerce into the Hart County Chamber of Commerce, a task completed in 1986.

About three years ago, the chamber's board hired a full-time director, Bob Sims, who went to work to recruit industry and to develop more community leaders.

The chamber is preparing a Leadership Hart County program, similar to programs offered by other chambers. The first class is scheduled for January 1993.

Recruiting efforts, however, have hit some stumbling blocks. While there has been some new development—some fast-food restaurants, a shopping center and a motel are newcomers to the Interstate 65 interchange just north of Munfordville—the town's aging sewage treatment plant has caused problems. It no longer meets state standards and cannot handle industrial expansion. Environmental officials have ordered that it be replaced.

A new treatment plant is in the works, and Mayor Charles Hays said it should be finished in about two years.

In the hope of attracting industry, county officials built a $500,000 industrial building just west of the interchange, between I-65 and a main CSX rail line. Sims said the building offers about 35,000 square feet of space but can be expanded to 100,000 square feet.

However, it sits empty after more than a year. Without the sewage treatment improvements, says Sims, the building "is like a Cadillac without an engine."

Another problem has been the loss of some of the chamber's federal funding. Sims says he has to find a new source for about $17,000 of his $50,000 annual budget. Lang says he hopes Sims can find the money: "The small towns that don't have a full-time mayor or someone working full-time on economic development fall behind."

But there are reasons for optimism, among them the Hart County school system, which has cut its dropout rate in the last dozen years from more than 60 percent to between 2 and 3 percent. The system also offers the oldest academic competition in the state. Hart Superintendent Wandel Strange, who is retiring, said those were among his top priorities when he arrived as superintendent in 1980.

Hart County's dropout program, which has won several state and national awards, is a product of increased academic and athletic offerings, more student activities and individual counseling, plus a new work-study program and aggressive follow-up.

"When people asked me why we were using a shotgun approach—why we didn't just try one thing at a time—I told them we couldn't wait, it was already too late," Strange said. "My theory is students who get involved in their school, they stay with you. They become like a close family."

If, between its schools and its chamber, Hart County produces new leadership, then another source for optimism may come into play—Hart County's potential for growth.

For example, there's Munfordville's Civil War heritage. The assets here include three fortifications that are the focus of an annual September reenactment of the 1862 Battle of Munfordville.

There is also a large monument to a Mississippi regiment that fell in that battle. All are difficult to find during the rest of the year because they are on private property.

Then there is a substantial population attracted to the county's rolling vistas by Glen Thomas' ads in such publications as Mother Earth News and Organic Gardening. Thomas, who is continuing the effort started by Williams and his father, Davis Williams, in the early 1970s, is marketing farmland to people seeking to escape escalating land prices and urban environmental problems.

In Hart County, the new residents have started food cooperatives, become active on issues ranging from solid waste to literacy, and in some cases, started small but profitable businesses ranging from mail-order food sales to woodworking and carpentry.

Thomas' ads attracted another group—the Amish. About 40 families have moved to Hart County from Ohio. Thomas said they have "put up new hog barns and chicken houses, new fencing, new homes . . . and those old farms looked 100 percent better six months after they arrived."

While the Amish won't take direct roles outside their community, the other "newcomers" might. Said Thomas: "We need a few more movers and shakers. We've still got a long way to go."

Population (1990): Munfordville, 1,556; Hart County, 14,890.

Per capita income (1989): $11,055, or $2,768 below the state average.

Jobs (1989): Manufacturing, 1,048 employees; wholesale/retail, 628; services, 315; state/local government, 606; contract construction, 55.

Big employers: Hart County schools, 335; Dart Container Corp. 325; Louisville Bedding, 230; Ken-Dec Inc., 120.

Media: Newspapers—The Hart County News-Herald (weekly). Radio: WLOC AM and FM. Television: Cable available.

Transportation: Air—Glasgow's Moore Field, 24 miles south of Munfordville. Scheduled commercial air service available at Standford Field in Louisville, 69 miles north of Munfordville. Rail—CSX Transportation. Truck—24 truck lines serve Munfordville.

Education: Cavema independent, 1,002 students; Hart County, 2,231 students.

Topography: Prominent knobs, rolling terrain with caves and sinkholes. The Green River bisects Hart County, and Nolin River Lake serves as part of the county's western boundary. A small part of Mammoth Cave National Park is in the southwest part of the county.

FAMOUS FACTS AND FIGURES

Hart County is named for Capt. Nathaniel G.T. Hart, one of the Kentucky "long knives" killed during the River Raisin massacre in Michigan during the War of 1812. Hart County was created seven years later, from Hardin and Green counties.

Munfordville is where two lads named Simon and Tom, who were born in 1823, grew up. Close friends as children, Simon won appointment to the U.S. Military Academy at West Point. Tom followed a year later. After graduation, both served in the War with Mexico. Then Simon resigned his commission to pursue a business career. Six years later the Civil War broke out. Tom—Gen. T. J. Wood—joined the Union Army. Simon Bolivar Buckner urged Kentucky to remain neutral in the war; he later accepted a commission as brigadier general in the Confederate Army. The two men fought each other in the bloody battles of Chickamauga and Chattanooga, Tenn., and almost met a third time at Munfordville.

Simon Bolivar Buckner served as governor of Kentucky from 1887 to 1891, and died in 1910 at his home, Glen Lily, near Munfordville. He was the last surviving Confederate general. (His friend Wood died in 1906 in Dayton, Ohio.)

John Hunt Morgan also has ties to Munfordville. The notorious raider and 84 members of his original command were sworn into Confederate service in front of the old Green River Baptist Church. The church was burned during the September 1862 battle. Only a pair of concrete steps in an old cemetery mark its location.●

TIME FOR SEQUENTIAL REFERRAL EXTENDED—S. 2566

Mr. RIEGLE. Mr. President, I ask unanimous consent that the time for the sequential referral of S. 2566, the Department of Energy Laboratory Partnership Act, be extended to June 25, 1992, and that if the Committee on Governmental Affairs has not reported the bill by that time, it then will be automatically discharged and returned to the calendar.

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

AUDIO HOME RECORDING ACT

Mr. RIEGLE. Mr. President, I ask unanimous consent that the Senate

proceed to the immediate consideration of Calendar No. 389, S. 1623, a bill to implement the royalty payment system and a serial copy management system for digital audio recording, and for other purposes.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (S. 1623) to amend title 17, United States Code, to implement a royalty payment system and a serial copy management system for digital audio recording, to prohibit certain copyright infringement actions, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on the Judiciary, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Audio Home Recording Act of 1991".

SEC. 2. IMPORTATION, MANUFACTURE, AND DISTRIBUTION OF DIGITAL AUDIO RECORDING DEVICES AND MEDIA.

Title 17, United States Code, is amended by adding at the end the following:

"CHAPTER 10—DIGITAL AUDIO RECORDING DEVICES AND MEDIA

"SUBCHAPTER A—DEFINITIONS, PROHIBITION OF CERTAIN INFRINGEMENT ACTIONS, AND RULES OF CONSTRUCTION

"Sec.
"1001. Definitions.
"1002. Prohibition on certain infringement actions.
"1003. Effect on other rights and remedies with respect to private home copying or otherwise.

"SUBCHAPTER B—ROYALTY PAYMENTS

"1011. Obligation to make royalty payments.
"1012. Royalty payments.
"1013. Deposit of royalty payments and deduction of expenses.
"1014. Entitlement to royalty payments.
"1015. Procedures for distributing royalty payments.
"1016. Negotiated collection and distribution arrangements.

"SUBCHAPTER C—THE SERIAL COPY MANAGEMENT SYSTEM

"1021. Incorporation of the serial copy management system.
"1022. Implementing the serial copy management system.

"SUBCHAPTER D—REMEDIES

"1031. Civil remedies.
"1032. Binding arbitration.

"SUBCHAPTER A—DEFINITIONS, PROHIBITION OF CERTAIN INFRINGEMENT ACTIONS, AND RULES OF CONSTRUCTION

"§1001. Definitions

"As used in this chapter, the following terms and their variant forms mean the following:

"(1) An 'audiogram' is a material object (i) in which are fixed, by any method now known or later developed, only sounds (and not, for example, a motion picture or other audiovisual work even though it may be accompanied by sounds), and material, statements or instructions incidental to those fixed sounds, if any, and (ii) from which the sounds and material can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.

"(2) A 'digital audio copied recording' is a reproduction in a digital recording format of an audiogram, whether that reproduction is made directly from another audiogram or indirectly from a transmission.

"(3) A 'digital audio interface device' is any machine or device, now known or later developed, whether or not included with or as part of some other machine or device, that supplies a digital audio signal through a nonprofessional interface, as the term 'nonprofessional interface' is used in the Digital Audio Interface Standard in part I of the technical reference document or as otherwise defined by the Secretary of Commerce under section 1022(b).

"(4) A 'digital audio recording device' is any machine or device, now known or later developed, of a type commonly distributed to individuals for use by individuals, whether or not included with or as part of some other machine or device, the recording function of which is designed or marketed for the primary purpose of, and that is capable of, making a digital audio copied recording for private use, except for—

"(A) professional model products and

"(B) dictation machines, answering machines, and other audio recording equipment that is designed and marketed primarily for the creation of sound recordings resulting from the fixation of nonmusical sounds.

"(5)(A) A 'digital audio recording medium' is any material object in which sounds may be fixed, now known or later developed, in a form commonly distributed for ultimate sale to individuals for use by individuals (such as magnetic digital audio tape cassettes, optical discs, and magneto-optical discs), that is primarily marketed or most commonly used by consumers for the purpose of making digital audio copied recordings by use of a digital audio recording device.

"(B) Such term does not include any material object—

"(i) that embodies a sound recording at the time it is first distributed by the importer or manufacturer, unless the sound recording has been so embodied in order to evade the obligations of section 1011 of this title; or

"(ii) that is primarily marketed and most commonly used by consumers either for the purpose of making copies of motion pictures or other audiovisual works or for the purpose of making copies of nonmusical library works, including, without limitation, computer programs or data bases.

"(6) 'Distribute' means to sell, resell, lease, or assign a product to consumers in the United States, or to sell, resell, lease, or assign a product in the United States for ultimate transfer to consumers in the United States.

"(7) An 'interested copyright party' is—

"(A) the owner of the exclusive right under section 106(1) of this title to reproduce a sound recording of a musical work that has been embodied in an audiogram lawfully made under this title that has been distributed to the public;

"(B) the legal or beneficial owner of, or the person that controls, the right to reproduce in an audiogram a musical work that has been embodied in an audiogram lawfully made under this title that has been distributed to the public; or

"(C) any association or other organization—

"(i) representing persons specified in subparagraph (A) or (B), or

"(ii) engaged in licensing rights in musical works to music users on behalf of writers and publishers.

"(8) An 'interested manufacturing party' is any person that imports or manufactures any digital audio recording device or digital audio recording medium in the United States, or any association of such persons.

"(9) 'Manufacture' includes the production or assembly of a product in the United States.

"(10) A 'music publisher' is a person that is authorized to license the reproduction of a particular musical work in a sound recording.

"(11)(A) A 'professional model product' is an audio recording device—

"(i) that is capable of sending a digital audio interface signal in which the channel status block flag is set as a 'professional' interface, in accordance with the standards and specifications set forth in the technical reference document or established under an order issued by the Secretary of Commerce under section 1022(b);

"(ii) that is clearly, prominently, and permanently marked with the letter 'P' or the word 'professional' on the outside of its packaging, and in all advertising, promotional, and descriptive literature, with respect to the device, that is available or provided to persons other than the manufacturer or importer, its employees, or its agents; and

"(iii) that is designed, manufactured, marketed, and intended for use by recording professionals in the ordinary course of a lawful business.

"(B) In determining whether an audio recording device meets the requirements of subparagraph (A)(iii), factors to be considered shall include—

"(i) whether it has features used by recording professionals in the course of a lawful business, including features such as—

"(I) a data collection and reporting system of error codes during recording and playback;

"(II) a record and reproduce format providing 'read after write' and 'read after read';

"(III) a time code reader and generator conforming to the standards set by the Society of Motion Picture and Television Engineers for such readers and generators; and

"(IV) a professional input/output interface, both digital and analog, conforming to standards set by audio engineering organizations for connectors, signaling formats, levels, and impedances;

"(ii) the nature of the promotional materials used to market the audio recording device;

"(iii) the media used for the dissemination of the promotional materials, including the intended audience;

"(iv) the distribution channels and retail outlets through which the device is disseminated;

"(v) the manufacturer's or importer's price for the device as compared to the manufacturer's or importer's price for digital audio recording devices inplementing the Serial Copy Management System;

"(vi) the relative quantity of the device manufactured or imported as compared to the size of the manufacturer's or importer's market for professional model products;

"(vii) the occupations of the purchasers of the device; and

"(viii) the uses to which the device is put.

"(12) The 'Register' is the Register of Copyrights.

"(13) The 'Serial Copy Management System' means the system for regulating serial copying by digital audio recording devices that is set forth in the technical reference document or in an order of the Secretary of Commerce under section 1022(b), or that conforms to the requirements of section 1021(a)(1)(C).

"(14) The 'technical reference document' is the document entitled 'Technical Reference Document for Audio Home Recording Act of 1991' in section 5 of this Act.

"(15)(A) The 'transfer price' of a digital audio recording device or a digital audio recording medium is—

"(i) in the case of an imported product, the actual entered value at United States Customs

(exclusive of any freight, insurance, and applicable duty), and

"(ii) in the case of a domestic product, the manufacturer's transfer price (FOB the manufacturer, and exclusive of any direct sales taxes or excise taxes incurred in connection with the sale).

"(B) Where the transferor and transferee are related entities or within a single entity, the transfer price shall not be less than a reasonable arms-length price under the principles of the regulations adopted pursuant to section 482 of the Internal Revenue Code of 1986, or any successor provision to such section 482.

"(16) A 'transmission' is any audio or audiovisual transmission, now known or later developed, whether by a broadcast station, cable system, multipoint distribution service, subscription service, direct broadcast satellite, or other form of analog or digital communication.

"(17) The 'Tribunal' is the Copyright Royalty Tribunal.

"(18) A 'writer' is the composer or lyricist of a particular musical work.

"(19) The terms 'analog format', 'copyright status', 'category code', 'generation status', and 'source material', mean those terms as they are used in the technical reference document.

"§1002. Prohibition on certain infringement actions

"(a) CERTAIN ACTIONS PROHIBITED.—

"(1) GENERALLY.—No action may be brought under this title, or under section 337 of the Tariff Act of 1930, alleging infringement of copyright based on the manufacture, importation, or distribution of a digital audio recording device or a digital audio recording medium, or an analog audio recording device or analog audio recording medium, or the use of such a device or medium for making audiograms. However, this subsection does not apply with respect to any claim against a person for infringement by virtue of the making of one or more audiograms, or other material objects in which works are fixed, for direct or indirect commercial advantage.

"(2) EXAMPLE.—For purposes of this section, the copying of an audiogram by a consumer for private, noncommercial use is not for direct or indirect commercial advantage, and is therefore not actionable.

"(b) EFFECT OF THIS SECTION.—Nothing in this section shall be construed to create or expand a cause of action for copyright infringement except to the extent such a cause of action otherwise exists under other chapters of this title or under section 337 of the Tariff Act of 1930, or to limit any defenses that may be available to such causes of action.

"§1003. Effect on other rights and remedies with respect to private home copying or otherwise

"Except as expressly provided in this chapter with respect to audio recording devices and media, neither the enactment of this chapter nor anything contained in this chapter shall be construed to expand, limit, or otherwise affect the rights of any person with respect to private home copying of copyrighted works, or to expand, limit, create, or otherwise affect any other right or remedy that may be held by or available to any person under chapters 1 through 9 of this title.

"SUBCHAPTER B—ROYALTY PAYMENTS

"§1011. Obligation to make royalty payments

"(a) PROHIBITION ON IMPORTATION AND MANUFACTURE.—No person shall import into and distribute in the United States, or manufacture and distribute in the United States, any digital audio recording device or digital audio recording medium unless such person—

"(1) records the notice specified by this section and subsequently deposits the statements of account and applicable royalty payments for such device or medium specified by this section and section 1012 of this title, or

"(2) complies with the applicable notice, statement of account, and payment obligations under a negotiated arrangement authorized pursuant to section 1016 of this title.

"(b) FILING OF NOTICE.—

"(1) GENERALLY.—The importer or manufacturer of any digital audio recording device or digital audio recording medium, within a product category or utilizing a technology with respect to which such manufacturer or importer has not previously filed a notice under this subsection, shall file a notice with the Register, no later than 45 days after the commencement of the first distribution in the United States of such device or medium, in such form as the Register shall prescribe by regulation; provided, however, that no notice shall be required with respect to any distribution occurring prior to the effective date of this chapter.

"(2) CONTENTS.—Such notice shall—

"(A) set forth the manufacturer's or importer's identity and address,

"(B) identify such product category and technology, and

"(C) identify any trade or business names, trademarks, or like indicia of origin that the importer or manufacturer uses or intends to use in connection with the importation, manufacture, or distribution of such device or medium in the United States.

"(c) FILING OF QUARTERLY STATEMENTS OF ACCOUNT.—

"(1) GENERALLY.—Any importer or manufacturer that distributed during a given quarter any digital audio recording device or digital audio recording medium that it manufactured or imported shall file with the Register, in such form as the Register shall prescribe by regulation, a quarterly statement of account specifying, by product category, technology, and model, the number and transfer price of all digital audio recording devices and digital audio recording media that it distributed during such quarter.

"(2) PERIOD COVERED.—The quarterly statements of account may be filed on either a calendar or fiscal year basis, at the election of the manufacturer or importer.

"(3) STATEMENTS OF ACCOUNT FOR THE FIRST THREE QUARTERS.—For the first three quarters of any calendar or fiscal year, such statement shall—

"(A) be filed no later than 45 days after the close of the period covered by the statement; provided, however, that any quarterly statement that would be due within three months and 45 days of the effective date of this chapter shall not be filed until the next quarterly statement is due, at which time a statement shall be filed covering the entire period since the effective date of this chapter;

"(B) be certified as accurate by an authorized officer or principal of the importer or manufacturer;

"(C) be accompanied by the total royalty payment due for such period pursuant to section 1012 of this title.

