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Senate

The Senate met at 9:30 a.m. and was called to order by the Honorable HILLARY RODHAM CLINTON, a Senator from the State of New York.

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Almighty God, You have called us to perform our duties with delight for Your glory and the good of our Nation. Tomorrow we celebrate the birthday of a great American, John Quincy Adams. His memorable words ring in our hearts; when asked why he never seemed discouraged or depressed he said, ''Duty is ours; results are God's.'' We adopt this as our motto for today's relationships and responsibilities. We report for duty with our intellects, emotions, and wills. Today You will tap each of us on the shoulder and call us to some duty. We commit ourselves to do Your will as best we know it and leave the results to You. We say with Adams, ''Providence has showered blessings unforseen and unsought. Not to us, Lord, not to us, but to Your name be glory.''

Thank You, eternal God, for the assurance of heaven. We ask for Your courage and comfort for Senator GEORGE VOINOVICH whose brother Paul joined the triumphant company of heaven on Monday. Strengthen the Senator and his family in this time of grief with renewed grace. You are our Lord and Saviour. Amen.

PLEDGE OF ALLEGIANCE

The Honorable HILLARY RODHAM CLINTON led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

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, July 10, 2002.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable HILLARY RODHAM CLINTON, a Senator from the State of New York, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mrs. CLINTON thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE ACTING MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The acting majority leader is recognized, the Senator from Nevada.

THOUGHTS AND PRAYERS FOR THE SENATE CHAPLAIN

Mr. REID. Mr. President, our good Chaplain, Dr. Ogilvie, each day comes before the Senate and the Nation and prays for our comfort and progress, as he does for other nations.

I think it is important for all of us to realize he is going through a very traumatic time himself. He has, for many months, been doing everything he can to help his very ill wife. She got out of intensive care, and she is back in intensive care now. Each of us in our individual thoughts and prayers should keep that in mind.

SCHEDULE

Mr. REID. Today the Senate will be in a period of morning business which the Chair will announce, with the first half under the control of the majority leader—Senator KENNEDY is here to take that time today—and the second half will be under the control of the Republican leader or his designee. Then at 10:30 the Senate will resume consideration of the accounting reform bill. We have been advised by the majority leader he expects to finish this bill this week.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of morning business not to extend beyond the hour of 10:30 a.m., with Senators permitted to speak therein for up to 10 minutes each. Under the previous order, the first half of the time shall be under the control of the majority leader or his designee.

The Senator from Massachusetts.

TED WILLIAMS

Mr. KENNEDY. Madam President, Senator John Kerry and I will bring before the Senate a resolution in honor of Ted Williams, one of the great sports heroes, military heroes, and a great patron for the Dana-Farber Center that looks after children who are afflicted with cancer.

EDUCATION

Mr. KENNEDY. Madam President, I would like to address the Senate on an issue of continuing importance and consequence to families all over this country, and that is what is happening in the schools of our country and what

we can look forward to as we are approaching the return to school in late August and September.

This has not been a good summer for many families who have children struggling in the high schools of this country. Not long ago, we made a bipartisan commitment to the children of this country. We committed that no child would be left behind. I think we have a continuing responsibility to families in this country to give them an idea about the progress we are making in meeting that commitment.

When we all supported the No Child Left Behind Act, it was a commitment that no child would be left behind. However, we are finding out that because of state budget shortfalls and declining local revenues, school districts around the country have cancelled or severely cut summer school. Hundreds of thousands of students will not graduate, will not be promoted, or worse—will be socially promoted, unprepared academically, because of the cancellation of summer school. For example, the New York Times reported on July 4 that because of budget cuts, this year the number of students attending summer school for enrichment rather than promotion will be reduced to 60,000 from 140,000 last year. Summer school provides students with a second chance to improve their reading and math. A math teacher stated, ''What is good about the summer school is that there are fewer kids.'' A reduced budget means fewer teachers and bigger classes in summer school. That has been true, Madam President, in schools across the country. And I'll include in the RECORD the various summer school reductions and cuts which have occurred since the end of the school year.

On June 2, 2002, the Orlando Sentinel reported that due to state budget cuts, schools in Volusia, Orange and Seminole counties in Florida have slashed summer offerings to the bare bones. Other schools statewide, such as those in the Tampa Bay region, have cancelled traditional summer-school programs. Schools in Volusia County tapped federal funds to tutor struggling elementary-school students over the summer. This year, the district dramatically scaled back high school offerings due to nearly $1 million in state cuts over the past two years. Orange County reduced its summer-school budget by $8 million, scaling back high-school offerings and eliminating classes for struggling middle-schoolers. Seminole County cut summer school funding by about $600,000 this year and will hold SAT prep course classes at only four high schools, instead of at all high schools.

On May 31, 2002, the Associated Press reported that state budget cuts in Indiana are forcing school systems to pay more for summer school programs or eliminate some programs. Last year, the state reimbursed school systems for about eighty percent of the costs of all summer classes. This year, they will pay no more than sixty-nine percent or less. School districts will now have to pick up more costs, and some teachers who planned on a summer job will have to look elsewhere because their classes have been canceled. Superintendents across the state were notified of the reductions in a May 15 letter from the Indiana Department of Education. The plan cut the summer school appropriation by $3.2 million, from $21.6 million to $18.4 million. Administrators in the Greater Clark schools in southern Indiana notified parents about ten days ago that no enrichment classes would be offered to elementary school students. The district director of instructional services stated, ''I know the teachers, the parents and the students were disappointed . . . but we just could not afford to offer classes without state support.''

According to the May 29, 2002 edition of The Herald in Rock Creek, South Carolina, due to state budget cuts freezing thousands of dollars, the Rock Hill school district will have to limit enrollment in summer classes. On June 3rd, only 630 students began the summer sessions—220 less than last year's 850 students. The number of instructors and the sites for the classes will be downsized because of fewer students. Cuts totaling $2.4 million will also come from teacher training stipends, school and department allocations and library book spending.

On May 29, 2002, the Associated Press reported that Enid, Oklahoma school officials canceled a federal summer school program because of reductions in state funding to the district. The district will have problems paying the costs of the program due to a cut of $672,000 from the state for the 2001–02 school year. Enid's free, month-long summer program was scheduled to start June 3rd. 400 students would have received assistance, up from 366 last year. Fifty-five employees were to have worked in the program.

We have also found out that in the fall schools and universities will face great challenges—and I will include in the RECORD a series of articles from the last few weeks. Overall, states are being forced to eliminate programs and positions in public schools in order to deal with growing budget cuts. As school budgets are being cut back, there is an increase in the number of students in the classes, there's a reduction in the number of teachers, and a reduction in the number of professional development programs. All of the indicators are going the wrong way.

On June 27, 2002 The Contra Costa Times reported that the West Contra Costa school district will cut department budgets by ten percent and will eliminate twenty-seven jobs and two after-school programs. The budget also includes $4.2 million in cutbacks, with savings found in the elimination of school clerks, administrators, library assistants and professional development workers.

On June 25, 2002, The Kansas City Star reported that Johnson County, Kansas plans to vote on a quarter-cent sales tax meant to generate revenue for schools and cities. Across Kansas, school districts are facing tight budgets because of the state's $700 million budget shortfall. If approved, the tax would provide $45.3 million in three years for the county's six school districts. Educators are worried because the passage of the sales tax is the difference between adequate and excellent schools. The proposed $20 per student increased state aid to schools is not even guaranteed, nor would it even total costs.

On June 19, 2002, The St. Petersburg Times reported that Pinellas County School Board (Florida) members are committed to raising teacher salaries over the next three to five years up to the national average. Currently, teachers in Pinellas are earning on average $39,000 a year compared to the national average of $45,800. Low salaries only feed the dwindling morale of teachers disheartened by recent budget cuts and increased responsibilities. Unfortunately, no one knows how salary increases will be funded, and the only option appears to be a tax hike for voters who may be unwilling to pay.

On May 29, 2002, The Salt Lake Tribune reported that the Jordan School District in Utah could be forced to layoff 250 teachers if lawmakers force public schools to absorb half of the state's tax revenue shortfall. The school board has already raised the district's average class size to balance next year's budget following the Legislature's March decision to cut statewide public education funding by $20 million. That cut reduced sixty teaching positions in Jordan. Jordan and the state's other thirty-nine districts have already sliced their budget proposals for the 2003 fiscal year, which starts July 1. But, districts fear they will face additional reductions after lawmakers meet in July to adjust the state's budget to accommodate another shortfall, projected at $173 million. If public education were cut in proportion to its share of the state budget, it would be reduced by $83 million, and Jordan's share of that would be $13 million, which would cause at least an additional two-student increase in class size. Granite will drop 157 teaching positions. Davis is considering cutting twenty-one teachers.