"(4) STATEMENT OF ACCOUNT FOR THE FOURTH QUARTER.—The quarterly statement for the final quarter of any calendar or fiscal year shall be incorporated into the annual statement required under subsection (d) of this section, which shall be accompanied by the royalty payment due for such quarter.

"(d) FILING OF ANNUAL STATEMENTS OF ACCOUNT.—

"(1) GENERALLY.—Any importer or manufacturer that distributed during a given calendar or fiscal year (as applicable) any digital audio recording device or digital audio recording medium that it manufactured or imported shall also file with the Register a cumulative annual statement of account, in such form as the Register shall prescribe by regulation.

"(2) TIMING AND CERTIFICATION.—Such statement shall be filed no later than 60 days after the close of such calendar or fiscal year, and shall be certified as accurate by an authorized officer or principal of the importer or manufacturer.

"(3) INDEPENDENT REVIEW AND CERTIFICATION.—The annual statement of account shall be reviewed and, pursuant to generally accepted auditing standards, certified by an independent certified public accountant selected by the manufacturer or importer as fairly presenting the information contained therein, on a consistent basis and in accordance with the requirements of this chapter.

"(4) RECONCILIATION OF ROYALTY PAYMENT.—The cumulative annual statement of account shall be accompanied by any royalty payment due under section 1012 of this title that was not previously paid under subsection (c) of this section.

"(e) VERIFICATION.—

"(1) GENERALLY.—

"(A) The Register shall, after consulting with interested copyright parties and interested manufacturing parties, prescribe regulations specifying procedures for the verification of statements of account filed pursuant to this section.

"(B) Such regulations shall permit interested copyright parties to select independent certified public accountants to conduct audits in order to verify the accuracy of the information contained in the statements of account filed by manufacturers and importers.

"(C) Such regulations shall also—

"(i) specify the scope of such independent audits; and

"(ii) establish a procedure by which interested copyright parties will coordinate the engagement of such independent certified public accountants, in order to ensure that no manufacturer or importer is audited more than once per year.

"(D) All such independent audits shall be conducted at reasonable times, with reasonable advance notice, and shall be no broader in scope than is reasonably necessary to carry out the purposes of this subsection in accordance with generally accepted auditing standards.

"(2) INDEPENDENT CERTIFICATION.—The results of all such independent audits shall be certified as fairly presenting the information contained therein, on a consistent basis and in accordance with the requirements of this chapter and generally accepted auditing standards, by the certified public accountant responsible for the audit. The certification and results shall be filed with the Register.

"(3) ACCESS TO DOCUMENTS IN EVENT OF DISPUTE.—In the event of a dispute concerning the amount of the royalty payment due from a manufacturer or importer resulting from a verification audit conducted under this section—

"(A) any interested manufacturing party audited pursuant to this subsection, and its authorized representatives, shall be entitled to have access to all documents upon which the audit results under this subsection were based; and

"(B) any representative of an interested copyright party that has been approved by the Register under subsection (h)(2) of this section shall be entitled to have access to all documents upon which the audit results under subsection (d) of this section were based, subject to the limitations of subsection (h)(2) of this section.

"(f) COSTS OF VERIFICATION.—

"(1) The costs of all verification audits that are conducted pursuant to subsection (e) of this section shall be borne by interested copyright parties, except that, in the case of a verification audit of a manufacturer or importer that leads

ultimately to recovery of an annual royalty underpayment of 5 percent or more of the annual payment made, the importer or manufacturer shall provide reimbursement for the reasonable costs of such audit.

"(2) Except as may otherwise be agreed by interested copyright parties, the costs of a verification audit conducted pursuant to subsection (e) of this section shall be borne by the party engaging the certified public accountant. Any recovery of royalty underpayments as a result of the audit shall be used first to provide reimbursement for the reasonable costs of such audit to the extent such costs have not otherwise been reimbursed by the manufacturer or importer pursuant to this subsection. Any remaining recovery shall be deposited with the Register pursuant to section 1013 of this title, or as may otherwise be provided by a negotiated arrangement authorized under section 1016 of this title, for distribution to interested copyright parties as though such funds were royalty payments made pursuant to this section.

"(g) INDEPENDENCE OF ACCOUNTANTS.—Each certified public accountant used by interested copyright parties or interested manufacturing parties pursuant to this section shall be in good standing and shall not be financially dependent upon interested copyright parties or interested manufacturing parties, respectively. The Register may, upon petition by any interested copyright party or interested manufacturing party, prevent the use of a particular certified public accountant on the ground that such accountant does not meet the requirements of this subsection.

"(h) CONFIDENTIALITY.—

"(1) GENERALLY.—The quarterly and annual statements of account filed pursuant to subsections (c) and (d) of this section, and information disclosed or generated during verification audits conducted pursuant to subsection (e) of this section, shall be presumed to contain confidential trade secret information within the meaning of section 1905 of title 18 of the United States Code. Except as provided in paragraphs (2), (3), and (4) of this subsection, neither the Register nor any member, officer, or employee of the Copyright Office or the Tribunal, may—

"(A) publicly disclose audit information furnished under this section or information contained in quarterly or annual statements of account, except that aggregate information that does not disclose, directly or indirectly, company-specific information may be made available to the public;

"(B) use such information for any purpose other than to carry out responsibilities under this chapter; or

"(C) permit anyone (other than members, officers, and employees of the Copyright Office and the Tribunal who require such information in the performance of duties under this chapter) to examine such information.

"(2) PROCEDURES FOR ACCESS TO BE PRESCRIBED BY REGISTER.—(A) The Register, after consulting with interested manufacturing parties and interested copyright parties, shall prescribe procedures for disclosing, in confidence, to representatives of interested copyright parties and representatives of interested manufacturing parties information contained in quarterly and annual statements of account and information generated as a result of verification audits.

"(B) Such procedures shall provide that only those representatives of interested copyright parties and interested manufacturing parties who have been approved by the Register shall have access to such information, and that all such representatives shall be required to sign a certification limiting the use of the information to—

"(i) verification functions under this section, and

"(ii) any enforcement actions that may result from such verification procedures.

"(3) ACCESS BY AUDITED MANUFACTURER.—Any interested manufacturing party that is audited pursuant to subsections (e) of this section, and its authorized representatives, shall be entitled to have access to all documents filed with the Register as a result of such audit.

"(4) ACCESS BY CONGRESS.—Nothing in this section shall authorize the withholding of information from the Congress.

"§1012. Royalty payments

"(a) DIGITAL AUDIO RECORDING DEVICES.—

"(1) The royalty payment due under section 1011 of this title for each digital audio recording device imported into and distributed in the United States, or manufactured and distributed in the United States, shall be 2 percent of the transfer price. However, only the first person to manufacture and distribute or import and distribute such device shall be required to pay the royalty with respect to such device.

"(2) With respect to a digital audio recording device first distributed in combination with one or more devices, either as a physically integrated unit or as separate components, the royalty payment shall be calculated as follows:

"(A) If the digital audio recording device and such other devices are part of a physically integrated unit, the royalty payment shall be based on the transfer price of the unit, but shall be reduced by any royalty payment made on any digital audio recording device included within the unit that was not first distributed in combination with the unit.

"(B) If the digital audio recording device is not part of a physically integrated unit and substantially similar devices have been distributed separately at any time during the preceding 4 quarters, the royalty payment shall be based on the average transfer price of such devices during those 4 quarters.

"(C) If the digital audio recording device is not part of a physically integrated unit and substantially similar devices have not been distributed separately at any time during the preceding 4 quarters, the royalty payment shall be based on a constructed price reflecting the proportional value of such device to the combination as a whole.

"(3) Notwithstanding paragraph (1) or (2) of this subsection, the amount of the royalty payment for each digital audio recording device or physically integrated unit containing a digital audio recording device shall not be less than $1 nor more than the royalty maximum. The royalty maximum shall be $8 per device, except that for a physically integrated unit containing more than one digital audio recording device, the royalty maximum for such unit shall be $12. During the 6th year after the effective date of this chapter, and no more than once each year thereafter, any interested copyright party may petition the Tribunal to increase the royalty maximum and, if more than 20 percent of the royalty payments are at the relevant royalty maximum, the Tribunal shall prospectively increase such royalty maximum with the goal of having no more than 10 percent of such payments at the new royalty maximum; provided, however, that the amount of any such increase as a percentage of the royalty maximum shall in no event exceed the percentage increase in the Consumer Price Index during the period under review.

"(b) DIGITAL AUDIO RECORDING MEDIA.—The royalty payment due under section 1011 of this title for each digital audio recording medium imported into and distributed in the United States, or manufactured and distributed in the United States, shall be 3 percent of the transfer price. However, only the first person to manufacture and distribute or import and distribute such medium shall be required to pay the royalty with respect to such medium.

"(c) RETURNED OR EXPORTED MERCHANDISE.—

"(1) In calculating the amount of royalty payments due under subsections (a) and (b) of this section, manufacturers and importers may deduct the amount of any royalty payments already made on digital audio recording devices or media that are—

"(A) returned to the manufacturer or importer as unsold or defective merchandise; or

"(B) exported by the manufacturer or importer or a related person—

within two years following the date royalties are paid on such devices or media.

"(2) Any such credit shall be taken during the period when such devices or media are returned or exported, and the basis for any such credit shall be set forth in the statement of account for such period filed under section 1011(c) of this title.

"(3) Any such credit that is not fully used during such period may be carried forward to subsequent periods. If any returned or exported merchandise for which a credit has been taken is subsequently distributed, a royalty payment shall be made as specified under subsection (a) or (b) of this section, based on the transfer price applicable to such distribution.

"§1013. Deposit of royalty payments and deduction of expenses

"The Register shall receive all royalty payments deposited under this chapter and, after deducting the reasonable costs incurred by the Copyright Office under this chapter, shall deposit the balance in the Treasury of the United States, in such manner as the Secretary of the Treasury directs. All funds held by the Secretary of the Treasury shall be invested in interest-bearing United States securities for later distribution with interest under section 1014, 1015, or 1016 of this title. The Register may, in the Register's discretion, four years after the close of any calendar year, close out the royalty payments account for that calendar year, and may treat any funds remaining in such account and any subsequent deposits that would otherwise be attributable to that calendar year as attributable to the next succeeding calendar year. The Register shall submit to the Copyright Royalty Tribunal, on a monthly basis, a financial statement reporting the amount of royalties available for distribution.

"§1014. Entitlement to royalty payments

"(a) INTERESTED COPYRIGHT PARTIES.—The royalty payments deposited pursuant to section 1013 of this title shall, in accordance with the procedures specified in section 1015 or 1016 of this title, be distributed to any interested copyright party—

"(1) whose musical work or sound recording has been—

"(A) embodied in audiograms lawfully made under this title that have been distributed to the public, and

"(B) distributed to the public in the form of audiograms or disseminated to the public in transmissions, during the period to which such payments pertain; and

"(2) who has filed a claim under section 1015 or 1016 of this title.

"(b) ALLOCATION OF ROYALTY PAYMENTS TO GROUPS.—The royalty payments shall be divided into two funds as follows:

"(1) THE SOUND RECORDINGS FUND.—66⅔ percent of the royalty payments shall be allocated to the Sound Recordings Fund. The American Federation of Musicians (or any successor entity) shall receive 2⅚ percent of the royalty payments allocated to the Sound Recordings Fund for the benefit of nonfeatured musicians who have performed on sound recordings distributed in the United States. The American Federation of Television and Radio Artists (or any successor entity) shall receive 1⅙ percent of the roy-

alty payments allocated to the Sound Recordings Fund for the benefit of nonfeatured vocalists who have performed on sound recordings distributed in the United States. The remaining royalty payments in the Sound Recordings Fund shall be distributed to claimants under subsection (a) of this section who are interested copyright parties under section 1001(7)(A) of this title. Such claimants shall allocate such royalty payments, on a per sound recording basis, in the following manner: 40 percent to the recording artist or artists featured on such sound recordings (or the persons conveying rights in the artists' performances in the sound recordings), and 60 percent to the interested copyright parties.

"(2) THE MUSICAL WORKS FUND.—

"(A) 33⅓ percent of the royalty payments shall be allocated to the Musical Works Fund for distribution to interested copyright parties whose entitlement is based on legal or beneficial ownership or control of a copyright in a musical work.

"(B) Notwithstanding any contractual obligation to the contrary—

"(i) music publishers shall be entitled to 50 percent of the royalty payments allocated to the Musical Works Fund, and

"(ii) writers shall be entitled to the other 50 percent of the royalty payments allocated to the Musical Works Fund.

"(c) DISTRIBUTION OF ROYALTY PAYMENTS WITHIN GROUPS.—If all interested copyright parties within a group specified in subsection (b) of this section do not agree on a voluntary proposal for the distribution of the royalty payments within such group, the Tribunal shall, pursuant to the procedures specified in section 1015(c) of this title, allocate such royalty payments based on the extent to which, during the relevant period—

"(1) for the Sound Recording Fund, each sound recording was distributed to the public in the form of audiograms; and

"(2) for the Musical Works Fund, each musical work was distributed to the public in the form of audiograms or disseminated to the public in transmissions.

"§1015. Procedures for distributing royalty payments

"(a) FILING OF CLAIMS AND NEGOTIATIONS.—

"(1) During the first 2 months of each calendar year after the calendar year in which this chapter takes effect, every interested copyright party that is entitled to royalty payments under section 1014 of this title shall file with the Tribunal a claim for payments collected during the preceding year in such form and manner as the Tribunal shall prescribe by regulation.

"(2) All interested copyright parties within each group specified in section 1014(b) of this title shall negotiate in good faith among themselves in an effort to agree to a voluntary proposal for the distribution of royalty payments. Notwithstanding any provision of the antitrust laws, for purposes of this section such interested copyright parties may agree among themselves to the proportionate division of royalty payments, may lump their claims together and file them jointly or as a single claim, or may designate a common agent to receive payment on their behalf; except that no agreement under this subsection may vary the allocation of royalties specified in section 1014(b) of this title.

"(b) DISTRIBUTION OF PAYMENTS IN THE ABSENCE OF A DISPUTE.—Within 30 days after the period established for the filing of claims under subsection (a) of this section, in each year after the year in which this section takes effect, the Tribunal shall determine whether there exists a controversy concerning the distribution of royalty payments under section 1014(c) of this title. If the Tribunal determines that no such controversy exists, it shall, within 30 days after such determination, authorize the distribution of the royalty payments as set forth in the agreements regarding the distribution of royalty payments entered into pursuant to subsection (a) of this section, after deducting its reasonable administrative costs under this section.

"(c) RESOLUTION OF DISPUTES.—If the Tribunal finds the existence of a controversy, it shall, pursuant to chapter 8 of this title, conduct a proceeding to determine the distribution of royalty payments. During the pendency of such a proceeding, the Tribunal shall withhold from distribution an amount sufficient to satisfy all claims with respect to which a controversy exists, but shall, to the extent feasible, authorize the distribution of any amounts that are not in controversy.

"§1016. Negotiated collection and distribution arrangements

"(a) SCOPE OF PERMISSIBLE NEGOTIATED ARRANGEMENTS.—

"(1) Interested copyright parties and interested manufacturing parties may at any time negotiate among or between themselves a single alternative system for the collection, distribution, or verification of royalty payments provided for in this chapter.

"(2) Such a negotiated arrangement may vary the collection, distribution, and verification procedures and requirements that would otherwise apply under sections 1011 through 1015 of this title, including the time periods for payment and distribution of royalties, but shall not alter the requirements of section 1011(a), (b), or (h)(4), section 1012 (a) or (b), or section 1014 (a) or (b) of this title.

"(3) Such a negotiated arrangement may also provide that specified types of disputes that cannot be resolved among the parties to the arrangement shall be resolved by binding arbitration or other agreed upon means of dispute resolution.

"(4) Notwithstanding any provision of the antitrust laws, for purposes of this section interested manufacturing parties and interested copyright parties may negotiate in good faith and voluntarily agree among themselves as to the collection, distribution, and verification of royalty payments, and may designate common agents to negotiate and carry out such activities on their behalf.

"(b) IMPLEMENTATION OF A NEGOTIATED ARRANGEMENT.—

"(1) No negotiated arrangement shall go into effect under this section until the Tribunal has approved the arrangement, after full opportunity for comment, as meeting the following requirements.

"(A) The participants in the negotiated arrangement shall include—

"(i) at least two-thirds of all individual interested copyright parties that are entitled to receive royalty payments from the Sound Recording Fund,

"(ii) at least two-thirds of all individual interested copyright parties that are entitled to receive royalty payments from the Musical Works Fund as music publishers, and

"(iii) at least two-thirds of all individual interested copyright parties that are entitled to receive royalty payments from the Musical Works Fund as writers.

"(B) For purposes of subparagraph (A) of this paragraph, the determination as to two-thirds participation shall be based on annual retail sales of audiograms in which musical works or sound recordings of musical works are embodied. One or more organizations representing any of the types of individual interested copyright parties specified in the first sentence of this subsection shall be presumed to represent two-thirds of that type of interested copyright party if the membership of, or other participation in, such organization or organizations includes two-thirds of that type of interested copyright party based on annual retail sales of audiograms in which musical works or sound recordings of musical works are embodied.

"(C) The implementation of the arrangement shall include all necessary safeguards, as determined by the Tribunal, which ensure that all interested copyright parties who are not participants in the arrangement receive the royalty payments to which they would be entitled in the absence of such an arrangement under sections 1013 and either 1014(c) or 1015(b), whichever is applicable. Such safeguards may include accounting procedures, reports and any other information determined to be necessary to ensure the proper collection and distribution of royalty payments.

"(2) Notwithstanding the existence of a negotiated arrangement that has gone into effect under this section, any interested manufacturing party that is not a party to such negotiated arrangement shall remain subject to the requirements of sections 1011 and 1012 and may fully satisfy its obligations under this subchapter by complying with the procedures set forth therein.

"(c) MAINTENANCE OF JURISDICTION BY TRIBUNAL.—Where a negotiated arrangement has gone into effect under this section, the Tribunal shall maintain jurisdiction and shall (1) hear and address any objections to the arrangement that may arise while it is in effect, (2) ensure the availability of alternative procedures for any interested manufacturing party or interested copyright party that is not a participant in the negotiated arrangement, (3) ensure that all interested copyright parties who are not participants in the arrangement receive the royalty payments to which they would be entitled in the absence of such an arrangement under sections 1013 and either 1014(c) or 1015(b), whichever is applicable, (4) ensure that it has adequate funds at its disposal, received either through the Copyright Office or through the entity administering the negotiated arrangement, to distribute to interested copyright parties not participating in the arrangement the royalty payments to which they are entitled under section 1014(c) or 1015(b), including applicable interest, and (5) ensure that the requirements of section 1016(b)(1)(C) are met.

"(d) JUDICIAL ENFORCEMENT.—The Tribunal may seek injunctive relief in an appropriate United States district court to secure compliance with the requirements of subsection (c).

"SUBCHAPTER C—THE SERIAL COPY MANAGEMENT SYSTEM

"§1021. Incorporation of the serial copy management system

"(a) PROHIBITION ON IMPORTATION, MANUFACTURE, AND DISTRIBUTION.—

"(1) No person shall import, manufacture, or distribute any digital audio recording device or any digital audio interface device that does not conform to the standards and specifications to implement the Serial Copy Management System that are—

"(A) set forth in the technical reference document;

"(B) set forth in an order by the Secretary of Commerce under section 1022(b) (1), (2), or (3) of this title; or

"(C) in the case of a digital audio recording device other than a device defined in part II of the technical reference document or in an order issued by the Secretary pursuant to section 1022(b) of this title, established by the manufacturer (or, in the case of a proprietary technology, the proprietor of such technology) so as to achieve the same functional characteristics with respect to regulation of serial copying as, and to be compatible with the prevailing method for implementation of, the Serial Copy Management System set forth in the technical reference document or in any order of the Secretary issued under section 1022 of this title.

"(2) If the Secretary of Commerce approves standards and specifications under section

1022(b)(4) of this title, then no person shall import, manufacture, or distribute any digital audio recording device or any digital audio interface device that does not conform to such standards and specifications.

"(b) PROHIBITION ON CIRCUMVENTION OF THE SERIAL COPY MANAGEMENT SYSTEM.—No person shall import, manufacture, or distribute any device, or offer or perform any service, the primary purpose or effect of which is to avoid, bypass, remove, deactivate, or otherwise circumvent any program or circuit which implements, in whole or in part, the Serial Copy Management System in a digital audio recording device or a digital audio interface device.

"(c) ENCODING OF INFORMATION ON AUDIOGRAMS.—

"(1) No person shall encode an audiogram of a sound recording with inaccurate information relating to the category code, copyright status, or generation status of the source material so as improperly to affect the operation of the Serial Copy Management System.

"(2) Nothing in this subchapter requires any person engaged in the importation, manufacture, or assembly of audiograms to encode any such audiogram with respect to its copyright status.

"(d) INFORMATION ACCOMPANYING TRANSMISSIONS IN DIGITAL FORMAT.—Any person who transmits or otherwise communicates to the public any sound recording in digital format is not required under this subchapter to transmit or otherwise communicate the information relating to the copyright status of the sound recording. However, any such person who does transmit or otherwise communicate such copyright status information shall transmit or communicate such information accurately.

"§1022. Implementing the serial copy management system

"(a) PUBLICATION OF TECHNICAL REFERENCE DOCUMENT AND CERTIFICATION.—Within 10 days after the date of enactment of this chapter, the Secretary of Commerce shall cause to be published in the Federal Register the technical reference document along with the certification from the National Institute of Standards and Technology, as such certification appears in the report of the Committee on the Judiciary to the Senate on the Audio Home Recording Act of 1991, that the technical reference document sets forth standards and specifications that adequately incorporate the intended functional characteristics to regulate serial copying and are not incompatible with existing international digital audio interface standards and existing digital audio technology.

"(b) ORDERS OF SECRETARY OF COMMERCE.—The Secretary of Commerce, upon petition by an interested manufacturing party or an interested copyright party, and after consultation with the Register, may, if the Secretary determines that to do so is in accordance with the purposes of this chapter, issue an order to implement the Serial Copy Management System set forth in the technical reference document as follows:

"(1) FUNCTIONALLY EQUIVALENT ALTERNATIVES.—The Secretary may issue an order for the purpose of permitting in commerce devices that do not conform to all of the standards and specifications set forth in the technical reference document, if the Secretary determines that such devices possess the same functional characteristics with respect to regulation of serial copying as, and are compatible with the prevailing method for implementation of, the Serial Copy Management System set forth in the technical reference document.

"(2) REVISED GENERAL STANDARDS.—The Secretary may issue an order for the purpose of permitting in commerce devices that do not conform to all of the standards and specifications set forth in the technical reference document, if the Secretary determines that—

"(A) the standards and specifications relating generally to digital audio recording devices and digital audio interface devices have been or are being revised or otherwise amended or modified such that the standards and specifications set forth in the technical reference document are not or would no longer be applicable or appropriate; and

"(B) such devices conform to such new standards and specifications and possess the same functional characteristics with respect to regulation of serial copying as the Serial Copy Management System set forth in the technical reference document.

"(3) STANDARDS FOR NEW DEVICES.—The Secretary may issue an order for the purpose of—

"(A) establishing whether the standards and specifications established by a manufacturer or proprietor for digital audio recording devices other than devices defined in part II of the technical reference document or a prior order of the Secretary under paragraph (1) or (2) of this subsection comply with the requirements of subparagraph (C) of section 1021(a)(1) of this title; or

"(B) establishing alternative standards or specifications in order to ensure compliance with such requirements.

"(4) MATERIAL INPUT TO DIGITAL DEVICE THROUGH ANALOG CONVERTER.—

"(A) GENERALLY.—Except as provided in subparagraphs (B) through (D), the Secretary, after publication of notice in the Federal Register and reasonable opportunity for public comment, may issue an order for the purpose of approving standards and specifications for a technical method implementing in a digital audio recording device the same functional characteristics as the Serial Copy Management System so as to regulate the serial copying of source material input through an analog converter in a manner equivalent to source material input in the digital format.

"(B) COST LIMITATION.—The order may not impose a total cost burden on manufacturers of digital audio recording devices, for implementing the Serial Copy Management System and the technical method prescribed in such order, in excess of 125 percent of the cost of implementing the Serial Copy Management System before the issuance of such order.

"(C) CONSIDERATION OF OTHER OBJECTIONS.—The Secretary shall consider other reasoned objections from any interested manufacturing party or interested copyright party.

"(D) LIMITATIONS TO DIGITAL AUDIO DEVICES.—The order shall not affect the recording of any source material on analog recording equipment and the order shall not impose any restrictions or requirements that must be implemented in any device other than a digital audio recording device or digital audio interface device.

"SUBCHAPTER D—REMEDIES

"§1031. Civil remedies

"(a) CIVIL ACTIONS.—Any interested copyright party or interested manufacturing party that is or would be injured by a violation of section 1011 or 1021 of this title, or the Attorney General of the United States, may bring a civil action in an appropriate United States district court against any person for such violation.

"(b) POWERS OF THE COURT.—In an action brought under subsection (a) of this section, the court—

"(1) except as provided in subsection (h) of this section, may grant temporary and permanent injunctions on such terms as it deems reasonable to prevent or restrain such violation;

"(2) in the case of a violation of section 1011 (a) through (d) or 1021 of this title, shall award damages under subsection (d) of this section;

"(3) in its discretion may allow the recovery of full costs by or against any party other than the United States or an officer thereof;

"(4) in its discretion may award a reasonable attorney's fee to the prevailing party as part of the costs awarded under paragraph (3) if the court finds that the nonprevailing party has not proceeded in good faith; and

"(5) may grant such other equitable relief as it deems reasonable.

"(c) RECOVERY OF OVERDUE ROYALTY PAYMENTS.—In any case in which the court finds that a violation of section 1011 of this title involving nonpayment or underpayment of royalty payments has occurred, the violator shall be directed to pay, in addition to damages awarded under subsection (d) of this section, any such royalties due, plus interest calculated as provided under section 1961 of title 28, United States Code.

"(d) AWARD OF DAMAGES.—

"(1) SECTION 1011.—

"(A) DEVICE.—In the case of a violation of section 1011 (a) through (d) of this title involving a digital audio recording device, the court shall award statutory damages in an amount between a nominal level and $100 per device, as the court considers just.

"(B) MEDIUM.—In the case of a violation of section 1011 (a) through (d) of this title involving a digital audio recording medium, the court shall award statutory damages in an amount between a nominal level and $4 per medium, as the court considers just.

"(2) SECTION 1021.—In any case in which the court finds that a violation of section 1021 of this title has occurred, the court shall award damages calculated, at the election of the complaining party at any time before final judgment is rendered, pursuant to subparagraph (A) or (B) of this paragraph, but in no event shall the judgment (excluding any award of actual damages to an interested manufacturing party) exceed a total of $1,000,000:

"(A) ACTUAL DAMAGES.—A complaining party may recover its actual damages suffered as a result of the violation and any profits of the violator that are attributable to the violation that are not taken into account in computing the actual damages. In determining the violator's profits, the complaining party is required to prove only the violator's gross revenue, and the violator is required to prove its deductible expenses and the elements of profit attributable to factors other than the violation.

"(B) STATUTORY DAMAGES.—

"(i) DEVICE.—A complaining party may recover an award of statutory damages for each violation of section 1021 (a) or (b) of this title in the sum of not less than $1,000 nor more than $10,000 per device involved in such violation or per device on which a service prohibited by section 1021(b) of this title has been performed, as the court considers just.

"(ii) AUDIOGRAM.—A complaining party may recover an award of statutory damages for each violation of section 1021(c) of this title in the sum of not less than $10 nor more than $100 per audiogram involved in such violation, as the court considers just.

"(iii) TRANSMISSION.—A complaining party may recover an award of damages for each transmission or communication that violates section 1021(d) of this title in the sum of not less than $10,000 nor more than $100,000, as the court considers just.

"(3) WILLFUL VIOLATIONS.—

"(A) In any case in which the court finds that a violation of section 1011 (a) through (d) of this title was committed willfully and for purposes of direct or indirect commercial advantage, the court shall increase statutory damages—

"(i) for a violation involving a digital audio recording device, to a sum of not less than $100 nor more than $500 per device; and

"(ii) for a violation involving a digital audio recording medium, to a sum of not less than $4

nor more than $15 per medium, as the court considers just.

"(B) In any case in which the court finds that a violation of section 1021 of this title was committed willfully and for purposes of direct or indirect commercial advantage, the court in its discretion may increase the award of damages by an additional amount of not more than $5,000,000, as the court considers just.

"(4) INNOCENT VIOLATIONS OF SECTION 1021.—The court in its discretion may reduce the total award of damages against a person violating section 1021 of this title to a sum of not less than $250 in any case in which the court finds that—

"(A) the violator was not aware and had no reason to believe that its acts constituted a violation of section 1021 of this title, or

"(B) in the case of a violation of section 1021(a) of this title involving a digital audio recording device, the violator believed in good faith that the device complied with section 1021(a)(1)(C) of this title, except that this subparagraph shall not apply to any damages awarded under subsection (d)(2)(A) of this section.

"(e) MULTIPLE ACTIONS.—

"(1) GENERALLY.—No more than one action shall be brought against any party and no more than one award of statutory damages under subsection (d) of this section shall be permitted—

"(A) for any violations of section 1011 of this title involving the same digital audio recording device or digital audio recording medium; or

"(B) for any violations of section 1021 of this title involving digital audio recording devices or digital audio interface devices of the same model, except that this subparagraph shall not bar an action or an award of damages with respect to digital audio recording devices or digital audio interface devices that are imported, manufactured, or distributed subsequent to a final judgment in a prior action.

"(2) NOTICE AND INTERVENTION.—Any complaining party who brings an action under this section shall serve a copy of the complaint upon the Register within 10 days after the complaining party's service of a summons upon a defendant. The Register shall cause a notice of such action to be published in the Federal Register within 10 days after receipt of such complaint. The court shall permit any other interested copyright party or interested manufacturing party entitled to bring the action under section 1031(a) of this title who moves to intervene within 30 days after the publication of such notice to intervene in the action.

"(3) AWARD.—

"(A) GENERALLY.—Except as provided in subparagraph (B), the court may award recovery of actual damages for a violation of section 1021 of this title pursuant to subsection (d)(2)(A) of this section to each complaining party in an action who elects to recover actual damages.

"(B) LIMITATIONS.—

"(i) If more than one complaining party elects to recover actual damages pursuant to subsection (d)(2)(A) of this section, only a single award of the violator's profits shall be made, which shall be allocated as the court considers just.

"(ii) If any complaining interested copyright party or parties elect to recover statutory damages pursuant to subsection (d)(2) of this section in an action in which one or more other complaining interested copyright parties have elected to recover actual damages, the single award of statutory damages permitted pursuant to paragraph (1) of this subsection shall be reduced by the total amount of actual damages awarded to interested copyright parties pursuant to subsection (d)(2)(A) of this section.

"(f) PAYMENT OF OVERDUE ROYALTIES AND DAMAGES.—The court may allocate any award of damages under subsection (d) of this section between or among complaining parties as it considers just. Any award of damages that is allocated to an interested copyright party and any award of overdue royalties and interest under subsection (c) of this section shall be deposited with the Register pursuant to section 1013 of this title, or as may otherwise be provided pursuant to a negotiated arrangement authorized under section 1016 of this title, for distribution to interested copyright parties as though such funds were royalty payments made pursuant to section 1011 of this title.

"(g) IMPOUNDING OF ARTICLES.—At any time while an action under this section is pending, the court may order the impounding, on such terms as it deems reasonable, of any digital audio recording device, digital audio interface device, audiogram, or device specified in section 1021(b) of this title that is in the custody or control of the alleged violator and that the court has reasonable cause to believe does not comply with, or was involved in a violation of, section 1021 of this title.

"(h) LIMITATIONS REGARDING PROFESSIONAL MODELS AND OTHER EXEMPT DEVICES.—Unless a court finds that the determination by a manufacturer or importer that a device fits within the exemption of subparagraph (A) or (B) of section 1001(4) of this title was without a reasonable basis or not in good faith, the court shall not grant a temporary or preliminary injunction against the distribution of such device by the manufacturer or importer.

"(i) REMEDIAL MODIFICATION AND DESTRUCTION OF ARTICLES.—As part of a final judgment or decree finding a violation of section 1021 of this title, the court shall order the remedial modification, if possible, or the destruction of any digital audio recording device, digital audio interface device, audiogram, or device specified in section 1021(b) of this title that—

"(1) does not comply with, or was involved in a violation of, section 1021 of this title, and

"(2) is in the custody or control of the violator or has been impounded under subsection (g) of this section.

"(j) DEFINITIONS.—For purposes of this section—

"(1) the term 'complaining party' means an interested copyright party, interested manufacturing party, or the Attorney General of the United States when one of these parties has initiated or intervened as a plaintiff in an action brought under this section; and

"(2) the term 'device' does not include an audiogram.

"§ 1032. Binding arbitration

"(a) DISPUTES TO BE ARBITRATED.—Any dispute between an interested manufacturing party and an interested copyright party shall be resolved through binding arbitration, in accordance with the provisions of this section, if—

"(1) the parties mutually agree; or

"(2) before the date of first distribution in the United States of the product which is the subject of the dispute, an interested manufacturing party or an interested copyright party requests arbitration concerning whether such product is or is not a digital audio recording device, a digital audio recording medium, or a digital audio interface device, or concerning the basis on which royalty payments are to be made with respect to such product.

"(b) ARBITRAL PROCEDURES.—

"(1) REGULATIONS FOR COORDINATION OF ARBITRATION.—The Register shall, after consulting with interested copyright parties, prescribe regulations establishing a procedure by which interested copyright parties will coordinate decisions and representation concerning the arbitration of disputes. No interested copyright party shall have the authority to request, agree to, or (except as an intervenor pursuant to subsection (c) of this section) enter into, binding arbitration unless that party shall have been authorized to do so pursuant to the regulations prescribed by the Register.

"(2) PANEL.—Except as otherwise agreed by the parties to a dispute that is to be submitted to binding arbitration under subsection (a) of this section, the dispute shall be heard by a panel of three arbitrators, with one arbitrator selected by each of the two sides to the dispute and the third arbitrator selected by mutual agreement of the first two arbitrators chosen.

"(3) DECISION.—The arbitral panel shall render its final decision concerning the dispute, in a written opinion explaining its reasoning, within 120 days after the date on which the selection of arbitrators has been concluded. The Register shall cause to be published in the Federal Register the written opinion of the arbitral panel within 10 days after receipt thereof.

"(4) TITLE 9 PROVISIONS TO GOVERN.—Except to the extent inconsistent with this section, any arbitration proceedings under this section shall be conducted in the same manner, subject to the same limitations, carried out with the same powers (incluaing the power to summon witnesses), and enforced in the courts of the United States as an arbitration proceeding under title 9, United States Code.

"(5) PRECEDENTS.—In rendering a final decision, the arbitral panel shall take into account any final decisions rendered in prior proceedings under this section that address identical or similar issues; and failure of the arbitral panel to take account of such prior decisions may be considered imperfect execution of arbitral powers under section 10(a)(4) of title 9, United States Code.

"(c) NOTICE AND RIGHT TO INTERVENE.—Any interested copyright party or interested manufacturing party that requests an arbitral proceeding under this section shall provide the Register with notice concerning the parties to the dispute and the nature of the dispute within 10 days after formally requesting arbitration under subsection (a) of this section. The Register shall cause a summary of such notice to be published in the Federal Register within 30 days after receipt of such notice. The arbitral panel shall permit any other interested copyright party or interested manufacturing party who moves to intervene within 20 days after such publication to intervene in the action.