When we passed the No Child Left Behind Act, we said we were going to ensure accountability, we were going to make sure we had well-qualified teachers, afterschool programs, and supplementary services. And all the indicators are now going in the wrong direction.

State universities are also experiencing huge budget cuts, as decreasing financial aid and increased tuition make college less affordable. According to recent reports in Illinois, college tuition is increasing while the state's college financial aid program is facing severe cutbacks. Under the state budget that took effect on July 1, 2002, funding for the state's need-based Monetary

Award Program will be cut by $38 million. Just several days earlier, on June 27, 2002, the University of Illinois Board of Trustees decided to increase tuition by ten percent to fill a $90 million budget hole.

State officials estimate that as many as 12,000 students across the state will not be eligible for the Monetary Award Program this year, and thousands more will learn that the grant aid they will receive under the program this year will be less than the grants that they received in previous years.

Of the 12,000 fewer students receiving the grants, about 7,000 are fifth-year students. Those students would lose their grants altogether, under a plan proposed by state lawmakers and Governor George Ryan to save the state $20 million.

An estimated 5,000 students at Illinois State University and another 550 students at Illinois Wesleyan University could be forced to take out more loans, work extra jobs, or forego attending school. Cutbacks will hurt students like Kimberly Williams, 21, a Columbia College business management student. She said the assistance commission is still trying to determine if she is eligible for an award, even though she has received them in the past. If her award is less, ''I'll either drop classes or I'll take out more loans.'' She is already $10,000 in debt.

In Indiana, The Indianapolis Star reported on July 4, 2002, that at state-supported universities this upcoming year the average tuition bill will jump 14.2%. Last year the tuition increased by an average of 7.1%—still more than twice the rate of overall inflation. Tuition hikes were forced to make up for tighter state spending on higher education.

In Florida, The Bradenton Herald reported on July 4, 2002, that Florida State University trustees raised tuition for the fall semester to reflect: five percent for in-state undergraduate students and twenty percent for out-of-state students. The University of Florida and Florida A&M University have approved similar increases. The tuition increase is expected to bring in $10.5 million in additional revenue for FSU.

What we are also seeing is an excellent report that was released last week by the Advisory Committee on Student Financial Aid. Its findings follow—they are enormously alarming.

More children are and will be attending college. Enrollment in higher education institutions was over fifteen million last year, and is expected to increase to nearly 17.5 million by 2010. The number of high school students qualified to attend college is also expected to grow by twenty percent over the next decade, and most of that increase will be among low-income and minority students.

The demand for college-educated workers has grown, and today's high-skilled job environment demands a college degree. In 1950, eighty percent of jobs were classified as ''unskilled''; today eighty-five percent of all jobs are classified as ''skilled.''

Financial barriers to attending college are on the rise for low- and moderate- income students. Too many students are being forced to borrow too much—and work too much—to finance the rising costs of college. Debt levels are sky-rocketing for low-income college students and their families, causing financial hardships in repaying student loans. At the same time, state budget crunches continue to drive up college tuition at public universities, forcing shut the doors of college opportunity for too many.

Due to the cost of college, this year more than 400,000 students from families who make less than $50,000 a year will graduate from high school, qualified and prepared to attend 4-year colleges, but will not be able to fulfill that dream.

Half of low- and moderate-income students who do attend college will have to live at home while attending school to lower the cost of college. Sixty-five percent of students will have to work part-time—an average of twenty-four hours a week—while attending college to cover costs. Excessive student work takes a heavy toll on academic performance, often delaying graduation by two years or more.

The college attendance gap between affluent and poor students is widening. In 1979, the most affluent students in the nation were four times more likely to have a bachelor's degree than poor students. Today, the most affluent students are ten times more likely to have a degree.

We must not sell students short. We must do all we can to increase aid to college students to ensure that more students can afford to go to college.

I believe, as others do, that education is a national security issue. In many respects, it is as basic and as fundamental as the defense of this country. If we are not going to have well-qualified recruits, if we are not going to have men and women in the service who are going to be able to take advantage of the new technologies in terms of defending our country, we will not be able to preserve the values and the systems that we hold so dear. Education is a national security issue. That is why it is obviously key to our position in terms of global competition.

From the Advisory Committee Report, we can see that looking at the students coming out of our high schools, we find in so many instances that many of these students are coming from very moderate, limited economic means. We find their opportunities to continue on to higher education and to get the skills they need are being vastly diminished.

What do we see in the future? We see that those families—particularly low income families—have not benefitted much from the economic expansion of the 1990s. They are barely holding on. Those in the lower income are actually falling further behind because we have had no increase in the minimum wage for the last six years. They have been falling further and further behind. Now, what is happening to these families?

What has happened to the kids who are going on? We are finding increases in tuition for colleges and universities all across this country, ranging from nine percent, ten percent, twelve percent, fifteen percent. And looking into the future years, they will continue to go up.

We find that student aid has remained absolutely the same. The children are working more jobs. They are working minimum wage jobs. And they are working longer hours with less time for their schoolwork. They are now forced to borrow more and more resources in order to be able to continue.

One of the interesting ironies is that as they earn more money, it counts against their ability to get loans and grants in the future. It is an extraordinary circumstance. Children take one job, two jobs, and they get additional earnings which they will have to reflect on their financial statements in their ability to get additional income, which may very well reflect a lowering in terms of their scholarship assistance. It is a no-win situation. That is happening.

We find that hundreds of thousands and millions of American children are being left behind. That is what this Advisory Committee report has stated. We have a basic and fundamental responsibility. If we are concerned about our national security, if we are concerned about our economy, if we are concerned about our democracy, then we have to ensure that children are going to be able to continue to develop their skills and academic backgrounds.

They make a series of recommendations in terms of the enhanced Pell programs. Those programs have been evaluated, attested to, tried, and demonstrated as being effective. We shouldn't have to fight that fight every year in the Senate.

There is not an American, I believe, who doesn't understand that the GI bill paid back anywhere from six percent to eight percent more in dollars to the Federal Treasury for every dollar invested in America. That is true in terms of education investment today.

That is something we hear in this institution, and in terms of the administration refusing support. The fact that the administration has requested virtually zero in terms of Pell grant increases last year is a failure and an abdication of leadership in terms of meeting the responsibility for educating the children in this country.

The ACTING PRESIDENT pro tempore. The Senator has consumed 10 minutes.

Mr. KENNEDY. Thank you, Madam President.

I see my friend and colleague on the floor. He has a resolution, on which I

am honored to join with him. I look forward to taking a moment of the Senate's time to address this issue, which both of us take a great sense of pride in doing.

The ACTING PRESIDENT pro tempore. The Senator from Massachusetts.

Mr. KERRY. Madam President, I thank my colleague.

TRIBUTE TO TED WILLIAMS

Mr. KERRY. Senator KENNEDY and I are delighted to join in a resolution paying tribute to a unique American who passed away last Friday at the age of 83—a fighter to the end, and really a rather remarkable and fascinating individual—Ted Williams.

Over the span of 21 amazing years with the Boston Red Sox, Ted Williams redefined baseball's greatness. Everyone knows about his .406 batting average in 1941. Not everyone knows that he had an option to settle that year for a less than .400, or that he would have been rounded up to a .400 batting average. It was about .399.

In the last day of season, with the doubleheader, a day that he was offered the opportunity to sit it out so he wouldn't lose his .400 if he had a bad day, there was no way he would do that. It was not his style. He stepped up to bat, and hit 6 for 8 and took his average up to the .406, which now stands as a memorable and unequaled batting average since that period of time. He had 521 career home runs; a .344 lifetime batting average; 2 of the 4 Red Sox Triple Crown Awards, twice the American League's Most Valuable Player; 6-time American League Batting Champion, 18 American League All-Star appearances; and a member of the Baseball Hall of Fame.

He was quite literally the father of the Red Sox nation, and, for millions of us, he came to live out what was his greatest wish—that if people ever saw him walk down the street they would say, There goes the greatest hitter who ever lived. Indeed, that is what people would have said.

Beyond the statistics and awards, which speak volumes about what he accomplished in a Red Sox uniform, so many of us in this country have an even deeper respect for the individuality he expressed in almost everything he did: His uniqueness as a fisherman; his uniqueness in his contributions to the Jimmy Fund to raise funds for fighting cancer to help others; but especially what he did in the 5 years he spent wearing the uniform of his country, reminding each of us of what it means to be a citizen soldier, to leave a citizen's life to go out and fight for your country and then come back to resume what you did before.