"(d) AUTHORITY OF ARBITRAL PANEL TO ORDER RELIEF.—

"(1) TO PROTECT PROPRIETARY INFORMATION.—The arbitral panel shall issue such orders as are appropriate to protect the proprietary technology and information of parties to the proceeding, including provision for injunctive relief in the event of a violation of such order.

"(2) TO TERMINATE PROCEEDING.—The arbitral panel shall terminate any proceeding that it has good cause to believe has been commenced in bad faith by a competitor in order to gain access to proprietary information. The panel shall also terminate any proceeding that it believes has been commenced before the technology or product at issue has been sufficiently developed or defined to permit an informed decision concerning the applicability of this chapter to such technology or product.

"(3) TO ORDER RELIEF.—In any case in which the arbitral panel finds with respect to devices or media that were the subject of the dispute, that royalty payments have been or will be due under section 1011 of this title through the date of the arbitral decision, the panel shall order the deposit of such royalty payments pursuant to section 1013 of this title, plus interest calculated as provided under section 1961 of title 28, United States Code. The arbitral panel shall not award monetary or injunctive relief, as provided in section 1031 of this title or otherwise,

except as is expressly provided in this subsection.

"(e) EFFECT OF ARBITRATION PROCEEDING ON CIVIL ACTIONS AND REMEDIES.—Notwithstanding any provision of section 1031 of this title, no civil action may be brought or relief granted under section 1031 of this title against any party to an ongoing or completed arbitration proceeding under this section, with respect to devices or media that are the subject of such an arbitration proceeding. However, this subsection does not bar—

"(1) an action for injunctive relief at any time based on a violation of section 1021 of this title; or

"(2) an action or any relief with respect to those devices or media distributed by their importer or manufacturer following the conclusion of such arbitration proceeding, or, if so stipulated by the parties, prior to the commencement of such proceedings.

"(f) ARBITRAL COSTS.—Except as otherwise agreed by the parties to a dispute, the costs of an arbitral proceeding under this section shall be divided among the parties in such fashion as is considered just by the arbitral panel at the conclusion of the proceeding. Each party to the dispute shall bear it own attorney fees unless the arbitral panel determines that a nonprevailing party has not proceeded in good faith and that, as a matter of discretion, it is appropriate to award reasonable attorney's fees to the prevailing party.".

SEC. 3. TECHNICAL AMENDMENTS.

(a) FUNCTIONS OF REGISTER.—Chapter 8 of title 17, United States Code is amended—

(1) in section 801(b)—

(A) by striking "and" at the end of paragraph (2);

(B) by striking the period at the end of paragraph (3) and inserting "; and"; and

(C) by adding the following new paragraph at the end:

"(4) to distribute royalty payments deposited with the Register of Copyrights under section 1014, to determine, in cases where controversy exists, the distribution of such payments, and to carry out its other responsibilities under chapter 10"; and

(2) in section 804(d)—

(A) by inserting "or (4)" after "801(b)(3)"; and

(B) by striking "or 119" and inserting "119, 1015, or 1016".

(b) DEFINITIONS.—Section 101 of title 17, United States Code, is amended by striking "As used" and inserting "Except as otherwise provided in this title, as used".

(c) MASK WORKS.—Section 912 of title 17, United States Code, is amended—

(1) in subsection (a) by inserting "or 10" after "8"; and

(2) in subsection (b) by inserting "or 10" after "8".

SEC. 4. EFFECTIVE DATE.

This Act, and the amendments made by this Act, shall take effect on the date of the enactment of this Act or January 1, 1992, whichever date is later.

SEC. 5. TECHNICAL REFERENCE DOCUMENT FOR AUDIO HOME RECORDING ACT OF 1991.

SEC. 6. REPEAL OF SECTION 5.

Effective upon publication of the Technical Reference Document in the Federal Register pursuant to section 1022(a) of this title—

(a) section 5 of this Act shall be repealed, and

(b) section 1001(14) of this title shall be amended by striking "in section 5 of this Act" and inserting "as such document was published in the Federal Register pursuant to section 1022(a) of this title".

TECHNICAL REFERENCE DOCUMENT FOR THE AUDIO HOME RECORDING ACT OF 1991

INTRODUCTION

This Technical Reference Document is provided to facilitate the implementation of legislation relating to digital audio recording ("DAR") devices, known as the "Audio Home Recording Act of 1991" ("the Act").

This Technical Reference Document establishes the standards and specifications that are necessary to implement the Serial Copy Management System ("SCMS") under the Act. It draws in part from specifications proposed to the International Electrotechnical Commission ("IEC") in "IEC 958: Digital Audio Interface" (First edition 1989-03) and "Amendment Number 1 to IEC 958 (1989): Digital Audio Interface, Serial Copy Management System" (Reference 84(CO)126 submitted on June 21, 1991) (collectively, "IEC 958"), and "IEC 60A(CO)136 Part 6: Serial copy management system for consumer audio use DAT recorders". The standards and specifications set forth herein relate only to the implementation of SCMS via digital audio interface signals, DAR devices and digital audio interface devices. The standards and specifications set forth herein, as they may be amended pursuant to an order of the Secretary of Commerce under section 1022(b) of subchapter C of the Act, shall be considered determinative under the Act, regardless of any future action by the IEC or by a manufacturer or by an owner of a proprietary technology.

SCMS is intended to prohibit DAR devices from recording "second-generation" digital copies from "first-generation" digital copies containing audio material over which copyright has been asserted via SCMS. It does not generally restrict the ability of such devices to make "first-generation" digital copies from "original" digital sources such as prerecorded commercially available compact discs, digital transmissions or digital tapes.

Currently, the predominant type of DAR device offered for sale in the United States is the DAT recorder, which records and sends digital signals in accordance with the IEC 958 nonprofessional digital audio interface format. Additional types of DAR devices and interface formats are being or may be developed. The standards and specifications in this Technical Reference Document are not intended to hinder the development of such new technologies but require, in accordance with section 1021(a)(1)(A)-(C) of subchapter C of the Act, that they incorporate the functional characteristics of SCMS protection. In order for a DAR device to be "compatible with the prevailing method of implementing SCMS," to the extent DAR devices are capable of recording signals sent in a particular digital audio interface signal format, the SCMS information must be accurately received and acted upon by the DAR devices so as to correctly implement the same level of SCMS protection provided by that format. "Compatibility" does not require direct bit-for-bit correspondence across every interface signal format; indeed, particular interface signal formats may be recordable by some, but not all, DAR devices. To the extent that any digital audio interface device translates and sends signals in a form that can be recorded by a particular DAR device, however, "compatibility" requires that the SCMS information also be accurately translated and sent by the interface device, and accurately read and acted upon by the DAR device.

This document is in three parts. Part I section A sets forth standards and specifications constituting the functional characteristics for implementing SCMS in digital audio interface signals. Sections B and C then apply these standards and specifications in a specific reference for implementing SCMS in the IEC 958 nonprofessional digital audio interface format. Part II section A similarly first sets forth standards and specifications constituting the functional characteristics for implementing SCMS in DAR devices. Sections B and C then apply these standards and specifications in a specific reference for implementing SCMS with respect to the recording and play-back functions of nonprofessional model DAT recorders. Part III contains a series of charts that apply and correlate those codes that are mandated for implementation in DAT recorders by parts I-C and II-C of this document.

The terms "digital audio interface device," "digital audio recording device," "digital audio recording medium," "distribute," "professional model," and 'transmission" as used in this document have the same meanings as in the Act. "Generation status" means whether the signal emanates from a source that has been produced or published by or with the authority of the owner of the material, such as commercially released pre-recorded compact discs or digital tapes or a digital transmission (referred to herein as "original"); or whether the signal emanates from a recording made from such "original" material.

PART I. IMPLEMENTATION OF SCMS IN DIGITAL AUDIO INTERFACE FORMATS

Various consumer devices are capable of producing digital audio signals. Currently, for example, compact disc players, DAT recorders and analog-to-digital converters can send digital audio signals; future devices may include digital microphones or recordable compact disk devices. To enable communication between these different types of devices and a DAR device, it is necessary and desirable to establish common protocols or "interfaces" that mandate specific information in the digital audio output signal of each device. Digital signal interfaces may enable communication of different types of data. A "digital audio interface signal" communicates audio and related interface data as distinguished from, for example, computer or video data. Digital audio interface signal formats may be established for particular types of devices or uses. For example, interface protocols may exist for broadcast use, or for users of professional model products ("professional interface") or for nonprofessional model products ("nonprofessional interface") or for nonprofessional model products ("nonprofessional interface"). One such set of protocols already has been established in the document IEC 958. Sections B and C of part I summarize and mandate the implementation of SCMS in the IEC 958 nonprofessional interface.

Section A sets forth the standards and specifications for implementing SCMS in digital audio interface signals and devices.

(A) DIGITAL AUDIO INTERFACE STANDARD.—To implement the functional characteristics of SCMS in nonprofessional digital audio interface signal formats, whether presently known or developed in the future, the following conditions must be observed:

(1) The digital audio interface format shall provide a means to indicate—

(a) whether or not copyright protection is being asserted via SCMS over the material being sent via the interface; and

(b) whether or not the generation status of the material being sent via the interface is original.

(2) If the digital audio interface format has discrete professional and nonprofessional modes, the interface format and digital audio interface devices shall indicate accurately the professional or nonprofessional status of the interface signal. Such indication is referred to generically as a "channel status block flag".

(3) If the interface format has a discrete mode for sending data other than audio material, the interface format shall indicate accurately whether or not the interface signal contains audio material.

(4) If a digital audio interface device is capable of combining more than one digital audio input signal into a single digital audio output signal, and if copy right is asserted via SCMS over the material being sent in at least one of the input signals, then the device shall indicate in the output signal that copyright is asserted over the entire output signal. If copyright protection is asserted via SCMS over any of the input signals, and the generation status of that copyright-asserted signal is not original, then the entire output signal shall indicate that copyright is asserted and that the generation status is not original.

(5) Devices that are capable of reading original recordings and/or DAR media, and that are capable of sending digital audio signals that can be recorded by a DAR device, shall accurately read the copyright and generation status information from the media and accurately send that information.

(6) Devices having a nonprofessional digital audio interface shall receive and accurately send the copyright and generation status information.

(7) Professional devices that are capable of sending audio information in a nonprofessional digital audio interface format shall send SCMS information as implemented for that format. However, nothing shall prevent professional devices and/or recording professionals engaged in a lawful business from setting SCMS information according to the needs of recording professionals.

(8) If the audio signal is capable of being recorded by a DAR device and the interface format requires an indication of the type of device sending the signal via the interface, then the device shall send the most accurate and specific designation applicable to that device; for example, "Category Codes" as set forth in part I with reference to the IEC 958 nonprofessional interface.

(9) Devices that receive digital audio transmissions sent without copyright and generation status information shall indicate that copyright is asserted over the transmitted audio material and that the generation status is original. If the transmitting entity wishes to transmit copyright status information it shall do so accurately, and the information shall accurately be received and sent unaltered by the receiving device. In the case of Electronic Audio Software Delivery signal transmissions, the receiver shall accurately receive generation status information as sent by the transmitting entity so as to permit or restrict recording of the transmitted signals. "Electronic Audio Software Delivery" refers to a type of transmission whereby the consumer interactively determines what specific work(s) and/or events(s) are received. This includes, for example, "audio on demand" (electronic selection and delivery of sound recordings for copying) or "pay-per-listen" reception, as distinguished from regular broadcast or comparable cable radio programming services.

(10)(a) If the digital audio portion of an interface signal format is recordable by a "preexisting" type of DAR device, that is, one that was distributed prior to the distribution of the interface signal format, then the signal format shall implement the rules of SCMS so that the preexisting DAR device will act upon the rules of SCMS applicable to that DAR device.

(b) If a type of DAR device is capable of recording the digital audio portion of signals sent by a preexisting digital audio interface device, then the DAR device shall implement the rules of SCMS so that the DAR device will act upon the rules of SCMS applicable to that preexisting digital audio interface device's format.

(c) If a digital audio interface device is capable of translating a signal from one interface format to another, then the device also shall accurately translate and send the SCMS information.

(B) SUMMARY OF SCMS IMPLEMENTATION IN THE IEC 958 DIGITAL AUDIO INTERFACE.—Under IEC 958, SCMS is implemented via inaudible information, known as "channel status data", that accompanies a digital audio signal being sent to or by a DAR device via a nonprofessional digital audio interface. Like all digital data, channel status data consist of numerical information encoded as a series of zeros and ones. Each zero or one constitutes a "bit" of data in which both zero and one may impart information concerning the composition of the audio signal being sent to or by a DAR device. Bits represented in this Technical Reference Document as "X", rather than as zero or one, indicate that those bits may be either zero or one without affecting the specifications set forth herein.

Channel status data bits are organized into units of information, known as "blocks," relating to both the left and right stereo audio channels. Each block contains 192 bits of information, numbered consecutively from 0 to 191. Those channel status bits that are significant to the implementation of SCMS via the IEC 958 interface are included within channel status bits 0 through 15. Certain of these 16 bits identify professional or nonprofessional interfaces; some specify copyright assertion; and some identify the generation number of a recording. The remaining bits are "Category Codes" that describe the type of device sending the digital audio signal. More complete descriptions of these channel status bits are set forth in the remaining sections of this part I.

IEC 958 defines professional and nonprofessional interface formats for digital audio signals. An IEC 958 professional interface contains particular types of channel status data for such digital audio recording devices as would be used in professional model products. An IEC 958 nonprofessional interface contains different types of channel status data. The channel status data sent in a nonprofessional interface are incompatible with the channel status data in a professional interface; a DAR device cannot correctly read the channel status data sent in a professional interface.

The specifications summarized herein and mandated in section C apply only to devices that send or read an IEC 958 nonprofessional interface signal. To the extent that a professional device also may have a IEC 958 nonprofessional interface, such a professional device must be capable to sending channel status data via its nonprofessional interface in accordance with the standards set forth herein. However, nothing in this Technical Reference Document shall be interpreted to prevent a professional device having an IEC 958 nonprofessional interface and/or recording professionals engaged in a lawful business from permitting such channel status data bits to be set in accordance with the needs of recording professionals.

All devices having a digital audio output capable of supplying a digital audio signal to a DAR device through an IEC 958 nonprofessional interface must implement five types of codes located between Channel Status Bits 0 and 15. For the IEC 958 interface format, Channel Status Bits 0 through 15 are supplied in a digital audio output signal to a DAR device as follows:

(1) BIT 0.—Bit 0 (the "Channel Status Block Flag"), one of the "Control" bits, shall identify whether the channel status bits are for a professional or nonprofessional interface. Where Bit 0 is set as "1", the signal contains the channel status data required for a professional interface. Where Bit 0 is set as "0", the channel status data is suitable for a nonprofessional interface. The remaining bit assignments are mandated only with respect to a nonprofessional interface, that is, where Bit 0 is set as "0".

(2) BIT 1.—Bit 1, another of the "Control" bits, shall identify whether the signal being sent to or by the DAR device is a digital audio or a digital data signal. Where Bit 1 is set as "0", the signal is a digital audio signal. Where Bit 1 is set as "1", the signal is a digital data signal.

(3) BIT 2.—Bit 2 (the "C" Bit), another of the "Control" bits, shall identify whether copyright protection is asserted for the audio material being sent via the digital audio signal. Where the C Bit is set as "0", copyright protection has been asserted over the material being sent to the digital audio input of the DAR device. Where the C Bit is set as "1", either that material is not protected by copyright or no copyright protection has been asserted by the owner of that material. There are specific applications of the C Bit for three types of devices, as follows:

Compact disc players compatible with the standards set forth in IEC 908 (compact disc standard, Category Code 10000000) in effect as of the date of enactment of the Act indicate in the C Bit both the copyright and generation status of the signal. (See description of "Bit 15", infra.) Where the signal is original and copyright protection has been asserted, the C Bit ="0". Where no copyright protection has been asserted, the C Bit ="1". Where the signal is first-generation and copyright protection has been asserted, the C Bit will fluctuate between "0" and "1" at a rate of between 4–10 Hz.

Digital Receivers (Category Codes 001XXXXL and 0111XXXL) shall set the C Bit as "0", except that these devices shall send the C Bit as "1" only where the cable operator, broadcaster or other entity specifically transmits information indicating that no copyright protection has been asserted over the material.

Devices that combine digital audio input signals into one digital audio output signal for example, digital signal mixing devices) shall reflect whether copyright protection has been asserted in the C Bit for at least one of the input signals by setting the C bit as "0" in the resulting digital audio output signal.

Devices in the Category Codes for General ("00000000") and Present A/D Converters ("01100XXX") are not capable of sending copyright status information in the C Bit. The C Bit in the channel status data sent by these devices has no meaning.

There is no existing legal requirement that a copyright owner must assert protection over its material (and, therefore, set the C Bit as "0"). However, except as provided herein with respect to implementation in Digital Receivers (category codes 001XXXXL and 0111XXXL), a copyright owner may not set the C Bit as "0" for material that is not copyrighted or is in the public domain.

(4) BITS 3–7.—These bits are sent to and read by a DAR device, but specific bit settings for Bits 3–7 are not necessary for the implementation of SCMS. (Bits 6–7 are Music Production Program Block ("MPPB") flag bits.)

(5) BITS 8–14.—Bits 8–14 shall specify a "Category Code" that identifies the type of device that produces the digital audio signal sent to or by a DAR device. Using various combinations of zeros and ones, Bits 8–14 can define Category Codes for as many as 128 different devices that can provide digital audio signals to a DAR device. According to IEC 958, the first three to five Category Code bits (numbered Bits 8–10 through 8–12) describe general product groups, and the remaining Category Code bits specify particular devices within each product group. IEC 958 has assigned particular Category Codes to existing and anticipated product groups and devices, and has reserved additional Category Codes for future devices.

The Category Code issued by each particular device must reflect the most specific code applicable to that device, with the following exceptions:

Digital signal processing and mixing products receive digital audio signals from one or more sources and either process or combine them with other incoming digital audio signals. If all input signals come from analog-to-digital converters having a Category Code "01100XXX", these devices should issue the Category Code of an analog-to-digital converter rather than of the digital signal processing or mixing device.

Sampling rate converters and digital sound samplers come under the Category Codes for digital-to-digital converters. If an input signal to a sampling rate converter or digital sound sampler comes from an analog-to-digital converter having a Category Code "01100XXX", the sampling rate converter or digital sound sampler should issue the Category Code of the analog-to-digital converter.

These exception cases will permit two generations of digital copies from analog recordings, which currently is permitted under SCMS.

The relevance of these Category Codes to SCMS as implemented for devices having the IEC 958 nonprofessional interface is described in Section C and, specifically as to DAT recorders, in Part II Sections B and C.

(6) BIT 15.—Bit 15 (the "L" Bit) shall indicate the "generation status" of the digital audio signals being sent to or by a DAR device. "Generation status" means whether the signal emanates from a source that has been produced or published by or with the authority of the owner of the material, such as commercially released prerecorded compact discs or digital tapes or a digital transmission (referred to herein as "original"); or where the signal emanates from a recording made from such "original" material. In the latter case, a recording made directly from an "original" source is known as a "first-generation" copy; a recording made from a first-generation copy is a "second-generation" copy; and so forth. Because there is no restriction on the number of copies that can be made from material over which no copyright protection has been asserted, generation status is relevant only where copyright protection has been asserted over the signal. For most products, if the L Bit is set as "0", the source is a recording that is first-generation or higher. If the L Bit is set as "1", the source is "original." There are four specific categories of products which indicate generation status differently, as follows:

Compact disc players compatible with the specifications in IEC 908 (Category Code 10000000) are incapable of controlling the L Bit. These products signal generation status solely by means of the C Bit (Bit 2).

Digital audio output signals from all other laser-optical products (Category Code 100XXXXL) shall send the L Bit as "0" for "original" material and the L Bit as "1" for first-generation or higher recordings.

Digital Receivers (Category Codes 001XXXXL and 0111XXXL) shall set the L Bit as "0"; except in the case of receivers for Electronic Audio Software Delivery, which receivers shall send the L Bit as "1" only where the entity specifically transmits information indicating that the material should be treated as if it were first generation or higher.

Devices that combine more than one digital audio input signal into one digital audio output signal, such as digital signal processors or mixers, shall reflect in the L Bit of the output signal the highest generation status of any input containing material over which copyright protection has been asserted. Thus, where one or more of the constituent input signals contains material that is not original (that is, a first-generation copy) and over which copyright protection is asserted, then the device must reflect in the L Bit of the digital audio output signal a nonoriginal generation status. In all other cases, the device shall reflect in the L Bit that the output signal is original.

(C) MANDATORY SPECIFICATIONS FOR IMPLEMENTING SCMS IN THE IEC 958 DIGITAL AUDIO INTERFACE.—The following bit assignments for channel status data, as referenced in the provisions of IEC 958 paragraph 4.2.2 "Channel status data format for digital equipment for consumer use", shall be mandatory for devices implementing the IEC 958 interface:

(1) BITS 0–2 OF THE "CONTROL" BITS.—

(a) BIT 0 (THE "CHANNEL STATUS BLOCK FLAG"):

Bit 0="0"	Nonprofessional interface.
Bit 0="1"	Professional interface.

(b) BIT 1:

Bit 1="0"	Digital audio signals.
Bit 1="1"	Nonaudio (data) signals.

(c) BIT 2 (THE "C" BIT)—

(i) CASE 1:

Bit 2="0"	Copyright protection asserted.
Bit 2="1"	No copyright protection asserted or not under copyright.

(ii) CASE 2—COMPACT DISC PLAYERS.—For compact disc players compatible with IEC 908 (Category Code 10000000), the C Bit shall indicate:

Bit 2="0"	Copyright protection asserted and generation status is "original".
Bit 2="1"	No copyright protection asserted.

Where the Bit 2 fluctuates between '0" and "1" at a rate between 4–10 Hz, copyright protection has been asserted and the signal is first generation or higher.

(iii) CASE 3—DIGITAL RECEIVERS.—For Digital Receivers (Category Codes 001XXXXL and 0111XXXL), the C Bit shall indicate, where copyright information is transmitted to the digital receiver:

Bit 2="0"	Copyright protection asserted.
Bit 2="1"	No copyright protection asserted

Where no copyright information is transmitted to the receiver, the digital receiver shall set the C Bit as "0".

(iv) CASE 4—DIGITAL SIGNAL MIXERS.—Where a single digital audio output signal results from the combination of more than one digital audio input signal:

Bit 2="0"	Copyright protection asserted over at least one of the constituent digital audio input signals.
Bit 2="1"	For all of the constituent digital audio input signals, no copyright protection asserted or not under copyright.

(v) EXCEPTION CASE.—The C Bit has no meaning for A/D converters for analog signals that do not include status information concerning the C Bit and the L Bit (that is, A/D converters in Category Code 01100XXX).

(2) BITS 3–7.—Specific bit settings for Bits 3–7 are not necessary for the implementation of SCMS.

(3) CATEGORY CODE BITS 8–15:

(a) BITS 8–15.—The Category Codes that follow are established for particular product groups. Where Bit 15 is represented by "L" rather than a zero or one, Bit 15 (the "L" Bit) can be either a zero or one without affecting the Category Code. Where Bit 15 is represented by "X" rather than a zero or one, the device is not capable of issuing status information concerning the L Bit:

00000000	General. This category applies to products that are capable of sending channel status data but are not programmed to send such data in accordance with the specifications set forth in this Technical Reference Document because the products were manufactured before the effective date of the Act. This General Category Code shall not be used for products manufactured after the effective date of the Act.
0000001L	Experimental products not for commercial sale.
100XXXXL	Laser-optical products, such as compact disc players (including recordable and erasable compact disk players) and videodisc players with digital audio outputs.
010XXXXL	Digital-to-digital ("D/D") converters and signal processing products.
110XXXXL	Magnetic tape or disk based products, such as DAT players and recorders.
001XXXXL and 0111XXXL	Receivers of digitally encoded audio transmissions with or without video signals.
101XXXXL	Musical instruments, microphones and other sources that create original digital audio signals.
01100XXX	Analog-to-digital ("A/D") converters for analog signals without status information concerning the C Bit and the L Bit ("Present A/D converters").
01101XXL	A/D converters for analog signals which include status information concerning the C Bit and the L Bit ("Future A/D converters").
0001XXXL	Solid state memory based media products.

Particular devices within each product group defined above shall be assigned specific Category Codes in accordance with IEC 958. Manufacturers of any device that is capable of supplying a digital audio input to a DAR device must use the most specific Category Code applicable to that particular device. However, digital signal processing or digital signal mixing products in Category Code product group "010XXXXL" shall issue the Category Code for Present A/D converters where all the input signals have the Category Code for a Present A/D converter. Similarly, sampling rate converters in Category Code "0101100L" and digital sound samplers in Category Code "0100010L" shall issue the Category Code for Present A/D converters where the input signal comes from a Present A/D converter.

(b) BIT 15 (THE "L" BIT).—The L Bit shall be used to identify the generation status of the digital audio input signal as emanating from an "original" source or from a nonoriginal (that is, first-generation or higher) recording.

(1) CASE 1—GENERAL CASE.—For all Category Codes (except as explicitly set forth below), the L Bit shall indicate:

Bit 15="0"	First-generation or higher recording.
Bit 15="1"	"Original" source, such as a commercially released prerecorded digital audiogram.

(2) CASE 2.—LASER OPTICAL PRODUCTS.—The reverse situation is valid for laser optical products (Category Code 100XXXXL), other than compact disc players compatible with IEC 908 (Category Code 10000000). For laser optical products in Category Code 100XXXXL, the L Bit shall indicate:

Bit 15 = "1"	First-generation or higher recording.
Bit 15 = "0"	"Original" recording, such as a commercially released prerecorded compact disc.

(3) CASE 3.—DIGITAL RECEIVERS.—For Digital Receivers (Category Codes 001XXXXL and 0111XXXL), Bit 15 always shall be set as "0";

except for receivers for Electronic Audio Software Delivery, for which the L Bit shall indicate:

Bit 15 = "0"	*Generation status information transmitted as "original" material.*
Bit 15 = "1"	*Generation status information transmitted as for nonoriginal material, or no generation status information transmitted.*

(4) CASE 4.—DIGITAL SIGNAL MIXERS.—Where a single digital audio output signal results from the combination of more than one digital audio input signal:

Bit 15 = "0"	*One or more of those constituent digital audio input signals over which copyright protection has been asserted is first-generation or higher.*
Bit 15 = "1"	*All other cases.*

(5) EXCEPTION CASE.—The L Bit has no meaning for A/D converters for analog signals that do not include status information concerning the C Bit and the L Bit (that is, A/D converters in Category Code 01100XXX) and compact disc players in Category Code 10000000.

PART II. SERIAL COPY MANAGEMENT SYSTEM FOR DAR DEVICES AND NONPROFESSIONAL MODEL DAT RECORDERS

The intention of SCMS is generally to prevent DAR devices from making second-generation or higher "serial" digital recordings of "original" digital audio material over which copyright protection has been asserted through SCMS. SCMS does not prevent the making of a first-generation recording of such "original" digital audio material. As future technologies permit, SCMS may limit the digital recording by a DAR device of analog audio material over which copyright protection has been asserted to the making of only first-generation digital copies. However, because present technology does not identify whether analog audio material is protected by copyright, SCMS will not prevent the making of first- and second-generation digital copies of such material. SCMS will not restrict digital recording of material carrying an indication through SCMS that copyright protection has not been asserted. SCMS does not apply to professional model products as defined under the Act.

(A) GENERAL PRINCIPLES FOR SCMS IMPLEMENTATION IN DAR DEVICES.—To implement the functional characteristics of SCMS in DAR devices, whether presently known or developed in the future, the following conditions must be observed:

(1) A digital audio recording medium shall be capable of storing an indication of—

(a) whether or not copyright protection is being asserted over the audio material being sent via the interface and stored on the DAR medium; and

(b) whether or not the generation status of the audio material being sent via the interface and stored on the DAR medium is original.

(2) If the digital audio interface format being sent to and read by a DAR device has discrete modes for professional as well as nonprofessional purposes, the DAR device shall distinguish accurately the professional or nonprofessional status of the interface signal.

(3) If the interface format has a discrete mode for sending data other than audio material, the DAR device shall distinguish accurately whether or not the interface signal contains audio material.

(4) A DAR device capable of receiving and recording digital audio signals shall observe the following rules:

(a) Audio material over which copyright is asserted via SCMS and whose generation status is original is permitted to be recorded. An indication that copyright is asserted over the audio material contained in the signal and that the generation status of the recording is first generation shall be recorded on the media.

(b) Audio material over which copyright is not asserted via SCMS may be recorded, without regard to generation status. An indication that copyright is not asserted shall be recorded on the media.

(c) Audio material over which copyright is asserted via SCMS and whose generation status is not original shall not be recorded.

(5) DAR media shall store the copyright and generation status information as described herein during recording in a manner that the information can be accurately read.

(6) Devices that are capable of reading original recordings and/or DAR media, and that are capable of sending digital audio signals that can be recorded by a DAR device, shall accurately read the copyright and generation status information from the media and accurately send the information.

(7) DAR devices shall not be capable of recording digital audio signals transmitted in a professional digital audio interface format.

(8) DAR devices having a nonprofessional digital audio interface shall receive and accurately send the copyright and generation status information.

(9) Professional devices that are capable of sending audio information in a nonprofessional digital audio interface format shall send SCMS information as implemented for that format. However, nothing shall prevent professional devices and/or recording professionals engaged in a lawful business from setting SCMS information according to the needs of recording professionals.

(10) Digital audio signals that are capable of being recorded by a DAR device but that have no information concerning copyright and/or generation status shall be recorded by the DAR device so that the digital copy is copyright asserted and original generation status.

(11) If the signal is capable of being recorded by a DAR device and the interface format requires an indication of the type of device sending the signal via the interface, then the device shall send the most accurate and specific designation applicable to that device; for example, "Category Codes" as set forth in part I with reference to the IEC 958 nonprofessional interface.

(12) Except as may be provided pursuant to section 1022(b)(4) of subchapter C of the Act, a DAR device that is capable of converting analog input signals to be recorded in digital format shall indicate that the digital copy is copyright asserted and original generation status.

(13)(a) If the digital audio portion of an interface signal format is recordable by a "preexisting" type of DAR device, that is, one that was distributed prior to the distribution of the interface signal format, then the signal format shall implement the rules of SCMS so that the preexisting DAR device will act upon the rules of SCMS applicable to that DAR device.

(b) If a type of DAR device is capable of recording the digital audio portion of signals sent by a preexisting digital audio interface device, then the DAR device shall implement the rules of SCMS so that the DAR device will act upon the rules of SCMS applicable to the format of that preexisting digital audio interface device.

(c) If a digital audio interface device is capable of translating a signal from one interface format to another, then the device also shall accurately translate and send the SCMS information.

(B) SUMMARY OF MANDATORY SCMS SPECIFICATIONS FOR DAT RECORDERS.—SCMS, to be implemented for DAT machines, requires that a DAT machine must play-back and/or record specific inaudible data in a particular location on a DAT tape. According to IEC documents "IEC 60A(CO)130 part 1: Digital Audio Tape Cassette System (DAT) Dimensions and Characteristics" and "IEC 60A(CO)136 part 6: Serial copy management system for consumer audio use DAT recorders", that particular location on the digital audio tape consists of two bits known as "subcode ID6 in the main ID in the main data area" ("ID6").

(1) SCMS OPERATION WHEN PLAYING A DAT TAPE.—With respect to the play-back function, a DAT machine that is connected to a DAT recorder can provide digital audio output signals via a nonprofessional interface. In that circumstance, the DAT play-back machine functions as a digital audio interface device that must provide channel status data conforming to the general principles and specifications set forth in part I. SCMS as implemented for the IEC 958 nonprofessional interface format requires that when a DAT tape is played back, the DAT play-back machine reads the information from ID6 on the tape and then sends the corresponding channel status data (concerning Bit 2 "the C Bit" and Bit 15 "the L Bit"), along with the Category Code for a DAT machine, in its digital audio output signal. The channel status data to be sent in response to the various settings of ID6 are as follows:

(a) Where ID6 is set as "00", copyright protection has not been asserted over the material under SCMS. In response to ID6, the digital audio signal output of the DAT will provide the C Bit set as "1" and the L Bit set as "0".

(b) Where ID6 is set as "10", copyright protection has been asserted over the material under SCMS and the recording is not "original". In response to ID6, the digital audio output signal of the DAT will provide the C Bit set as "0" and the L Bit set as "0".

(c) Where ID6 is set as "11", copyright protection has been asserted over the material under SCMS and the recording is "original". In response to ID6, the digital audio output signal of the DAT will provide the C Bit set as "0" and the L Bit set as "1".

(2) SCMS OPERATION WHEN RECORDING ON DAT TAPE.—With respect to the recording function, SCMS governs the circumstances and manner in which a DAT recorder may record a digital audio input signal. A DAT recorder implementing SCMS information being sent in the IEC 958 nonprofessional interface format must be capable of acknowledging the presence or absence of specific channel status information being sent to the DAT recorder via its digital audio input. The DAT recorder then responds to that channel status information by either preventing or permitting the recording of that digital audio input signal. If recording is permitted, the DAT machine records specific codes in ID6 on the tape, so that when the tape is played back, the DAT machine will issue the correct channel status data in its digital audio output signal. The settings of ID6 to be recorded in response to particular IEC 958 channel status bit information are as follows:

(a) Where the C bit of the digital audio input signal is set as "0" (copyright protection asserted), the DAT recorder shall not record the input, except in three circumstances: (a) where the input is original material and the digital audio input signal comes from one of the products on the "Category Code White List" (section D below); (b) where the digital audio input signal contains an undefined Category Code (in which case only one generation of recording is permitted); or, (c) where the digital audio input signal comes from a product with a defined Category Code but the product currently is not capable of transmitting information regarding copyright protection (in which case, two generations of copying are possible). In circumstances (a) and (b) above, the DAT recorder will record

"10" in ID6 to prevent further copying. In circumstance (c) above, the DAT recorder will record "11" in ID6 for the first-generation copy.

(b) Where the C Bit of the digital audio input signal is set as "1" (no copyright protection asserted or not copyrighted), the DAT recorder will record "00" in ID6, and unlimited generations of copying will be permitted.

(c) Where the C Bit of the digital audio input signal fluctuates between "0" and "1" at a rate of between 4–10 Hz, the signal is coming from a compact disc player compatible with IEC 908 (Category Code 10000000) which plays back a compact disc that is not an "original" and that contains material over which copyright protection has been asserted. The DAT recorder shall not record in this circumstance.

(d) The condition "01" in ID6 has been assigned no meaning within SCMS. Therefore, to prevent circumvention of SCMS, the DAT recorder shall not record "01" in ID6 on the tape.

(C) MANDATORY SPECIFICATIONS FOR IMPLEMENTING SCMS IN DAT RECORDERS IN THE IEC 958 FORMAT.—

(1) MANDATORY STANDARDS FOR DIGITAL AUDIO OUTPUT SIGNALS.—

(a) CATEGORY CODE BIT 15 (THE "L" BIT).—All nonprofessional model DAT recorders having a IEC 958 interface shall provide the Category Code "1100000L" in the channel status bits of the IEC 958 digital audio output signal. The status of the L Bit of the Category Code shall be provided in the digital audio output signal of the DAT recorder as follows, in accordance with the status of ID6:

When ID6 is "00", the digital audio output signal shall indicate in the L Bit of the Category Code that the output source is either a first-generation or higher DAT tape recorded from an "original" source, or an "original" commercially released prerecorded DAT tape of material over which copyright protection is not being asserted under SCMS. In either of these cases, the L Bit shall be set as "0", and the complete Category Code would be "11000000".