No one knows, but lots of people have speculated about what kind of career numbers this man might have posted, what records he would have broken, if it had not been for those 5 years during the prime of his baseball career while he served as a pilot and a member of the greatest generation.

All of us would wonder. He walked away from the major leagues to serve his country as a fighter pilot. He flew as a wingman beside our colleague, Senator John Glenn, during Korea, performing a memorable emergency landing in a damaged plane that was on fire. And when he was later asked why he didn't just bail out, he told people he was fearing the fact that he might injure his knees—as you punch the button to bail out and you pull out of the cockpit. If you were tall, your knees often would be broken hitting the edge of the cockpit itself. He would sooner have died than not have been able to play baseball because of that potential injury. It was a conscious choice. Another time, he escaped to safety after being hit with anti-aircraft fire.

Ted Williams was a courageous person, bigger than life, tough as nails, and he had that rare ability to sum up perfectly in his character so many things that speak about a generation, about our country, and about a game that is known as our national pastime.

We all hope we will find citizens such as him and ballplayers such as him again. We join in mourning his loss and reflect on all that he gave to his country.

The ACTING PRESIDENT pro tempore. The Senator from Massachusetts.

Mr. REID. Will the Senator from Massachusetts yield for a unanimous consent request? I would consider it an honor if the two Senators would allow me to be a cosponsor of this resolution dealing with one of my heroes, Ted Williams.

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

Mr. KENNEDY. Madam President, we thank our leaders and we thank our colleagues for giving Senator KERRY and me a moment to bring to the attention of the Senate and to the American people once again the extraordinary sense of loss that the Williams family feels, the incredible sense of loss that people in Boston feel, the incredible loss that those who love baseball feel and those who served in the Marine Corps feel at the loss of Ted Williams.

His stories on the baseball field have been well documented, although they bear repeating. For example, his extraordinary lifetime average of over .406: When we think today of all the various baseball records that are being broken, every single one is being broken almost annually in so many different areas, but no one has even coming close to his. We know he was on a level of excellence in terms of that sport that I don't think will be replicated again.

His service in the military was, as my colleague pointed out, exemplary service to our country. Then the service as well to the Jimmy Fund, the Dana-Farber program—the Jimmy Fund that was just getting started. People didn't give a great deal of attention to the fact of children's cancer, but now you can't travel anyplace in this country, or probably in the world, and not find people who haven't heard of the Jimmy Fund or the Dana-Farber Center as an extraordinary place of excellence that has given great focus and attention and, most importantly, hope and life to hundreds of thousands of children, including one of my own who had serious cancer, osteocarcinoma, and was able to benefit from the extraordinary research and the gift of life that that center provides. The time Ted Williams would spend down in that center without any kind of fanfare, greeting and welcoming children, giving them a new sense of hope, was a real reflection of his humanity.

This is an extraordinary American, someone of whom baseball is proud, Boston is proud, all of Massachusetts is proud. We salute his family, we salute him, and we thank our Ted Williams for all the good things he has done for baseball and for our country.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. I ask unanimous consent that an equal time for my speech be given to the Republican side because they were to control half the time in this morning business hour.

Mr. REID. Mr. President, will the Senator from West Virginia yield?

Mr. BYRD. Yes.

Mr. REID. I have been told by the Republican staff that Senator DOMENICI and Senator BROWNBACK wish to speak. How long does Senator DOMENICI wish to speak?

Mr. DOMENICI. Mr. President, I thought I was speaking earlier. I would like 10 to 15 minutes.

Mr. REID. Senator BROWNBACK wants 15 minutes.

Mr. DOMENICI. Did we not have a certain amount that some of our Senators—

Mr. REID. The Republican time was to start around 10 o'clock.

Mr. DOMENICI. That is correct.

Mr. REID. Senator WELLSTONE is here also.

Following Senator BYRD, Senator DOMENICI will be recognized for 15 minutes, Senator BROWNBACK will be recognized for 15 minutes, and then we will be on the bill. Senator WELLSTONE, being the timely person he is, came to speak at 10:30. He will not be able to do that now unless Senator BROWNBACK is late; we will be on the bill at that time.

I ask unanimous consent—the two managers are not here, but I do not think I am doing anything untoward—that he speak on the bill—he is not offering an amendment—that he be recognized as soon as the bill is called up.

The PRESIDING OFFICER (Mr. EDWARDS). Without objection, it is so ordered.

The Senator from West Virginia.

Mr. BYRD. Mr. President, I, too, am proud of Ted Williams. I hope the two Senators will allow me to cosponsor the resolution.

As one who grew up in the Great Depression, I liked baseball. It was 1927.

May I say to my two Senators from Massachusetts, it was 1927 when Babe Ruth, the Sultan of Swat, beat his own home run record when he swatted 60 home runs. I can remember those days when I watched for the baseball scores. I watched for Babe Ruth. I watched for Lou Gehrig. I watched for the Murderous Four on the New York Yankees team. That was the year in which Jack Dempsey fought Gene Tunney to regain the title.

May I say to my dear friend, TED KENNEDY, Jack Dempsey was a hero of the coal miners. He mined coal in Logan County, WV. So my foster father told me we would go down to the community grill, which was a place where one could buy Coca-Colas or a soda. I mean they were good Coca-Colas in those days, and you got them for 5 cents, a bottle of Coke for 5 cents. So he said we would go down to the community grill and listen to that fight.

Well, we went on that night. And there were fully 30 or 40 coal miners around that radio. I went home a disappointed lad because Jack Dempsey was my hero at that point as far as sports figures were concerned, as well as Babe Ruth. And I went home a disappointed lad because Jack Dempsey did not win the fight.

I did not hear the fight. There was only one set of earphones, and Julius Sleboda, who was the manager of the grill—that was 75 years ago, he was the manager of the grill—he listened to the fight, but he didn't tell the rest of us anything about what was going on.

So, lo and behold, Mr. C.R. Stahl, a Scotsman who was the general manager of the coal mining operation, came into that room and took the earphones from Julius, put them on, and gave to those of us who were standing around with open eyes, open ears, and open mouths, a blow-by-blow account of the greatest prize fight, as far as I am concerned, that ever occurred in the United States—Jack Dempsey. And he lost the fight. That was 1927.

May I say to the distinguished Senator from Illinois, something happened in 1927. I can see the bulletins that were tacked up on the wall of the company store, the coal company store: ''Lindbergh Crosses the Atlantic.'' He flew across the Atlantic in the Spirit of St. Louis. He started out, I believe it was May 9, 1927. The New York Times had a headline which said that he flew over Nova Scotia at the tremendous speed of 100 miles per hour in the Spirit of St. Louis. That was Lindbergh. He had a plane that had a load of 5,500 pounds. He had five sandwiches. He ate one-half of a sandwich on the way. Part of the time, he flew 10 feet above the water; part of the time, 10,000 feet above the water. He flew across the Atlantic in a single-engine plane, the Spirit of St. Louis. That was 1927.

That was the year Ford brought out the Model A Ford. It was also the year in which Sacco and Vanzetti were executed—1927, a great year.

Let me switch now to 2002. Congress had been requested to appropriate more than $10 billion in fiscal year 2003 funds for a reserve fund from which the Department of Defense will draw to pay for its operations in the war against terrorism. Now, watch out. This war against terrorism is a terrible war, but watch out. Many things are being done under the rubric of the war on terrorism. We had better watch out. Let me tell you about this one. The President requested this huge amount of money, free of any restrictions.

Now, Senators, we have to watch this stampede to legislate a new Department—and I am for a new Department—but in this so-called reorganization plan that the President sent up to the Senate and the House, watch out, this is a reorganization plan. Let's be careful we don't reorganize the checks and balances in our constitutional system. I have seen a fair number of requests for blank checks in my time, but this one takes the cake.

The President's request for a large reserve fund for the military is not unprecedented. Just within the last decade, Congress established reserve funds for military operations in Kosovo, Bosnia, and the Persian Gulf region. From 1996 to 2001, Congress appropriated funds to the overseas contingency operations transfer fund to pay for our peacekeeping missions in the Balkans and the enforcement of no-fly zones over Iraq. The result was an accounting nightmare.

As the General Accounting Office reported on May 22, 2002, the reserve fund for operations in the Balkans and the Persian Gulf was used for ''questionable expenditures.'' That is an understatement. The GAO report details how this reserve fund was used in 2000 and 2001 to buy cappuccino machines—there are three Appropriations Committee members on the floor right now on this side of the aisle, and another one is coming in on the other side of the aisle. The GAO report details how this reserve fund was used in 2000 and 2001 to buy cappuccino machines, golf club memberships, decorator furniture, and even a bingo console. President Bush says he needs the reserve fund to move money around quickly with a minimum of congressional intrusion. But would some congressional oversight have stopped the purchase of a bingo console with defense funds? How about that?

That is your money, I say to the taxpayers who are watching this Senate floor right through those cameras there. That is your money.

How did these funds, intended for important military missions, become diverted to Government waste? As the GAO report says:

There is limited oversight—

We don't give enough time to oversight, and we have an administration that doesn't want us to give much time to oversight. That is my view of it.

There is limited oversight and a corresponding lack of visibility over how contingency operations funds are used that has also contributed to questionable uses of contingency funds.

That is not Robert Byrd talking, that is the GAO report, the General Accounting Office, an arm of the Congress. It is no wonder Congress refused to put any more money into this reserve fund in the Fiscal Year 2002 Appropriations Act.

We should also put this in the proper context of how the Department of Defense manages and accounts for the money that is appropriated to it. It is a miserable record. Twelve years after the enactment of the Chief Financial Officers Act of 1990, the Pentagon is unable to produce annual audited financial statements. It is a financial scandal that goes beyond the accounting chicanery perpetrated by the fallen giants of corporate America. In January 2001, the General Accounting Office reported that the Pentagon was unable to reconcile a $7 billion difference—not $7 million, but $7 billion—the Pentagon was unable to reconcile a $7 billion difference between its available fund balances and the balances kept by the Department of the Treasury; that the Department made $2.3 trillion—this is still the General Accounting Office report talking—that the Department made $2.3 trillion in unsupported accounting entries in fiscal year 1999, and that the Pentagon was not able to keep track of all of their weapons systems and support equipment. Now, get that. Simply put, if the Pentagon were a corporation, its stock would be crashing and the Dow Jones would be in really serious trouble.

We should all know by now that the Pentagon's accounting mess requires closer oversight. It is a massive operation, and the Secretary of Defense has indicated it is a massive operation. Not all of this happened on his watch. He wants to try to get control over it, but how can he? It is so massive: Establishing a $10 billion reserve fund for the war on terrorism, with no restrictions, no limitations, no controls on how the money can be spent. We are talking about $10 billion; that is $10 for every minute since Jesus Christ was born. It would be throwing gasoline on a fire that is already raging out of control. With the Government ledgers filling up with red ink, we need not only fiscal responsibility, but also accounting responsibility.

My concern with the reserve fund proposed by the President is not limited to its gross invitation for waste, fraud, and abuse, to use a hackneyed term.

As a Member of the Senate and chairman of the Appropriations Committee, I want to know how this money will be used because $10 billion is a lot of money, looking at it from the standpoint of my background and my State. It is a lot of money. Will it be used for rooting out the terrorists who remain in Afghanistan? Will it be used for the creation of an Afghan national army? Will it be used to increase our military presence in the Philippines, Georgia, or Yemen? What about an invasion of Iraq? Is that what it is going to be used for? We don't know.

On July 3, 2002, President Bush sent a letter to congressional leaders to provide further details on how the $10 billion fund might be used. This supposed explanation left me scratching my head. I bet it left the Senator from New Mexico scratching his head. Nobody in this Senate understands this budget and the appropriations process any better than he does, if as well as he does. But it left me scratching my head—even more than I had scratched it before. The letter from the President talks about $10 billion being requested for a reserve fund with no controls and no oversight. But get this:

This request will improve collection, analysis, coordination, and execution of intelligence priorities and plans, as we expand into new theaters—

Oh, oh—

of operation and build new relationships.

That is not my quote. That is the quote in the message from the President.

Let me say that again. Hear me, Senators. The letter from the President states:

This request—

For $10 billion of your money; your money; your money—

This request will improve collection analysis, coordination, and execution of intelligence priorities and plans as we expand into new theaters of operation and build new relationships.

Mr. President, there is no clarification on what is meant by ''expanding into new theaters of operation.'' Our imaginations are left to run wild. Are we talking about Iraq? If so, Mr. President, let's hear it. Tell us. The American people are entitled to know where their money is going to be spent, where their boys and girls, the young men and women of this country, are going to be sent. Tell us.

Our imaginations are left to run wild. An accompanying letter from the Director of the Office of Management and Budget, Mitch Daniels, proposes to elaborate, he is going to explain, explain a bit more, on how the $10 billion is going to be used. He is a favorite of us Members on the Appropriations Committee in both Houses. Mitch Daniels, the OMB Director, is a great favorite of ours.

According to Mr. Daniels' letter, the reserve fund would contain—listen to this—the reserve fund would contain ''up to $2.550 billion for military personnel accounts; up to $5.570 billion for operation and maintenance accounts, as well as military construction on working capital funds; and up to $1.880 billion for procurement or research, development, test, and evaluation account.''

While this may be seen by some as making some progress in specifying how the requested funds might be used, the devil is still in the details, and we do not have them.

Under the President's proposal, the allocations could be changed by the Secretary of Defense, after consultation with the Director of the OMB. Now get that, get that, pay close attention: Under the President's proposal, the allocations could be changed by the Secretary of Defense, after consultation—get that—after consultation with the Director of OMB and 15 days after providing notification—not a request—but notification to the congressional defense committees. Ha, ha, ha. What are we going to do next?

It is not hard to see how that $10 billion reserve fund could start out for a legitimate purpose, such as paying the Guardsmen who have been mobilized for homeland security missions, but then be reallocated to fund any program that could be twisted around and redefined to encompass a defense against terrorism.

I suppose that additional missile defense spending could fall within that rubric, as would military action against Iraq. Watch out; be careful while you are back home in August. Be careful.

I could not imagine that a $10 billion reserve fund would be considered for any other agency in our Government but the Department of Defense. I doubt that any of us would seriously consider a $10 billion reserve fund that could be spent on health care, prescription drugs, or highway construction. The fiscal conservatives in Congress would hit the roof. ''Where is the accountability?'' they would say. If any Member of this body proposed on an appropriations bill a $10 billion reserve funds for education, with no limits on how those funds would be used, I have no doubt that the President would assail that Member for fiscal irresponsibility and ready his veto pen.

It is true that we are engaged in a war on terrorism, and that war is expensive. At the height of our military operations in Afghanistan, we were spending more than $1 billion a month. But there is already a well-established means of providing that money without resorting to blank checks and reserve funds. Congress passes supplemental appropriations bills to provide additional funds to address contingencies that were not anticipated in the regular appropriations process.

The Senate passed a supplemental appropriations bill on June 7 of this year that fully funds the President's request for additional funds for the military to pay for the war on terrorism. At his news conference earlier this week, President Bush criticized the Congress for delays in final action on the supplemental bill, but he failed to mention that his administration is greatly responsible for at least partially delaying the legislation.

The administration slowed the supplemental bill down months ago by repeatedly refusing to allow Homeland Security Director Tom Ridge to testify about the funding request. Most recently, the administration, claiming that the supplemental bill invests too much in homeland security, has threatened to veto the legislation, despite its overwhelming 71 to 22 vote in the Senate. What our country needs is responsible leadership, and Presidential threats about a veto of homeland security funding is nothing short of irresponsible.

This supplemental appropriations bill does not include a reserve fund that will subvert government accountability for how taxpayer money is spent. But the administration continues to seek such a fund for the fiscal year 2003 Defense appropriations bill. I deeply regret this indication that the administration continues to view Congress as an impediment to the national interest, rather than a coequal branch of our Government with its own, nondelegable authorities and responsibilities under the Constitution.

The Founding Fathers granted Congress the power of the purse and the responsibility to provide for our national defense.

Accountability for how the funds are spent must be demanded by Congress as the directly elected representatives of the people. We were not sent here by an electoral college. We are directly accountable to our constituents. If this $10 billion defense reserve fund is misused, who will have to answer to the letters and the phone calls from John Q. Public? It will not be the Secretary of Defense. It will not be the Director of the Office of Management and Budget. It will be us, the Members of Congress. We have a responsibility to see that funds we appropriate are well spent. We cannot allow ourselves to shirk that responsibility. It is the people's tax dollars.

If the people are being told these dollars are to go to fight global terrorism, this Congress must never allow these funds to buy cappuccino machines instead.

I again thank all the Senators, and I yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico.

THE SENATE NEEDS A BUDGET

Mr. DOMENICI. Mr. President, I might say to the distinguished Senator from West Virginia, since I like cappuccinos, it would be better than some other things we might buy.