When ID6 is "10", the digital audio output signal shall indicate in the L Bit of the Category Code that the output source is a first-generation or higher DAT tape recorded from an "original" source (that is, L Bit="0"). The complete Category Code in this case would be "11000000".

When ID6 is "11", the digital audio output signal shall indicate in the L Bit of the Category Code that the output source is an "original" source, such as a commercially released prerecorded DAT tape (that is, L Bit="1"). The complete Category Code in this case would be "11000001".

(b) BIT 2 (THE "C" BIT).—All nonprofessional model DAT recorders having an IEC 958 nonprofessional interface shall provide an output code in the C Bit in the channel status bits of the IEC 958 digital audio output signal. The C Bit shall be applied in the digital audio output signal as follows, in accordance with the status of ID6:

When ID6 is "00", the C Bit shall be set as "1".

When ID6 is "10" or "11", the C Bit shall be set as "0".

(2) MANDATORY SPECIFICATIONS FOR RECORDING FUNCTIONS.—SCMS with respect to recording functions performed by a nonprofessional model DAT recorder receiving digital audio input signals in the IEC 958 nonprofessional interface format shall be implemented as follows:

(a) Digital audio input signals in which the C Bit is set as "0" shall not be recorded, except for the cases specified below in paragraphs b, d, and e.

(b) A DAT recorder may record a digital audio input signal in which the C Bit is set as "0", where the Category Code of the signal is listed in the "Category Code White List." The DAT recorder shall record "10" in ID6 on the tape in this case.

(c) For digital audio input signals in which the C Bit is set as "1", the DAT recorder shall record "00" in ID6 on the tape except for those cases specified below in paragraphs d and e.

(d) For digital audio input signals that contain Category Code information that is not defined in this document, the DAT recorder shall record "10" in ID6, regardless of the status of the C Bit or the L Bit.

(e) For digital audio input signals originating from a source identified as an A/D converter with the Category Code "01100XXL", or from other sources such as from A/D converters with the Category Code for "General" ("00000000"), the DAT recorder shall record "11" in ID6, regardless of the status of the C Bit or the L Bit. This requirement shall be applied to digital input signals that do not contain source information of the original signal before digitization, for example, and A/D converter that does not deliver source information.

(f) For digital input signals originating from an A/D converter with the Category Code "01101XXL", which can deliver original source information concerning the C Bit and L Bit even if the source is in analog format, the requirement stated above in paragraph e shall not be applied. The "Category Code White List" includes this Category Code.

(g) A DAT tape of "original" generation status over which copyright protection has been asserted shall contain "11" in ID6. A DAT tape of "original" generation status over which no copyright protection has been asserted shall contain "00" in ID6.

(h) A DAT recorder shall not record digital audio input signals where the C Bit alternates between "0" and "1" at a frequency of between 4 and 10 Hz and the Category Code is for a Compact disc digital audio signal ("10000000"), as in the case of digital audio input signals from recordable or erasable compact discs that are not "original" and that contain material over which copyright protection has been asserted.

(i) A nonprofessional model DAT recorder shall not record digital audio input signals sent from a professional interface, that is, where channel status Bit 0 is set as "1".

(j) The condition "01" in ID6 is not to be used.

(k) Category codes and the C Bit included in the channel status information of digital audio input signals being sent to or by a DAT recorder shall not be deleted or modified and shall be monitored continuously and acted upon accordingly.

(D) "CATEGORY CODE WHITE LIST".—

100XXXX0	*Laser optical product.*
010XXXX1	*Digital-to-digital converter and signal processing devices.*
110XXXX1	*Magnetic tape and disk based product.*
001XXXX0 and 0111XXX0	*Receivers of digitally encoded audio transmissions with or without video signals.*
101XXXX1	*Musical instruments.*
01101XX1	*Future A/D converter (with status information concerning the C Bit and L Bit).*
0001XXX1	*Solid state memory based media products.*
00000011	*Experimental products not for commercial sale.*

PART III. APPLICATION OF SCMS IN DAT RECORDERS IMPLEMENTING THE IEC 958 INTERFACE

The following charts apply and correlate those codes that are mandated under the Act to implement SCMS in nonprofessional model DAT recorders having an IEC 958 nonprofessional interface, in those situations contemplated by these standards. The columns in each of these charts identify the following information:

The "Signal Source" column describes the type of product sending the digital audio signal to a DAT recorder.

The three columns under the heading "Digital Audio Input Signal," that is, the signal sent to the DAT recorder, identify the correct channel status information in the C Bit, Category Code Bits 8–14 and the L Bit, respectively, which correspond to each product. (In each case, Bit 0 will be "0" to indicate that the signal is being sent in the IEC 958 nonprofessional interface format, and Bit 1 will be "0" to indicate that the signal consists of audio data.)

The next three columns under the heading "DAT Recorder Response" identify the response of the DAT recorder to the corresponding digital audio input signal. The column "ID6" specifies the code that the DAT recorder will record on the tape in ID6 in response to the digital audio input signal. The last two columns set forth the correct channel status information in the C Bit and L Bit that are sent in the digital audio output signal of a DAT recorder in response to the setting of ID6.

Each of the appropriate codes is set forth in the cases described below:

Case 1: Where copyright protection has been asserted over the digital audio input, and the source of the input is "original" material (Only first-generation recording permitted):

Signal Source	Digital Audio Input Signal			DAT Recorder Response		
	C Bit (Bit 2)	Category code (Bits 8–14)	L bit (Bit 15)	ID6	C Bit (Bit 2)	L bit (Bit 15)
Laser Optical	0	100XXXX	0	10	0	0
D/D converter	0	010XXXX	1	10	0	0
Magnetic prod.	0	110XXXX	1	10	0	0
Musical Instrum.	0	101XXXX	1	10	0	0
Future A/D conv.	0	01101XX	1	10	0	0
Digital Receiver	0	001XXXX	0	10	0	0
Digital Receiver	0	0111XXX	0	10	0	0
Experimental	0	0000001	1	10	0	0
Solid state dev.	0	0001XXX	1	10	0	0

Case 2: Where copyright protection has not been asserted over the digital audio input, and the source of the input is "original" material (First-generation and above recording permitted):

Signal Source	Digital Audio Input Signal			DAT Recorder Response		
	C Bit (Bit 2)	Category code (Bits 8–14)	L bit (Bit 15)	ID6	C Bit (Bit 2)	L bit (Bit 15)
Laser Optical	1	100XXXX	0	00	1	0
D/D converter	1	010XXXX	1	00	1	0
Magnetic prod.	1	110XXXX	1	00	1	0
Musical Instrum.	1	101XXXX	1	00	1	0
Future A/D conv.	1	01101XX	1	00	1	0
Digital Receiver	1	001XXXX	0	00	1	0
Digital Receiver	1	0111XXX	0	00	1	0
Experimental	1	0000001	1	00	1	0
Solid state dev.	1	0001XXX	1	00	1	0

Case 3: Where copyright protection has been asserted over the digital audio input, and the source of the input to the DAT recorder is not "original" material (No recording permitted):

Signal Source	Digital Audio Input Signal			DAT Recorder Response		
	C Bit (Bit 2)	Category code (Bits 8–14)	L bit (Bit 15)	ID6	C Bit (Bit 2)	L bit (Bit 15)
Laser Optical	0	100XXXX		.....	.....	
D/D converter	0	010XXXX		.....	.....	
Magnetic prod.	0	110XXXX		.....	.....	
Musical Instrum.	0	101XXXX		.....	.....	
Future A/D conv.	0	01101XX		.....	.....	
Experimental	0	0000001		.....	.....	
Solid state dev.	0	0001XXX		.....	.....	

Case 4: Where copyright protection has not been asserted over the digital audio input, and the source of the input to the DAT recorder is not "original" material (Second-generation and above recording permitted):

Signal Source	Digital Audio Input Signal			DAT Recorder Response		
	C Bit (Bit 2)	Category code (Bits 8–14)	L bit (Bit 15)	ID6	C Bit (Bit 2)	L bit (Bit 15)
Laser Optical	1	100XXXX	1	00	1	0
D/D converter	1	010XXXX	0	00	1	0
Magnetic prod.	1	110XXXX	0	00	1	0
Musical Instrum.	1	101XXXX	0	00	1	0
Future A/D conv.	1	01101XX	0	00	1	0
Experimental	1	0000001	0	00	1	0
Solid state dev.	1	0001XXX	0	00	1	0

Case 5: Where the digital audio input signal includes Category Code information, but cannot provide information concerning copyright protection of the source (First- and second-generation recording permitted):

Signal Source	Digital Audio Input Signal			DAT Recorder Response		
	C Bit (Bit 2)	Category code (Bits 8–14)	L bit (Bit 15)	ID6	C Bit (Bit 2)	L bit (Bit 15)
General	X	0000000	0	11	0	1
Present A/D Con	X	01100XX	X	11	0	1

Case 6: Where the digital input signal does not include a defined Category Code (First-generation recording permitted):

Signal Source	Digital Audio Input Signal			DAT Recorder Response		
	C Bit (Bit 2)	Category code (Bits 8–14)	L bit (Bit 15)	ID6	C Bit (Bit 2)	L bit (Bit 15)
Undefined	X	.....	X	10	0	0

Case 7: Where copyright protection has been asserted over the digital audio input from a compact disc that is not an "original" by fluctuating the C Bit at a rate between 4–10 Hz (No recording permitted):

Signal Source	Digital Audio Input Signal			DAT Recorder Response		
	C Bit (Bit 2)	Category code (Bits 8–14)	L bit (Bit 15)	ID6	C Bit (Bit 2)	L bit (Bit 15)
CD Player	0/1	1000000	X			

Case 8: Where the digital signal transmitted to a Digital Receiver does not include information concerning copyright protection (Only first-generation recording permitted):

Signal Source	Digital Audio Input Signal			DAT Recorder Response		
	C Bit (Bit 2)	Category code (Bits 8–14)	L bit (Bit 15)	ID6	C Bit (Bit 2)	L bit (Bit 15)
Digital Receiver	0	001XXXX	0	10	0	0
Digital Receiver	0	0111XXX	0	10	0	0

Case 9: Where the digital signal transmitted to a receiver for Electronic Audio Software Delivery provides generation status information as if the status were first-generation or higher (No recording permitted):

Signal Source	Digital Audio Input Signal			DAT Recorder Response		
	C Bit (Bit 2)	Category code (Bits 8–14)	L bit (Bit 15)	ID6	C Bit (Bit 2)	L bit (Bit 15)
Digital Receiver	0	001XXXX	1			
Digital Receiver	0	0111XXX	1			

AMENDMENT NO. 2431

Mr. RIEGLE. Mr. President, on behalf of Senators DECONCINI and HATCH, I send a substitute amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Michigan [Mr. RIEGLE], for Mr. DECONCINI for himself and Mr. HATCH, proposes an amendment numbered 2431.

Mr. RIEGLE. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

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

(The text of the amendment appears in today's RECORD under "Amendments Submitted.")

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 2431) was agreed to.

Mr. DECONCINI. Mr. President, S. 1623, the Audio Home Recording Act of 1991, was amended and favorably reported out of the Judiciary Committee by unanimous consent on November 21, 1991. Since that time I have worked with various groups regarding several changes that are necessary to clarify the intent and scope of this bill.

First, the bill has been amended to exclude so-called spoken word recordings—for example, books on tape, recordings of instructional materials and conference proceedings, and the like—from the scope of the bill. To this end, the definition of "audiogram" has been amended to exclude material objects consisting of "spoken word recordings." The term "spoken word recording" is defined as "a sound recording in which are fixed only a series of spoken words, except that the spoken words may be accompanied by ancillary musical or other sounds." This new definition will ensure that objects embodying "books on tape" and other forms of spoken word recordings are not considered to be "audiograms," even if they contain brief musical passages or other sounds as, for example, interludes between chapters or pages, or as occasional background to the spoken words.

If the musical or other sounds are more than ancillary to the recording, such as in the case of rap, gospel, or similar music types that frequently rely on spoken phrases, the recording is not a spoken word recording. I believe that recordings of such music types should be included in the scope of the bill; they are created by songwriters, performed by recording artists, marketed by recording companies, and sold through traditional record outlets. Most important, even when words are spoken in these recordings, they have the rhythmic and tonal qualities of music.

Second, certain members of the computer industry have expressed concerns that the language of S. 1623 does not make sufficiently clear that material objects containing general purpose computer programs are not included within the definition of "audiogram." In order to further clarify this point, the definition of the term "audiogram" has been amended to expressly exclude material objects in which one or more computer programs are fixed, except for certain specialized statements or instructions that may be contained in CD's, digital audio tapes, and similar objects covered by the legislation.

Third, the definition of "digital audio recording medium" has been amended to clarify that whether or not a recording medium qualifies as a digital audio recording medium depends in part upon whether the media product is "primarily marketed or most commonly used by consumers for the purpose of making digital audio copied recordings by use of a digital audio recording device." The "primarily marketed or most commonly used" test should be applied on a product-by-product basis, taking into account, among other things, the advertising and marketing channels for the media product, its packaging and markings, and the actual uses to which the product is put, rather than merely focusing on the product's generic format or capability. The legislation has been amended to more clearly reflect this intent.

Fourth, concerns were expressed that the definition of "digital audio interface device" might encompass certain devices that were not designed to communicate digital audio interface signals to digital audio interface devices. As reflected in part I of the Technical Reference Document, such devices were not intended to fall within the definition of "digital audio interface device." This definition has been amended to clarify this.

Fifth, the word "digital" has been inserted before the phrase "recording function" in the definition of "digital audio recording device." The definition focuses on "the recording function" of the device and whether it is designed or marketed for the primary purpose of making a digital audio copied recording. A recording device may, however, have both digital and analog recording capabilities. In determining the "primary purpose" of the recording function, consideration of any analog recording capability was not intended. Therefore, in order to remove any ambiguity as to the applicability of the legislation with respect to such devices, the phrase "recording function" has been expanded to include the term "digital."

Sixth, the headings "GENERALLY" and "EXAMPLE" have been deleted from section 1002(a)(1) and (2), and the two provisions have been joined. The provision following the heading "EXAMPLE" is intended to make clear that copying by a consumer for private, noncommercial use is not for direct or indirect commercial advantage, and is therefore not actionable. The intent of the provision is better clarified by deleting these headings.

Seventh, several amendments have been made to section 1011. The section contains provisions concerning the certification and verification of the annual statements of account filed with the Copyright Office by manufacturers and importers of digital audio recording devices and media. These clarifications are based upon the comments of

the American Institute of Certified Public Accountants.

Eighth, under section 1014(b)(1), portions of the royalty payments allocated to the sound recordings fund were to be distributed to the American Federation of Musicians and the American Federation of Television and Radio Artists—or any successor entities—for the benefit of nonfeatured musicians and vocalists. These provisions have been amended to require the placement of the nonfeatured musicians' and vocalists' portions of the royalty payments into escrow accounts managed by independent administrators jointly appointed by the interested copyright parties under section 1001(7)(A) and each of the relevant unions.

The creation of separately administered escrow accounts solely for the receipt and distribution of royalty payments earmarked for nonfeatured musicians and nonfeatured vocalists will best ensure speedy and efficient payment of moneys to nonfeatured performers. Management of the escrow accounts by independent administrators jointly appointed by the record companies and the unions who are engaged in the day-to-day representation of the performers ensures access to production and employment data which might otherwise have to be independently generated, and in addition, provides experienced administrators who deal with such data on a regular basis. For instance, record companies and unions jointly participate in the administration of pension funds—the American Federation of Musicians-Employer Pension Fund and the American Federation of Television and Radio Artists Health and Retirement Fund—for musicians and vocalists. In addition, various collective-bargaining agreements in the entertainment industry create special payment funds administered by neutral administrators. In all of these cases, the funds operate totally separate and apart from the operation of the respective unions. Moreover, the funds are subject to annual independent audits, and deductions from the funds are limited to the costs associated with administering the funds, such as investments, fund accounting, bookkeeping, recordkeeping, salaries, and fees. The committee expects the two newly created escrow accounts to operate in a similar manner.

Moreover, since access to these funds should not be limited to union members, the section has been amended to clarify that nonfeatured musicians and nonfeatured vocalists who are not affiliated with either the American Federation of Musicians or the American Federation of Television and Radio Artists also are to receive their appropriate shares of royalty payments.

Finally, the language in the bill concerning the 50-50 split of royalty payments between writers and music publishers has been modified so as to provide that the overriding of any conflicting contractual obligations will not apply where such an override would be inconsistent with international obligations of the United States. Although such an override is not inconsistent with any current obligations of the United States, the U.S. Government is presently seeking, in the Uruguay round and other international negotiations, to obtain binding international commitments to respect foreign contractual relationships in providing access to royalty pools and otherwise enforcing copyrights. Should the United States become a party to international commitments along these lines, the bill would direct that the musical works fund be administered in such a way as to adhere to these commitments in distributing royalty payments to foreign rightsholders.

• Mr. HELMS. Mr. President, I thank the Senator from Arizona for his efforts to address the concerns of several Senators regarding the section which gave unions control of the royalties to be distributed to nonfeatured musicians and vocalists. We were concerned that the funds could be misused, for example, for political purposes. Furthermore, we wanted to ensure that union and nonunion nonfeatured musicians and vocalists were treated equally. We spent several months negotiating a compromise provision.

Mr. President, for the record, would my friend from Arizona clarify the new section 1014(b) of S. 1623, regarding the distribution of royalty payments from the sound recordings fund? It is my understanding that any distributions would be made on a neutral basis to deserving parties, regardless of union membership and that disputes involving royalty distribution may be settled in state courts.

Mr. DECONCINI. Mr. President, the Senator from North Carolina is absolutely right. A portion of the sound recordings fund, to be exact, 2⅝th percent for nonfeatured musicians and 1⅜ percent for nonfeatured vocalists, shall be placed in separate escrow accounts managed by independent administrators. Those individuals will be jointly appointed by interested copyright parties, and the American Federation of Musicians or the American Federation of Television and Radio Artists, respectively.

Let me stress that this is neutral legislation. The legislation is very clear and spells out that a deserving performer will be paid whether or not that individual is a member of a union.

With regard to any disputes involving royalty distribution, I note that under state law trust administrators have fiduciary responsibilities to trust beneficiaries. Accordingly, to the extent that a fund administrator has breached this fiduciary duty, recourse in State court would be available.

I appreciate the Senator's interest in this legislation and his concern over royalty distributions. Section 1014 is the result of much thought and hard work where the concerns of all parties were taken into account. I think you will find the result is fair to all.

Mr. HELMS. I thank the Senator.•

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

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

The bill was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

(The text of the bill, as passed, will appear in a future edition of the RECORD.)

Mr. RIEGLE. Mr. President, I move to reconsider the vote by which the bill was passed, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

VITIATION OF SENATE ACTION

Mr. RIEGLE. Mr. President, I ask unanimous consent to vitiate the confirmation of Calendar Nos. 586 and 587, as in executive session.

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

NATIONAL TRANSPORTATION SAFETY BOARD

Mr. RIEGLE. Mr. President, I now ask unanimous consent that we act to confirm Nos. 640 and 641.

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

Mr. RIEGLE. I ask unanimous consent that the confirmation of the nominations be reconsidered, the motion laid upon the table; that the President be immediately notified of the Senate's action; and that the Senate return to legislative session.

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

The nominations considered and confirmed are as follows:

NATIONAL TRANSPORTATION SAFETY BOARD

Carl W. Vogt, of Maryland, to be a member of the National Transportation Safety Board for the term expiring December 31, 1996.

Carl W. Vogt, of Maryland, to be Chairman of the National Transportation Safety Board for a term of 2 years.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session.

ORDERS FOR TOMORROW

Mr. RIEGLE. Mr. President, on behalf of the majority leader, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 11:30 a.m., Thursday, June 18; that following the prayer, the Journal of proceedings be deemed approved to date; that following the time for the two leaders, there be a period for morning business, not to extend beyond 1 p.m., with Senators permitted to speak therein for up to 5 minutes each, with Senator BRADLEY recognized for up to 35 minutes; Senators GORE and DOMENICI for up to 5 minutes each; Senators GORTON and BREAUX for up to 10 minutes each; and Senator REID for up to 15 minutes; that at 1 p.m., the Senate proceed to the consideration of Calendar No. 464, S. 2733, a bill to improve the regulation of Government-sponsored enterprises.

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

RECESS UNTIL 11:30 A.M. TOMORROW

Mr. RIEGLE. Mr. President, if there is no further business to come before the Senate today, I now ask unanimous consent that the Senate stand in recess as previously ordered.

There being no objection, the Senate, at 7:36 p.m. recessed until Thursday, June 18, 1992, at 11:30 a.m.

NOMINATIONS

Executive nominations received by the Senate June 17, 1992:

DEPARTMENT OF STATE

RICHARD MONROE MILES, OF SOUTH CAROLINA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF AZERBAIJAN.

JOSEPH S. HULINGS III, OF VIRGINIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF TURKMENISTAN.

IN THE ARMY

THE FOLLOWING NAMED OFFICERS, ON THE ACTIVE DUTY LIST, FOR PROMOTION TO THE GRADE INDICATED IN THE UNITED STATES ARMY IN ACCORDANCE WITH SECTION 624, TITLE 10, UNITED STATES CODE:

ARMY

To be colonel

ANDERS B. AADLAND [redacted]
JOHN P. ABIZAID [redacted]
GEORGE ABRAHAM, JR [redacted]
JAMES P. AHERN [redacted]
MICHAEL F. AHERN [redacted]
WILLIAM F. ALDRICH [redacted]
CARL K. ALLARD [redacted]
THOMAS J. ALLEN [redacted]
WILLIAM W. ALLEN [redacted]
GEORGE R. ALLIN, III [redacted]
CLINTON J. ANCKER [redacted]
WILLIAM C. ANGERMAN [redacted]
THOMAS F. ARMELI [redacted]
RAYMOND F. ARMENT [redacted]
ARTHUR A. ARMOUR [redacted]
WILLIAM ARMSTRONG [redacted]
ARCHIBALD V. ARNOLD [redacted]
EDWIN J. ARNOLD [redacted]
STEPHEN J. ARNTZ [redacted]
ROLAND A. ARTEAGA [redacted]
HARRY B. AXSON [redacted]
JOHN R. BAER [redacted]
ROBERT G. BAGGOTT [redacted]
TOMMY F. BAILEY [redacted]
DONALD C. BAKER [redacted]
WILLIAM G. BALKUS [redacted]
PERRY F. BALTIMORE [redacted]
HAROLD BANKIRER [redacted]
PAUL F. BARB [redacted]
ELDON A. BARGEWELL [redacted]
STEPHEN R. BARIBEAU [redacted]
BILLY R. BARKER [redacted]
BRUCE H. BARLOW [redacted]
JOHN W. BARNES [redacted]
THOMAS R. BARNES [redacted]
RAYMOND D. BARRETT [redacted]
WAYNE M. BARTH [redacted]
BARRY D. BATES [redacted]
RAYMOND H. BECERRIL [redacted]
CHARLES S. BEESON [redacted]
WILLIAM A. BELICH [redacted]
CLIFFORD BENNETT [redacted]
ANDREW R. BERDY [redacted]
FLOYD K. BERGER [redacted]
FRED M. BERGER [redacted]
DAVID G. BERNS [redacted]
MARK D. BETO [redacted]
JOHN E. BINKLEY [redacted]
JOHN S. BIRD [redacted]
PAUL N. BOHLEN [redacted]
JOHN L. BOOTH [redacted]
LANCE E. BOOTH [redacted]
JOHN E. BOREL [redacted]
BENTON H. BORUM [redacted]
JAMES M. BOSLEY [redacted]
STEVEN W. BOUTELLE [redacted]
THOMAS G. BOWDEN [redacted]
JOSEPH C. BOWEN [redacted]
WAYNE W. BOY [redacted]
RONALD R. BOYKIN [redacted]
VINCENT A. BOYLE [redacted]
ARTHUR L. BRADSHAW [redacted]
WILLIAM R. BRANCH [redacted]
ROBERT M. BRAY [redacted]
COLBY M. BROADWATER [redacted]
ALBERT P. BROCIOUS [redacted]
CLIFTON BRODERICK [redacted]
JESSE L. BROKENBURR [redacted]
JOHNNY W. BROOKS [redacted]
PHILIP E. BROU [redacted]
DOUGLA BROUILLETTE [redacted]
ROBERT K. BROWER [redacted]
CHRIS E. BROWN [redacted]
GEORGE P. BROWN [redacted]
JOHN S. BROWN [redacted]
RICHARD L. BROWN [redacted]
WILLIAM D. BROWN [redacted]
WILLIAM A. BRUCE [redacted]
DAVID L. BRUENING [redacted]
ALBERT E. BRYANT [redacted]
CALVIN BRYANT, JR [redacted]
GEORGE T. BRYANT [redacted]
JOHN M. BRYANT [redacted]
JUDITH R. BUGERT [redacted]
ALBERT G. BUNGARD [redacted]
WALTER L. BUNYEA [redacted]
JOHN C. BURCH [redacted]
JOHN J. BURNS [redacted]
MICHAEL A. BURNS [redacted]
RONALD P. BURTON [redacted]
CONRAD H. BUSCH [redacted]
PATRICK W. BUTTON [redacted]
THOMAS J. CAIN [redacted]
PETER L. CALAME [redacted]
JOHN P. CALHOUN [redacted]
CHARLES C. CAMPBELL [redacted]
LARRY O. CAMPBELL [redacted]
PHILLIP T. CAMPBELL [redacted]
ARNOLD J. CANADA [redacted]
SAMUEL E. CANTEY [redacted]
ALVIN D. CANTRELL [redacted]
JACK W. CARTER [redacted]
JAMES R. CARTER [redacted]
RICHARD C. CASHON [redacted]
JOHN F. CASTONGUAY [redacted]
JOHN P. CAVANAUGH [redacted]
LARRY M. CEREGHINO [redacted]
RAYMOND M. CHAPMAN [redacted]
THEODORE G. CHOPIN [redacted]
MICHAEL V. CHURCH [redacted]
RALPH B. CHURCHILL [redacted]
KENNETH H. CLOW [redacted]
BYRON C. COATES [redacted]
HENRY C. COBB [redacted]
CHARLES H. COGSWELL [redacted]
MICHAEL COLACICCO [redacted]
WILLIAM D. COLEMAN [redacted]
LARRY J. COLLIGNON [redacted]
JOSEPH J. COLLINS [redacted]
RAUL COLON [redacted]
ROBERT W. COOK [redacted]
STEPHEN K. COOK [redacted]
JOHN W. CORBETT [redacted]
MARK E. CORNWELL [redacted]
JAMES R. CORREIA [redacted]
SAMMY J. COWDEN [redacted]
CHARLES S. COX [redacted]
JAMES A. COX [redacted]
BANTZ J. CRADDOCK [redacted]
RICHARD W. CRAMPTON [redacted]
STEVEN L. CRAWFORD [redacted]
JOHNNY A. CREECH [redacted]
DENNIS L. CRIPPS [redacted]
PHILIP A. CROSBY [redacted]
CHARLES L. CROW [redacted]
WALTER J. CULBERSON [redacted]
RICHARD M. CURASI [redacted]
LOUIS J. CURL [redacted]
STEPHEN J. CURRY [redacted]
LAWRENCE M. CURTIN [redacted]
PHILLIP L. CURTIS [redacted]
FRANK N. CUSHING [redacted]
BRIAN C. DAVIS [redacted]
DANIEL D. DAY [redacted]
RONALD E. DEAVER [redacted]
MICHAEL DEEGAN [redacted]
THOMAS A. DELUCA [redacted]
EDWIN J. DENBESTE [redacted]
MORGAN F. DENNY [redacted]
DANIEL D. DEVLIN [redacted]
DAVID F. DEVOTI [redacted]
LARRY J. DODGEN [redacted]
JAMES E. DONALD [redacted]
MICHAEL J. DORMEYER [redacted]
JOHN P. DRINKWATER [redacted]
ROBERT F. DRISCOLL [redacted]
JAMES M. DUBIK [redacted]
LOUIS J. DUET, JR [redacted]
PAUL B. EAST [redacted]
WILLIAM T. ECHOLS [redacted]
ROY L. EDWARDS [redacted]
THOMAS M. EHLINGER [redacted]
WILLIAM J. ELDER [redacted]
BEN L. ELLEY [redacted]
ALFRED H. ELLIOTT [redacted]
DAVID C. ELLIOTT [redacted]
DERALD E. EMORY [redacted]
WILLIAM F. ENGEL [redacted]
CHARLES W. ENNIS [redacted]
JOHN D. ENYART [redacted]
JAMES ETCHECHURY [redacted]
RAYFORD M. EUBANKS [redacted]
LLOYD A. EVANS [redacted]
STANLEY L. EVANS [redacted]
WILLIAM P. FACKNER [redacted]
JAMES F. FAGAN [redacted]
DONALD R. FAINT [redacted]
WILLIAM FAIRCLOTH [redacted]
PATRICK L. FAVER [redacted]
RALPH W. FENEIS [redacted]
ALAN D. FENTY [redacted]
GRADY J. FERGUSON [redacted]
JAMES L. FETIG [redacted]
DENNIS W. FEUGE [redacted]
LARRY E. FEUGE [redacted]
WILLIAM C. FEYK [redacted]
ROBERT C. FILBEY [redacted]
WILLIAM R. FINNICUM [redacted]
JOHN E. FIRTH [redacted]
CARLA K. FISHER [redacted]
MATTHEW H. FLEUMER [redacted]
JOHN P. FLORIS [redacted]
ARTHUR L. FLOYD [redacted]
ROBERT A. FORTIN [redacted]
THEODORE C. FOX [redacted]
JOHN D. FOYE [redacted]
WEBSTER E. FRANCIS [redacted]
JESS J. FRANCO [redacted]
RICHARD L. FREEMAN [redacted]
PATRICK J. GAGAN [redacted]
THOMAS E. GARNETT [redacted]
ROBERT B. GATLIN [redacted]
COLBERT GAUTREAUX [redacted]
FRANK C. GAVIN [redacted]
ROBERT E. GAYLORD [redacted]
FRANK J. GEHRKI [redacted]
HARRY B. GIBB [redacted]
LEE P. GIBSON [redacted]
JOHN R. GINGRICH [redacted]
JOSEPH G. GIRLANDO [redacted]
JOHN A. GLASIER [redacted]
LEONARD GLIATTA [redacted]
EDWIN P. GOOSEN [redacted]
ROY C. GORTNEY [redacted]
JOSEPH G. GRAF [redacted]
JAMES GRAZIOPLENE [redacted]
WILLIAM GREENAWALD [redacted]
JOHN M. GREENWALT [redacted]
FRANK B. GREGORY [redacted]
RALPH GRIECO [redacted]
DWAYNE L. GRIESE [redacted]
MARK E. GRIFFARD [redacted]
GARY B. GRIFFIN [redacted]
ROBERT H. GRIFFIN [redacted]
JOHN C. GRIMSLEY [redacted]
CHARLES H. GROOM [redacted]
RONALD A. GRUBB [redacted]
JAMES B. GUNLICKS [redacted]
WALTER P. GUNNING [redacted]
MICHAEL C. GUTHRIE [redacted]
RICHARD A. HACK [redacted]
FRANKLIN HAGENBECK [redacted]
GREGORY V. HALL [redacted]
RICHARD W. HALL [redacted]
BEAUFORT C. HALLMAN [redacted]
WILLIAM L. HAND [redacted]
REX A. HARGADINE [redacted]
WAYNE C. HARRIS [redacted]
MAX M. HARSHMAN [redacted]
DANIEL K. HARTZ [redacted]
TED W. HASHIMOTO [redacted]
JAMES P. HAYES [redacted]
RICHARD M. HAYFORD [redacted]
RICHARD O. HELMS [redacted]
GEORGE F. HENDERSON [redacted]
JAMES W. HENDERSON [redacted]
DANIEL W. HENK [redacted]
JOHN C. HERBERT [redacted]
MELVIN L. HERITAGE [redacted]

ANTHONY C. HERMES, xxx-xx-x...
FRED W. HERRES, xxx-xx-x...
ROBERT V. HESTER, xxx-xx-x...
ROBERT E. HILLIARD, xxx-xx-xx...
CHRISTOPHER HIROTO, xxx-xx-x...
QUINCY C. HOBBS, xxx-xx-x...
RICHARD C. HOCHBERG, xxx-xx-x...
CURTICE E. HOLLAND, xxx-xx-x...
WILLIAM L. HOLLAND, xxx-xx-x...
JOHN W. HOLMES, xxx-xx-x...
RUSSEL L. HONORE, xxx-xx-x...
FLOYD C. HOOD, xxx-xx-x...
JAMES D. HORNADAY, xxx-xx-x...
JOHN R. HOSTETTLER, xxx-xx-xx...
LOUIS D. HUDDLESTON, xxx-xx-x...
WILLIAM H. HUFF, xxx-xx-x...
HENRY R. HUKE, xxx-xx-x...
DAVID W. HUNT, xxx-xx-x...
EDWARD K. HUTCHISON, xxx-xx-x...
JOHN M. HUTCHISON, xxx-xx-x...
RONALD D. HYATT, xxx-xx-x...
JAMES C. HYLTON, xxx-xx-x...
EDWARD F. IRICK, xxx-xx-x...
JOHN K. JACCARD, xxx-xx-x...
GALEN B. JACKMAN, xxx-xx-x...
MICHAEL H. JACKSON, xxx-xx-x...
JIMMY O. JACOBS, xxx-xx-xx...
WILLIAM F. JAISSLE, xxx-xx-x...
ROBERT L. JARVIS, xxx-xx-xx...
JOSEPH E. JENKINS, xxx-xx-xx...
MICHAEL J. JIMENEZ, xxx-xx-xx...
ALAN D. JOHNSON, xxx-xx-x...
JAMES G. JOHNSON, xxx-xx-x...
MITCHELL C. JOHNSON, xxx-xx-x...
NELSON P. JOHNSON, xxx-xx-x...
CHARLES E. JOHNSTON, xxx-xx-xx...
CHARLES B. JONES, xxx-xx-x...
ELWOOD A. JONES, xxx-xx-x...
MICHAEL L. JONES, xxx-xx-x...
ROBERT L. JORDAN, xxx-xx-x...
ROBERT E. JORGENSEN, xxx-xx-xx...
JOHN E. JUSTICE, xxx-xx-xx...
BRYAN N. KARABAICH, xxx-xx-x...
JOHN F. KEHOE, xxx-xx-x...
JIM D. KEIRSEY, xxx-xx-x...
DONALD L. KELDSEN, xxx-xx-x...
MICHAEL D. KELLY, xxx-xx-x...
JEAN C. KENNEDY, xxx-xx-x...
DAVID B. KENT, xxx-xx-x...
DEAN A. KERSHAW, xxx-xx-x...
WALTER F. KILGORE, xxx-xx-x...
LAWRENCE J. KIMMEL, xxx-xx-x...
STEPHEN P. KINDER, xxx-xx-xx...
COLE C. KINGSEED, xxx-xx-x...
JOHN R. KNIGHT, xxx-xx-x...
KIRK M. KNIGHT, xxx-xx-x...
WILLIAM E. KNIGHT, xxx-xx-x...
STEPHEN A. KNUDSEN, xxx-xx-x...
RUTH A. KREPS, xxx-xx-x...
ARTHUR R. KREUTZ, xxx-xx-x...
GARY L. KRUEGER, xxx-xx-x...
SAMUEL R. KRUG, xxx-xx-x...
DANA F. KWIST, xxx-xx-x...
DANIEL L. LABIN, xxx-xx-x...
JOSEPH S. LAHNSTEIN, xxx-xx-xx...
ROBERT E. LAIRD, xxx-xx-x...
GREGORY S. LAMOND, xxx-xx-x...
WILLIAM F. LANDRUS, xxx-xx-x...
WILLIAM D. LANE, xxx-xx-x...
JOHANN R. LAWTON, xxx-xx-x...
BRIAN F. LEE, xxx-xx-x...
DANWILL A. LEE, xxx-xx-x...
MILES R. LEHMANN, xxx-xx-x...
JOSEPH J. LEIGH, xxx-xx-xx...
MICHAEL W. LEMONS, xxx-xx-x...
THOMAS A. LENOX, xxx-xx-x...
WILLIA LESZCZYNSKI, xxx-xx-x...
MARCEL J. LETTRE, xxx-xx-...
ROY D. LEWIS, xxx-xx-x...
ROY W. LHEUREUX, xxx-xx-x...
JOHN F. LILLEY, xxx-xx-xx...
CRAIG R. LIND, xxx-xx-x...
JOSEPH R. LINDHORST, xxx-xx-xx...
JAMES R. LINGVAI, xxx-xx-xx...
WILLIAM J. LINN, xxx-xx-x...
SCOTT C. LONG, xxx-xx-x...
VICKIE LONGENECKER, xxx-xx-x...
ALFRED A. LOPEZ, xxx-xx-x...
HAROLD W. LORD, xxx-xx-x...
HARRY N. LUMPKIN, xxx-xx-x...
CHARLES D. LUREY, xxx-xx-x...
GERALD E. LUTTRELL, xxx-xx-xx...
DANIEL J. LYNCH, xxx-xx-x...
WILLIAM L. LYNCH, xxx-xx-x...
THOMAS D. MACIVER, xxx-xx-x...
JON D. MACKEY, xxx-xx-x...
CHARLES MACPHERSON, xxx-xx-x...
WILLIAM T. MADDOX, xxx-xx-x...
ROBERT M. MAGGIO, xxx-xx-x...
RICHARD MAJAUSKAS, xxx-xx-x...
WILLIAM C. MALKEMES, xxx-xx-x...
JAMES P. MALONEY, xxx-xx-x...
HOWARD E. MANCE, xxx-xx-x...
MICHAEL MANCINO, JR., xxx-xx-x...
ARTHUR R. MARSHALL, xxx-xx-x...
KELVIN C. MARSHMENT, xxx-xx-x...
JOHN T. MASTERSON, xxx-xx-x...
PHILIP M. MATTOX, xxx-xx-x...
DOUGLAS C. MCCARY, xxx-xx-x...
PATRICK D. MCDONALD, xxx-xx-x...
CHARLES MCFETRIDGE, xxx-xx-x...
DAVID D. MCKIERNAN, xxx-xx-x...