In any event, the Senator from Kansas is going to speak shortly, and I will try not to go too long. The Senator from West Virginia, Mr. BYRD, I have been listening, and not to your entire speech, but I say the Senator from New Mexico agrees with some of what you said. But I would not expect you to lay the blame in Congress where the blame lies in Congress. I believe much of the delay on everything is attributable to the fact that the majority party has not yet as of this day produced a budget. So if we want to talk about delays, as chairman of the Budget Committee, my good friend, you do not know what number to mark to. Nobody has yet told you how many dollars you have to spend. If the budget does anything, it starts with that.

It also ropes in, in some good and major way, the entitlements that are supposed to come up the remainder of this year and next year. We do not have that around either. That is one of the reasons we keep getting 60 votes for every proposal that might be something that we ought to be considering for the American people.

It is given an added burden because we do not have a budget. So I have said this, not as many times as some have urged me to say it, but I have said we need a budget. I do not know if we need it now—it is almost August—but I do believe we have to remind ourselves that whether we like the budget process or not, whether it will be in existence next year, we will know in advance. But as part of the process we go through, clearly it is not good for the American people that it not be done. It causes an awful lot of problems. It can cause us to spend an awful lot of money. It might indeed cause us to be behind schedule on things and we ought not be, especially in an election year when we have to tear ourselves away from an election, a number of the Senators do, plus the rest of the elections in our country.

Mr. BYRD. Will the Senator yield?

Mr. DOMENICI. I am pleased to yield.

Mr. BYRD. Inasmuch as he addressed some of his remarks to me, I share the Senator's concern that there is no budget. I was also concerned the previous year when there was no markup in the Budget Committee of the budget bill. I was a member of that committee.

Mr. DOMENICI. Yes, indeed.

Mr. BYRD. There was no markup. So each side, of course, can find some fault with the other. The point is, we are at the present moment, and Congress is being blamed by the administration for not passing a supplemental bill quickly. I have pointed out that the administration could be more helpful in this regard. Senator STEVENS and I, and other Members of the Appropriations Committee, have been working with a Republican House and we stand ready and have stood ready all along to meet to try and work out these differences.

The administration could be more helpful to us if it would urge the Republican House to move faster. We ought to get that supplemental back—that conference back to both Houses this week. We ought not to be any longer than that.

I am glad to say the distinguished chairman of the House side of the Appropriations Committee is calling me, I believe today, and he is working with Senator STEVENS and Mr. OBEY.

Mr. DOMENICI. Is that the House or the budget chairman?

Mr. BYRD. I beg your pardon?

Mr. DOMENICI. Is that the House or the Budget Committee chairman?

Mr. BYRD. I am glad the Senator pointed to my inadvertence. It is the House Appropriations Committee chairman, Mr. YOUNG. He is working with Mr. STEVENS, Mr. OBEY, and myself. So we hope to get a supplemental conference report this week.

I thank the distinguished Senator for his courtesy in yielding.

Mr. DOMENICI. I did not intend to get into a debate about the 27 years of budgets that I have been part of in the Senate. I merely call to the attention that right now, this year—we did get a budget last year. We did not get it out of committee, but the statute did not require that.

I do not want to debate that issue. I merely mentioned that my good friend was producing a litany of things that were causing the delay, and I thought it was a little bit lopsided toward blaming the administration for the delays. A lot of them are our fault, starting with the fact that we do not have a budget.

Yes, the President has a different approach to what he wants to use the money for than we do, but we better get on with it. It is not too much different than most Presidents in sending us their budgets, and the sooner we get on with facing up to our responsibility the better we are.

We have been sitting around waiting for somebody else—and it was not the President—for a long time in the Senate, as time ran buy and the appropriations were needed. We are going to get them done just like we do every other year. I used to think because it got late and because I was worried we were not in session, that we would not get it done. We will get it some way or another. We always have. We have been late. We have had partial passages of supplementals and then we have had other ways of putting two or three bills together, all of which should not happen. But if you need to do them, you need to do them. That will be the case this year, too, I hope. I hope it will be done expeditiously.

Now, I want to move to the subject I came to the floor about.

Mr. BYRD. Will the Senator yield?

Mr. DOMENICI. I am glad to yield.

Mr. BYRD. I ask that the time for this colloquy not be taken out of the time allotted to the Senator from New Mexico.

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

Mr. DOMENICI. This colloquy will not come off of my time.

Mr. BYRD. I hope the Senator will have all the time he wants.

It is too bad we get into these little kinds of colloquies, but I believe the candidate who said he was going to change the tone in Washington would go a long way towards helping to change that tone if he would stop beating Congress over the head in his public speeches. Just the other day, he complained about the Congress not passing his supplemental bill and the chairman of that committee. I am not at fault for not getting it passed. The Republicans on that committee are not at fault. We voted it out of the committee solidly, 29 to 0. So we work in a bipartisan fashion in that committee.

Senator STEVENS and I are working in a bipartisan fashion, and the administration does not help things when it lambastes the Congress publicly and talks about the supplemental bill, the delays in getting that bill down to the President.

We put every dollar in that bill that the President asked for for defense, and part of that delay is caused by the administration itself. I cannot help but respond to that kind of partisanship when it is sent out over the public airwaves by the one man in this country who commands the attention of the press. Nobody else can compete with a President when it comes to that, but we all are going to have to answer to voters. I will stand at the judgment bar as well, but we on the Appropriations Committee are doing everything we can to move the bill.

We are scheduled to take up the remaining appropriations bills before this month is out. Senator STEVENS is working with me in that regard, and so is Senator DOMENICI and the others. Let us call it 50/50, a draw, like the All-Americans did last night?

Mr. DOMENICI. Well, you just added another one. You went to the 60. So I have to go to the 60.

Mr. BYRD. The Senator says ''you.'' Under the Senate rules, we are not supposed to address another Senator in the second person.

Mr. DOMENICI. Mr. President, I am not here as much as the Senator and I slip every now and then.

Mr. BYRD. We all slip.

Mr. DOMENICI. It is pretty hard to get that out of your head, but I think I have the floor now. Is that correct?

Mr. BYRD. The Senator does.

Mr. REID. Will the Senator yield for a unanimous consent request?

Mr. DOMENICI. Yes.

Mr. REID. If the Senator will yield, Senator MCCONNELL, if he were here, wished to speak on his amendment, which is the pending matter on the bill that will be before the Senate in a few minutes. I ask unanimous consent that following the statement of the Senator from Minnesota, which is for debate only on the bill, the Senator from Kentucky, Mr. MCCONNELL, be recognized for debate only on his amendment for up to 30 minutes.

Mr. BROWNBACK. Reserving the right to object, if I could inquire, I believe in the former unanimous consent I was to be recognized after Senator DOMENICI. If that is not impacted by the unanimous consent request, I will have no objection.

The PRESIDING OFFICER. That is correct. It would not be affected by the unanimous consent request.

Mr. BROWNBACK. I remove my objection.

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

The Senator from New Mexico.

Mr. DOMENICI. Mr. President, am I limited by a certain amount of time?

The PRESIDING OFFICER. The Senator has 8½ minutes remaining.

FOREST FIRES

Mr. DOMENICI. Mr. President, for a couple of weeks, every time Americans look at their TV screen, they see a huge fire, a piece of America burning. Forests in our Southwest and West are on fire. We have seen huge fires in the State of Arizona, small but significant fires in New Mexico, and very large fires in the State of Colorado.

I do not want to discuss the why of the fires today, but I am very hopeful that another year will not pass in the Congress, at least the Senate, without a thorough analysis and research by a committee of Congress on why our forests are burning. Some say it is natural. Others say it is a terrible management mistake. They claim that we have gone along without pruning, thinning, or taking care of forests and are inviting either manmade fires, lightning, or some kind of natural fire starter.

We have a very serious problem with reference to our national forests and these fires. So far this year, over 3 million acres have burned, and the fire season is not yet over. This is 1 million acres more than the devastating 2000 fire season and twice the 10-year average. So far, twice the 10-year fire average has already occurred in our forests! This fire season has had a detrimental impact on communities throughout the West and Southwest, disrupting thousands of people's lives, hurting the economies in ways we cannot measure, and destroying homes and property. We must act in each instance to put out the fires, to contain them, and, yes, after that, provide whatever help we can to those suffering.

While the fires burn, there are people who need help. There are people in both the BLM and the Agriculture Department who are busy, day by day, using millions and millions of dollars, which we have provided.

I suggest today that the Department of the Interior and the Department of Agriculture indicate they will have to move resources from all kinds of activities that are supposed to occur during the rest of this year over into fire accounts because nobody expected such a huge, onerous, and costly fire season. The Department of the Interior and Department of Agriculture are about $850 million short for 2002.