JEFFREY MCKITRICK, xxx-xx-xx...
JOHN G. MCLINN, xxx-xx-x...
GARY A. MCMILLAN, xxx-xx-x...
HOWARD W. MCMILLAN, xxx-xx-x...
THOMAS J. MCNAMARA, xxx-xx-x...
LEE A. MERCHEN, xxx-xx-x...
MICHAEL P. MERZ, xxx-xx-x...
IL METTEEMCCUTCHON, xxx-xx-x...
MICHAEL MEULENERS, xxx-xx-x...
HENRY W. MEYER, xxx-xx-x...
KURTIS A. MEYER, xxx-xx-x...
ROY D. MILLAR, xxx-xx-x...
CALVIN W. MILLER, xxx-xx-x...
CLARENCE MITCHELL, xxx-xx-x...
ROBERT L. MOBERLY, xxx-xx-x...
DELANE F. MOELLER, xxx-xx-xx...
FREDERICK J. MOENCH, xxx-xx-x...
FRANCIS J. MONACO, xxx-xx-x...
DANIEL G. MONGEON, xxx-xx-x...
STEVEN J. MOODY, xxx-xx-x...
WALLACE C. MOOK, xxx-xx-x...
DAVID W. MOORE, xxx-xx-x...
LEE A. MOORE, xxx-xx-x...
GARY D. MORGAN, xxx-xx-x...
JACK R. MORRIS, xxx-xx-x...
ROBERT G. MORRIS, xxx-xx-x...
CHARLES L. MUDD, xxx-xx-x...
PAUL G. MUNCH, xxx-xx-x...
WILLIAM L. MUNDIE, xxx-xx-x...
DAVID E. MURDOCK, xxx-xx-x...
ROBERT R. MURFIN, xxx-xx-x...
JAMES K. MURRAY, xxx-xx-x...
NORMAN J. MYERS, xxx-xx-x...
LELAND A. NAKAI, xxx-xx-x...
STEPHEN A. NASH, xxx-xx-x...
PAUL E. NELL, xxx-xx-x...
JOHN T. NELSEN, xxx-xx-x...
JAMES W. NEWELL, xxx-xx-x...
DAVID A. NEYSES, xxx-xx-x...
JAMES R. NICHOLS, xxx-xx-x...
TOM M. NICHOLSON, xxx-xx-x...
RICHARD D. NIDEL, xxx-xx-x...
JOHN W. NOE, xxx-xx-x...
EDWARD R. NUTTALL, xxx-xx-x...
DAVID J. OBERST, xxx-xx-x...
BRIAN J. OHLINGER, xxx-xx-x...
EDWARD C. OKEEFFE, xxx-xx-x...
JAMES A. OLEARY, xxx-xx-x...
RICHARD L. OLSON, xxx-xx-x...
RUSSELL V. OLSON, xxx-xx-x...
TIMOTHY R. ONEILL, xxx-xx-x...
ASHTON H. ORMES, xxx-xx-x...
BETTY J. OSWEILER, xxx-xx-xx...
STEPHEN OVERSTREET, xxx-xx-xx...
THOMAS L. OWENS, xxx-xx-x...
STEPHEN J. PACHECO, xxx-xx-xx...
THOMAS F. PAGE, xxx-xx-x...
JAMES E. PAIGE, xxx-xx-xx...
LANEY M. PANKEY, xxx-xx-x...
MICHAEL C. PASCOE, xxx-xx-x...
TIMOTHY R. PATRICK, xxx-xx-x...
WILLIAM PATTERSON, xxx-xx-x...
JOHN D. PAVLOVSKY, xxx-xx-x...
ROBERT M. PEDEN, xxx-xx-x...
JOEL M. PELIS, xxx-xx-xx...
WAYNE R. PEMBROOK, xxx-xx-x...
WILLIA PENHALLEGON, xxx-xx-x...
OVIDIO E. PEREZ, xxx-xx-x...
MARK S. PERNELL, xxx-xx-x...
HOWARD S. PERRY, xxx-xx-x...
PETER L. PETOSKEY, xxx-xx-xx...
PAUL P. PEYTON, xxx-xx-x...
RUTH A. PHILLIPS, xxx-xx-xx...
BRIAN V. PIZZANO, xxx-xx-x...
THOMAS O. PLANT, xxx-xx-x...
WILLIAM C. PLOWDEN, xxx-xx-x...
DENNIS D. PORTER, xxx-xx-x...
DANIEL M. PRESCOTT, xxx-xx-x...
KENNETH PRIVRATSKY, xxx-xx-x...
JOHN F. PROUT, xxx-xx-x...
JAMES R. PROUTY, xxx-xx-x...
PAUL E. PTASNIK, xxx-xx-x...
EDWARD S. PUSEY, xxx-xx-x...
VICTOR G. RAPHAEL, xxx-xx-x...
STEPHEN RASMUSSEN, xxx-xx-xx...
DENNIS K. RAYMOND, xxx-xx-x...
JOHN N. REESE, xxx-xx-x...
KURT B. REINEKE, xxx-xx-x...
JAMES REISENWEBER, xxx-xx-xx...
JOHN W. REITZ, xxx-xx-x...
ROBERT REUSS, xxx-xx-x...
JOHN T. REVELLE, xxx-xx-xx...
KENNETH RHYLANDER, xxx-xx-x...
ROGER A. RICKETTS, xxx-xx-x...
JOHN C. RICKMAN, xxx-xx-x...
PETER E. RIEDEL, xxx-xx-xx...
STEPHEN P. RILEY, xxx-xx-xx...
PAUL W. ROACH, xxx-xx-x...
JERRY D. RODGERS, xxx-xx-xx...
THOMAS A. RODGERS, xxx-xx-x...
THOMAS J. ROEBER, xxx-xx-x...
LYNN W. ROLF, xxx-xx-x...
JOHN J. ROSSI, xxx-xx-x...
GLADSTON E. ROUSE, xxx-xx-x...
CHARLES A. RUSSO, xxx-xx-x...
HENRY C. RUTH, xxx-xx-x...
RICHARD L. RUTLEDGE, xxx-xx-x...
DONALD J. RYDER, xxx-xx-x...
GIACOMO R. SABIA, xxx-xx-x...
GERALD D. SALTNESS, xxx-xx-xx...
TALIAFERRO SAMUEL, xxx-xx-x...
JAMES L. SAUNDERS, xxx-xx-xx...

STEVEN R. SAWDEY, xxx-xx-x...
ALFRED A. SCHENCK, xxx-xx-x...
JOHN R. SCHMADER, xxx-xx-x...
MARK M. SCHNABEL, xxx-xx-x...
FRANCIS E. SCHWABE, xxx-xx-x...
JOHN E. SCHWEPPE, xxx-xx-x...
PHILIP P. SCIANNA, xxx-xx-xx...
STEPHEN M. SEAY, xxx-xx-x...
HAROLD J. SEIFERT, xxx-xx-xx...
PATRICK SHANNAHAN, xxx-xx-x...
WALTER L. SHARP, xxx-xx-x...
WILSON A. SHATZER, xxx-xx-x...
DAVID L. SHAW, xxx-xx-x...
JOHN J. SHELDON, xxx-xx-x...
MARK R. SHOEMAKER, xxx-xx-x...
KENNETH SILVERNAIL, xxx-xx-x...
JOSEPH J. SIMMONS, xxx-xx-xx...
PAUL N. SIMS, xxx-xx-x...
THOMAS J. SINCLAIR, xxx-xx-x...
WAYNE L. SITTLER, xxx-xx-x...
JOSEPH B. SKEES, xxx-xx-xx...
WILLIAM S. SKINNER, xxx-xx-x...
SILAS C. SMALLS, xxx-xx-x...
ROBERT L. SMALSER, xxx-xx-x...
DAVID C. SMITH, xxx-xx-x...
DEAN T. SMITH, xxx-xx-x...
DOUGLAS I. SMITH, xxx-xx-x...
JACK E. SMITH, xxx-xx-x...
JAMES R. SNIDER, xxx-xx-xx...
WILLIAM B. SNOW, xxx-xx-x...
CHARLES F. SPARKS, xxx-xx-xx...
DAVID E. SPAULDING, xxx-xx-x...
DANIEL J. SPECK, xxx-xx-xx...
ROBERT J. SPERBERG, xxx-xx-xx...
WILLIAM C. SPRACHER, xxx-xx-x...
MICHAEL R. STAFFORD, xxx-xx-x...
STEVEN G. STARNER, xxx-xx-xx...
EDGAR W. STEELE, xxx-xx-x...
GARY R. STEELE, xxx-xx-x...
GARY T. STEIMLE, xxx-xx-x...
GARY R. STEPHENS, xxx-xx-xx...
SHELBY T. STEVENS, xxx-xx-xx...
MITCHELL STEVENSON, xxx-xx-x...
STEPHEN A. STEWARD, xxx-xx-x...
LAWRENCE J. STEWART, xxx-xx-x...
ROBERT M. STEWART, xxx-xx-x...
WILLIAM P. STORMER, xxx-xx-x...
RICHARD L. STOUDER, xxx-xx-x...
NORMAND L. STPIERRE, xxx-xx-xx...
RICHARD L. STRUBE, xxx-xx-x...
MARK S. SULLIVAN, xxx-xx-x...
PETER F. SUN, xxx-xx-xx...
MICHAEL A. SUOZZO, xxx-xx-x...
DAVID W. SWANK, xxx-xx-x...
CHARLES H. SWANNACK, xxx-xx-x...
EDWARD J. SZELIGA, xxx-xx-x...
DONALD W. TARTER, xxx-xx-x...
JERRY A. TAYLOR, xxx-xx-x...
MICHAEL J. TERCY, xxx-xx-x...
WILLIAM J. TETU, xxx-xx-x...
GARY THOMAS, xxx-xx-x...
JAMES A. THOMAS, xxx-xx-x...
JOSEPH T. THOMAS, xxx-xx-x...
RODNEY G. THOMAS, xxx-xx-x...
GERALD B. THOMPSON, xxx-xx-x...
ROBERT P. THOMPSON, xxx-xx-x...
EDWARD E. THURMAN, xxx-xx-x...
ALBERTO W. TIO, xxx-xx-x...
JAMES R. TOMPKINS, xxx-xx-x...
FRANK J. TONEY, xxx-xx-x...
DAVID H. TOOPS, xxx-xx-x...
MICHAEL A. TOPP, xxx-xx-x...
WILLIAM T. TORPEY, xxx-xx-x...
BARRIE A. TOWN, xxx-xx-x...
DONALD P. TOWNSEND, xxx-xx-x...
HARRY M. TOWNSLEY, xxx-xx-x...
ANTONIO J. TRINIDAD, xxx-xx-x...
BRUCE M. TRIPP, xxx-xx-x...
ROY R. TRUMBLE, xxx-xx-x...
RONNIE W. TUCKER, xxx-xx-x...
THOMAS R. TURNER, xxx-xx-x...
JOSEPH M. TYO, xxx-xx-x...
JAMES E. UNTERSEHER, xxx-xx-xx...
HENRY VANBREDERODE, xxx-xx-x...
DAN M. VANNATTER, xxx-xx-x...
HANS A. VANWINKLE, xxx-xx-x...
BENJAMIN VEGA, JR., xxx-xx-xx...
MICHAEL E. VELTEN, xxx-xx-x...
JAMES E. VERITY, xxx-xx-xx...
JOHN M. VERMILLION, xxx-xx-x...
ELRIDGE J. VINCENT, xxx-xx-xx...
JOHN R. VINES, xxx-xx-x...
DONALD E. VINSON, xxx-xx-x...
MICHAEL E. VIRGIN, xxx-xx-x...
DELLOYD J. VOORHEES, xxx-xx-x...
STEPHEN J. WAGER, xxx-xx-xx...
THOMAS L. WALSH, xxx-xx-x...
WALTER V. WALSH, xxx-xx-x...
FRANK E. WARD, xxx-xx-x...
JAMES R. WARD, xxx-xx-x...
ROBERT L. WARD, II, xxx-xx-x...
JAMES H. WARE, xxx-xx-x...
DOUGLAS E. WARNE, xxx-xx-x...
THOMAS D. WASHBURN, xxx-xx-x...
JESSE L. WATSON, I, xxx-xx-x...
ARNOLD E. WEAND, xxx-xx-x...
JAMES M. WEBSTER, xxx-xx-xx...
MICHAEL B. WEIMER, xxx-xx-x...
JOHN O. WELCH, xxx-xx-x...
THOMAS E. WERNER, xxx-xx-x...
WILLIAM J. WETZEL, xxx-xx-x...
CLARENCE WHITAKER, xxx-xx-x...

ROY S. WHITCOMB, xxx-xx-x...
DAVID M. WHITE, xxx-xx-x...
PAUL A. WHITE, xxx-xx-x...
ROY J. WHITEHEAD, xxx-xx-x...
DONALD D. WHITFIELD, xxx-xx-x...
MICHEL WHITTENBERG, xxx-xx-x...
STEPHE WHITTENBERG, xxx-xx-x...
LAWRENCE WILKERSON, xxx-xx-x...
GERALD J. WILKES, xxx-xx-x...
ROBERT T. WILLARD, xxx-xx-x...
BRISTOL W. WILLIAMS, xxx-xx-x...
MICHAEL S. WILLIAMS, xxx-xx-x...
JAMES F. WILLIE, xxx-xx-x...
JOSEPH K. WILSON, xxx-xx-x...
ROGER E. WISE, xxx-xx-x...
WALTER WOJDAKOWSKI, xxx-xx-x...
DON K. WORKMAN, xxx-xx-x...
ROGER A. WRIGHT, xxx-xx-x...
WILLIAM R. WRIGHT, xxx-xx-x...
SAMMIE G. YOUNG, xxx-xx-x...
TERRY J. YOUNG, xxx-xx-x...
MICHAEL J. ZAHORSKY, xxx-xx-x...
HENRY A. ZIMON, xxx-xx-x...
x...
xx...
x...

CONFIRMATIONS

Executive nominations confirmed by the Senate June 17, 1992:

NATIONAL TRANSPORTATION SAFETY BOARD

CARL W. VOGT, OF MARYLAND, TO BE A MEMBER OF THE NATIONAL TRANSPORTATION SAFETY BOARD FOR THE TERM EXPIRING DECEMBER 31, 1996.

CARL W. VOGT, OF MARYLAND, TO BE CHAIRMAN OF THE NATIONAL TRANSPORTATION SAFETY BOARD FOR A TERM OF TWO YEARS.

IN THE COAST GUARD

THE FOLLOWING OFFICERS OF THE UNITED STATES COAST GUARD FOR APPOINTMENT TO THE GRADE OF REAR ADMIRAL:

GEORGE A. PENINGTON
PAUL E. VERSAW
WILLIAM C. DONNELL

THE FOLLOWING OFFICERS OF THE UNITED STATES COAST GUARD RESERVE FOR PROMOTION TO THE GRADE OF REAR ADMIRAL:

FRED S. GOLOVE
GEORGE R. MERRILEES

THE FOLLOWING OFFICER OF THE UNITED STATES COAST GUARD RESERVE FOR APPOINTMENT TO THE GRADE OF REAR ADMIRAL (LOWER HALF):

ROBERT E. SLONCEN

THE ABOVE NOMINATIONS WERE APPROVED SUBJECT TO THE NOMINEES' COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.

COAST GUARD NOMINATIONS BEGINNING WILLIAM I. NORTON, AND ENDING GEORGE S. KARAVITIS, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON MARCH 12, 1992.

COAST GUARD NOMINATIONS BEGINNING RICHARD B. GAINES, AND ENDING MICHAEL A. MEGAN, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON APRIL 1, 1992.