Those managing the bills, and the White House, should know it is a very difficult situation to let a supplemental catch up with the problem. That is what happened here. We have a supplemental appropriations bill waiting around. Now we have a new problem that did not exist when the supplemental started—reimbursement to the Departments of our Government that have used their money to pay for the forest fires that are burning down America.

We ought to either find a place for that amendment on the supplemental or in some way accommodate it. We always say if it is an American problem, we will pay for it. If it is an earthquake, we pay for it. If it is a tornado, we pay for it. That is the collective insurance of America that we will pay for those emergencies, either on the supplemental or on the Interior appropriations bill, neither of which at this moment has money for these forest fires—neither bill, neither the supplemental nor the full yearly appropriation bill.

The whole of next year is ready to be appropriated without the fire money in it. So we need to provide the money the way I see it. It has been waiting long enough. I know the President does not want the supplemental over a certain amount. I will accommodate to arrange the additional funding, however he and others in the appropriations process and the Congress desire.

I repeat, the money that has been used to fight the forest fires has come out of various and sundry accounts, including the accounts for rehabilitation and restoration of burned lands. For those in the West who are suffering from these fires, we will get a bill ready.

I close by saying there is also a growing problem in Texas and other States regarding excessive water. The floods have caught up with this supplemental. I have been discussing the issue with the Senator from Texas, KAY BAILEY HUTCHISON. I have also talked to Senator GRAMM. We will be asking that they present their water issues, and maybe we can provide funding on one emergency supplemental bill to the extent it is necessary to accommodate the emergencies of our people.

I yield the floor.

The PRESIDING OFFICER. Under the previous order, the Senator from Kansas is recognized.

Mr. MCCAIN. Mr. President, will the Senator yield for a unanimous consent to be placed in the queue to speak?

Mr. BROWNBACK. I yield.

Mr. MCCAIN. I ask unanimous consent that at the appropriate time, which I believe is following Senator MCCONNELL, I be allowed 15 minutes to speak in support of the Leahy amendment.

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

The Senator from Kansas.

COMMISSION ON THE ACCOUNTABILITY AND REVIEW OF FEDERAL AGENCIES ACT

Mr. BROWNBACK. Mr. President, I rise to spend a few minutes talking about a growing fiscal and budgetary problem we have in the Senate, something I am not joyous about bringing up, but we have a problem. We are quickly sliding into it, if not falling into it, and we need to get it addressed. We need to address it before we get completely caught up in the fiscal and budgetary track.

Time is growing short. This body has yet to pass a budget resolution. We have not passed a single 1 of the 13 annual appropriations bills yet. Here we are in the middle of July; no budget resolution, not 1 of the 13 annual appropriations bills. We are quietly moving into position for a fiscal train wreck. Many Members of the body expressed grave concern and doubt in 1998 when we did an omnibus appropriations bill. The course currently being charted by the Senate leadership will make that train wreck look like a fender bender.

We need to first consider the budget resolution created by the Budget Act of 1974. The budget resolution, which the Senate is legally required to pass by April 15—nearly 3 months ago—established caps on total annual discretionary spending. To waive the limits requires a 60-vote point of order. Without the mechanism in place, amendments to increase spending can be passed in the appropriations bills, regardless of their impact on Social Security, by a simple majority. So we are subjecting the Social Security surplus to simple majority movement by this body.

It is astounding, but despite the legal requirements for passage of the budget resolution by April 15, the leadership of the Senate has failed to even bring up the measure for consideration. And in the 27 years since the Budget Act of 1974, the Senate has had a budget.

To further put our current situation in perspective, consider the fact that just a year ago this body was composed of the exact 100 people here today, and we passed a budget resolution offered by Senator DOMENICI with the support of 65 Members.

Regardless of how the votes stack up, at the least, the Senate should pass a budget resolution so we have the fiscal caps in place that would take 60 votes—not just a majority, but 60 votes—to be able to raid the Social Security surplus. That is just prudence on our part that we ought to put the budget mechanisms in place.

I think we are sliding quickly into a situation where we are going to be spending ourselves into a bigger hole and not have any of these restraints or the mechanisms in place to help hold us back.

On the appropriations bills I mentioned at first, when the Senate should have passed 4 or 5 of these at least by this point in time, of the 13, we have passed none. These bills can take weeks to debate and pass. Then there are conference committees to work out the differences between the House and the Senate bills.

When considering these factors, coupled with the finite time remaining on the legislative calendar, it seems evident that a super-omnibus bill, larger than the 1998 omnibus, may very well be necessary to break the inevitable logjam.

Most of us in this Chamber have been privileged enough to serve during the recent period of historic, large federal surpluses. While large surpluses can be

an indicator of a robust economy, they are not necessarily an indicator of good fiscal management. Large surpluses, as I think we have seen, can lead to complacency with, and in some instances even misuse of, taxpayer dollars. While we should always be dedicated to ensuring the maximum benefit of every tax dollar that comes to Washington, we are now faced with the real possibility of a $100 billion deficit in fiscal year 2002—a $100 billion deficit.

Between increased funding for both the War on Terrorism and other domestic programs, our federal surpluses have vanished, and we are reentering the realm of deficit spending. We need to exercise fiscal restraint in our spending, and yet we appear to be headed for another omnibus appropriations bill at the end of this congressional session. Surely, Members on both sides of the aisle can understand that if this is the case, it means that there will be even more pork-laden measures tucked inside of these bills. Whether you are conservative or liberal, surely, it is an unacceptable strain on hard working Americans and our economy to have that type of pork barrel spending. The bottom line is that an omnibus appropriations bill prevents the proper individual consideration of spending measures, and it is bad for America.

Now more than ever, we should take steps to assure taxpayers that their hard-earned tax dollars are being well spent. Two months ago, I introduced the bipartisan Commission on the Accountability and Review of Federal Agencies Act—or CARFA Act for short. As in any bureaucracy, inefficient or low priority use of taxpayer's dollars are often serious threats to the credibility of an agency or program. We must be certain that the money we spend is not just allocated that way because we have historically spent it this way. Priorities change and our spending must change with it.

The CARFA Act would create a commission that is modeled on the successful Base Realignment and Closure BRAC Commission. Whereas the BRAC Commission examined military bases and the Department of Defense, CARFA would review Federal domestic agencies, and programs within agencies using a narrow set of criteria, which should produce significant results. The three areas of review are duplicative programs, wasteful or inefficient spending, outdated, irrelevant or failed programs.

If this legislation is enacted, the Commission, upon completion of its two-year review, would submit to Congress both its recommendations for the realignment and elimination of domestic agencies and programs, and proposed legislation to implement these recommendations. The Congress would then consider the Commission's proposed legislation in an expedited manner, with input from the committees under who's jurisdiction the affected agencies or programs fall. Following the committee's comment period, the proposed legislation would be brought to the floor of each Chamber for debate and a vote. Like BRAC, the Commission's proposed legislation would be voted up-or-down without amendment.

The Commission on the Accountability and Review of Federal Agencies Act is about maximizing the benefit of Federal funds. Like BRAC, which directed that all funds saved be placed back into the DOD budget, any funds saved by implementation of CARFA's recommendations would be directed to support other more efficient domestic programs and agencies. In other words, any money saved would be put right back into other, higher priority domestic programs. That would be the best way we could spend the money.

The CARFA Act is about fiscal responsibility, and the Federal Government is accountable to the hard-working Americans who foot the bill. Personally, I think it would be wonderful if we were able to further increase the research budget for the National Institutes of Health, or IDEA—Individuals w/Disabilities Education Act—because funds saved through the work of the CARFA commission would be more money available there. Priority spending would be done. This Commission has the potential to help us truly root out inefficiency, in the Federal Government in such a way that we can more fully realize the benefit of all Federal funds.

The CARFA Act is a good measure, and its enactment would send a positive signal to the American people that the Senate is attempting to exercise sound fiscal policy. I urge my colleagues to support it.

I urge my colleagues to look at the fiscal situation we are setting up right now with the spending and the lack of a budget bill, the lack of passing any appropriations bill, the $100 billion fiscal deficit we are looking at for this fiscal year. We cannot afford this train wreck, and it is not wise at all for us to allow ourselves to slip into it. We really need to show the leadership to pass a budget resolution, to pass appropriations bills, to put caps in place, and to pass this CARFA bill.

I yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. WELLSTONE. My colleague from Indiana wanted to speak for 5 minutes, so I ask unanimous consent he be allowed to speak for 5 minutes, after which I have the floor.

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

Mr. BAYH. Mr. President, I thank my colleague, the Senator from Minnesota, for his courtesy.

Mr. President, it is good to see you in the chair again. You have had the misfortune of being in the chair the last few times I took the floor, and I appreciate your forbearance as well.

ACCOUNTING REFORM ACT

Mr. BAYH. I come to the floor of this august body to call for the swift enactment of the accounting reform measure, including the Leahy amendment. I do so because I believe very strongly that it is in the best interests of America at this critical time in our history. I believe it goes way beyond mere accounting issues.

What we are debating today deals with the financial security of millions of individual investors across this country, the security of their pensions, their 401(k) programs, and their other investments for the future of their children and their grandchildren.

What we are talking about today involves the very vitality of our economy, for those who have invested and not invested alike, the amount of investment that will take place in the economy, the number of jobs that will be created, the vitality of farms. What we are debating today involves the standing of America in the international economy; whether we will continue to be a safe haven for investments from those abroad, attracting the capital that helps us build a strong foundation for America's economy.

More than anything else, what we are debating today is nothing less than the basic values upon which this country has been based; whether we will continue to encourage those virtues that have always characterized America, whether we will continue to be the land of opportunity based upon hard work, ability, thrift, honesty, and playing by the rules or, instead, whether we will be perceived as the land of opportunity based upon artifice, avarice, and financial deceit. I believe the choice is clear and that the right thing, based upon traditional values and virtues, is embodied in the Sarbanes bill, including the Leahy amendment.

I congratulate our colleague, Senator SARBANES. He has demonstrated leadership and foresight in this issue. I believe the record will show that Senator SARBANES was a leader in this issue a long time before it became popular. It is wonderful when events combine with leadership to give us an opportunity to truly make historic progress in this body. I think Senator SARBANES has seized the moment.

I congratulate Senator LEAHY for his protection of whistleblowers and strong penalties against document shredding and financial fraud. He has made this a better bill.

Mr. President, as you know, we serve on the Intelligence Committee together, and since the tragedies of 9/11, our country has been involved in twin struggles: One, the physical national security of this country; and, second, getting this economy moving again to ensure the economic security of Americans across this country. There are parallels between these two challenges. Both occurred as a result of unexpected tragedies but have presented us with opportunities to make this an even better, stronger, more secure Nation. Both involve breaking the political gridlock and the bureaucratic inertia that all too often make progress in this Capitol

difficult. And both involve striking the right balance between individual freedom and liberty on the one hand, that we cherish, and collective security, which makes individual liberty meaningful, on the other.

I believe this bill strikes the right balance. It insists upon credibility and transparency of information provided to the marketplace, the very foundation upon which capitalism is built, but it does so with flexibility to ensure that the regulatory hand is as light as possible, and that the information provided, that transparency and credibility provided to the marketplace, is done in a manner that is least burdensome to shareholders and investors as possible.

For example, the prohibitions against auditors providing consulting services: We have seen, as the chairman would note, in recent years a vast expansion of expenses and consulting services which create an appearance of a conflict of interest.

We need to deal with this transparency to reassure the marketplace, but we need to do so in a way that imposes less regulation, burden, and cost upon existing shareholders as is humanly possible. This bill takes that approach by creating a presumption that certain consulting services will not be allowed, but by also providing flexibility to the new independent oversight board to waive that presumption, or the company and its auditors can go to the oversight board and say in this instance, under these facts, the presumption should be waived because we can provide the transparent data to the marketplace in a less costly manner by allowing our auditors to provide these consulting services.

Basically, the bottom line is where it makes sense to provide the consulting services, or the presumption or the appearance of conflict is not a conflict in fact, it can be waived, and the consulting services can be provided. That is the right balance for transparency and credibility provided in the marketplace in the less costly manner to shareholders.

I congratulate the chairman for incorporating that into the bill.

I have heard some of our colleagues and commentators talk about overburdensome regulations. I don't have the reflexive reaction to regulate. I am well aware that one of the few laws that we count on in Washington is the law of unintended consequences. But the fact that an error may be made is no excuse for doing nothing.

The right answer is not no action to address the inadequacies that we have seen, just as it is not an overburdensome action. The right answer, my friends, is a well-considered, thoughtful, well-balanced action to protect the interests of American investors, and to ensure the integrity of our economy. That is the balance which is struck in the Sarbanes bill.

That is why I compliment the chairman for all the work he has done.

Let me conclude. My colleague from Minnesota has been so gracious for allowing me to continue.

I am pleased to see the chairman in the Chamber. I hope he will have a chance to read the complimentary remarks I made about his leadership and his farsightedness.

I said he is the leader on this issue, and I congratulate him for that.

Let me conclude where I began.

This issue goes a long way beyond mere accounting issues. It goes a long way beyond economic policy. It goes to the very heart of who we are, what we stand for as a people, and the kind of values we cherish in United States of America. This will protect individual investors. It will help to ensure the integrity of our economy. But more than anything else, it will ensure that those Americans who have embraced our tradition with virtues, who have worked hard and saved their money, who have played by the rules, and are honest are able to get ahead in this society.

It will send a loud and clear signal to those who practice financial deceit and financial chicanery that they do not have an avenue to success in this country. That does not embody the best values of America.

That is why I strongly support the Sarbanes bill and the Leahy amendment.

I urge my colleagues to enact this important legislation.

I thank the Chair. I yield the floor.

Mr. SARBANES. Mr. President, I say to my good friend, the distinguished Senator from Indiana, that he said I should read his gracious comments. I actually saw them on one of the monitors. That is one of the reasons I came to the floor. I wanted to express my personal appreciation to the Senator for his very kind remarks.

But even more, I wanted to underscore the constructive contributions which the Senator made to this legislation in the course of its consideration by the committee. I know how closely he followed what we were trying to do. He came forward with a number of ideas that were most helpful to us in shaping this legislation. I think the statement he just made reflects his own deep appreciation of the seriousness of the issue with which we are trying to deal, the import it has for the functioning of the American economy, and how he understands that they are very important issues.

If we don't move to restore confidence in the U.S. capital markets, there will be a negative impact on our economy. We are seeing some of that now. We have already seen this tremendous loss in the value of the retirement plans. People have just been wiped out. Tens of thousands of people are being laid off. The impact on the economy is beginning to spread. We need to move in order to counter that and start ascending in a different direction.

I particularly want to thank the Senator for his consistent help in the committee as we marked up this legislation.

Mr. BAYH. I thank the chairman.

Mr. SARBANES. I thank the Senator from Minnesota.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

PUBLIC COMPANY ACCOUNTING REFORM AND INVESTOR PROTECTION ACT OF 2002

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of S. 2673, which the clerk will report by title.

The assistant legislative clerk read as follows:

A bill (S. 2673) to improve quality and transparency in financial reporting and independent audits and accounting services for public companies, to create a Public Company Accounting Oversight Board, to enhance the standard setting process for accounting practices, to strengthen the independence of firms that audit public companies, to increase corporate responsibility and the usefulness of corporate financial disclosure, to protect the objectivity and independence of securities analysts, to improve Securities and Exchange Commission resources and oversight, and for other purposes.

Pending:

Daschle (for Leahy) amendment No. 4174, to provide for criminal prosecution of persons who alter or destroy evidence in certain Federal investigations or defraud investors of publicly traded securities.

Gramm (for McConnell) amendment No. 4175 (to amendment No. 4174), to provide for certification of financial reports by labor organizations to improve quality and transparency in financial reporting and independent audits and accounting services for labor organizations.

Miller amendment 4176, to amend the Internal Revenue Code of 1986 to require the signing of corporate tax returns by the chief executive officer of the corporation.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. WELLSTONE. Mr. President, I ask unanimous consent to be added as a cosponsor of the Leahy amendment.

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

Mr. WELLSTONE. Mr. President, I wanted to come out here on the floor and thank Senator SARBANES for his leadership in putting together a piece of legislation that deals with structural reform of corporate governance and auditing independence.

I also think what the chairman didn't do is very important. Senator SARBANES didn't just call for a roundup of the usual suspects but for the prosecution of the worst offenders who deliberately have enriched themselves at the expense of the employees, investors, and creditors, and then try to claim that it is the end of the matter. This bill does hold bad actors accountable for their fraud and deception. And it is probably going to be stronger by the time it leaves the Senate Chamber.

The legislation goes much further, and it should because the problem goes

much deeper. We are faced with much more than just the wrongdoing of individual executives. We are faced with a crisis in confidence in America's capital markets and in American business.

These corporate insider scandals are threatening the economic security of families all across Minnesota, North Dakota, New Jersey, Maryland, and all across the country. It is heartbreaking. You have people who have taken their savings and put them into stock. This is what was going to be their resources to help send their kids to college or to meet other family needs. The value of that has eroded.

Other people have 401(k) plans and are counting on that for retirement security. The value of that has eroded.

But I think the other big issue is really important, which is above and beyond hundreds of billions of dollars wiped out. That is what has happened already. You do not have investor confidence. Without investor confidence, we will not have the economic recovery that we need. Jobs aren't being created. Frankly, this affects all of us.

It is this last problem on which I want to focus. I see my colleague from New Jersey who knows much more about finance than I do.

There is a business cycle. Some years are good and some years are bad. Sometimes companies do well and sometimes companies don't do well. Sometimes people invest more and sometimes they invest less. That is the risk they take.

If the only problem was that executives at Enron were corrupt and their business failed—all of which is true—or WorldCom officers were fudging the books and the company really wasn't all that profitable—which is true—and that a lot of businesses, such as Global Crossing—what they were doing, to be blunt, was just fake—which is true—even with all of that, I don't think we would be out here on the floor with this legislation.

In other words, if the story was only that a bunch of companies did badly, lost money, went bankrupt, and a whole lot of other people were hurt, frankly, I still don't think we would feel this sense of urgency. But that is not the end of the story.

The reason we need this legislation goes way beyond Enron and WorldCom. It is not just because of Global Crossing. It is not just because of MicroStrategy. We need this legislation, and it ought not be cluttered with extraneous amendments, or with delay, because the American investing public has lost its confidence in this corporate system.

I want to emphasize this point because I think some colleagues—some, not all of my colleagues—on the other side of the aisle don't seem to get it. I hate to say it, but I don't think the President or the administration gets what this is really about.

Again, the President yesterday basically focused on a handful of corporate executives who deliberately misled investors. He talked about a few bad apples. It goes much deeper than that.

Listen to the words of some other members of the administration, such as Donald Evans, Secretary of Commerce, who 2 days ago said:

> The system has not failed us, but a few have failed the system.

The President said the same thing yesterday.

Treasury Secretary O'Neil said last year that Enron's collapse was ''capitalism working.'' Now, if these individuals didn't have substantial responsibility for the economy, then their comments would be comical. I guess if we asked these guys about Watergate, they would say it was just a burglary. But we are dealing with more structural and deeper issues.

The crisis is a crisis in faith. Investors who thought that if a corporation was doing badly and making poor decisions it would show up on their financial reports now have found out that is not the case. By the way, we should not be shocked by this. In fact, this should be old news to us.

Almost 2 years ago, the then-Chairman of the SEC, Arthur Levitt, approached many of us—I remember the discussion with him in my office—and he said: ''Paul, we are on the brink of a crisis in accounting.''

What Levitt was saying is, I want to put into effect a rule which is basically going to say that the Andersens of this world cannot be pulling in all these luxurious contracts and money for their internal auditing and all the rest, because once they get all the money, they are going to be reluctant to bite the hand that feeds them. Secondly, they will be put in a position of auditing their own auditing. That is a conflict of interest, and the consequences of it could be tragic for a lot of innocent people.

Arthur Levitt was right. Of the decisions I have made in the Senate, one of the best decisions I ever made was 2 years ago in writing a strong letter of support for the then-Chair of the SEC for what he was trying to do. The auditors haven't done a good job because they have been too close to the firms that they were supposed to be auditing. That is what Arthur Levitt was talking about. He fought for greater auditor independence. His solution looked a lot like what is in this bill.

I am glad I supported his reform. That was a pretty lonely position back then for Chairman Levitt. I am glad the Sarbanes bill is going to get a lot more support. I believe it is going to pass overwhelmingly.

The Sarbanes bill does a number of different things. No. 1, at the core of this crisis is the need to have auditor independence. That is part of what the Sarbanes bill is all about. One hundred years ago, we had politicians and business leaders who were willing to take on entrenched corporate interests that were stifling competition—sound familiar—that were bilking customers and bilking consumers and that basically were enslaving their workers. We are dealing with similar kinds of issues now.

We are now in a new century. This is going to be a real interesting case study—I was a political science teacher—as to whether or not the Senate and the Congress and this administration will, in fact, be there for strong reform.

The other part of this legislation which is also important is to hold the corporate insiders accountable for their abusive actions. That is why I am so supportive of the Leahy amendment.

If you ask people in any coffee shop in Minnesota, should there be criminal penalties for altering the documents, such as a 10-year felony, they will say, absolutely. If you ask people in Minnesota, should there be whistleblower protection for employees of public companies who actually blow the whistle on these kinds of abuses of power and corruption, people in Minnesota say, absolutely. If you ask, should there be criminal penalties for securities fraud, create a new 10-year felony for defrauding shareholders of a publicly traded company, people in Minnesota will answer, absolutely.

The President spoke yesterday, and the problem is, he did not call for enough resources. He has a lot of tough rhetoric, but then when you look at what is behind the rhetoric you don't see the resources the SEC needs for the oversight. You don't see an oversight board that is set up, as the Sarbanes bill does, with authority and independence. Most importantly, from the President we don't get any proposals that insist on auditor independence.

If we have learned one thing, it is that Chairman Levitt was right. Two years ago, Arthur Levitt tried to warn all of us. All of these big companies, accounting companies and all these other people who are tied into this finance, some of the biggest investors, frankly, in politics in the country—I know of no other way to say it—all lobbied hard. Arthur Levitt was clobbered by a whole bunch of people, but he was right. Now we have a chance to do the right thing.

If you were to go back over the last decade, we have passed too much legislation that has taken away some of the individual investor rights, that has made it harder for us to have Government oversight, that refused to look at these blatant conflict of interest situations. As a result of that, we have these corporate insider scandals.

I will say one more time, it is heartbreaking, hundreds of billions of dollars have been lost. It is heartbreaking to see what this has done to people's savings who invested in stock. It is heartbreaking to see what it has done to 401(k) plans, heartbreaking to see the ways in which families are terrified in Minnesota and around the country. Most fundamental of all is, we don't have investor confidence any longer.

I say to my colleague from Maryland, the best thing he did, above and beyond

this bill, is he didn't just say, let's go after a few bad apples. He didn't just say that. That would be the end of it. He has dealt with the underlying structural issues so we can prevent this from happening again.

I am extremely proud to support this bill. I can think of some zinger amendments. When I think of these guys who got the golden parachutes, I am amazed. Look at WorldCom.

Mr. SARBANES. Will the Senator yield for a moment?

Mr. WELLSTONE. I will just finish one quick point.

With WorldCom, you are looking at a situation where at the very time—the same old story—they are getting employees to do away with defined benefit packages and then they put their employees in 401(k)s, cheerleading the 401(k)s, while they are doing that, they are dumping their stock. They got out with golden parachutes, all this money. It is outrageous what has happened at the individual abuse level.

It is much deeper than the wrongdoing of these individual corporate chieftains and governance. It gets to the structural issues. That is what is so important about this bill.

Mr. SARBANES. If the Senator will yield, I thank him for that observation because he is absolutely on point. The bad apples ought to be punished. There is no question about it. They ought to be punished severely. But it is very clear, as this issue has unfolded, that we need to make structural changes. We need to change the system so that the so-called gatekeepers are doing the job they are supposed to be doing. That has not been happening. That is why we need to remove these conflicts of interest on the part of auditors who are also consultants for the same company, collecting huge fees. And they are supposed to come in as outside auditors and be very tough on the company, which at the same time is giving them large fees for consultancy.

The Senator is absolutely on point. We have to put in place a framework, a system which tightens up and begins to screen out these things.

Furthermore, if you go after the bad apples, fine; but the damage has already been done, as the Senator just observed, for instance, WorldCom and the collapse of the whole pension program and pension provisions.

Punishing a bad apple may have something of a deterrent effect, but there is nothing like putting a system into place that gives a heightened assurance that you are going to be accountable. That is what investors are looking for.

Mr. WELLSTONE. One more minute. What I said earlier, the problem with rounding up the usual suspects is quite often you then say that is the end of the matter. That is why the President's proposals yesterday come in for strong constructive criticism.

The story in the Post today in the business section is another outrageous example of what happened. WorldCom swallows MCI and tells the MCI employees they don't have a defined benefit any longer and puts them on the 401(k), cheerleads them on to put the investment into the company, cooks the books, and doesn't give them any accurate information on what happened to them. Now what happens to all these MCI employees? They don't have any of the savings any longer.

So do you know what. We have to hold these people accountable, absolutely, but at the same time don't let anybody—people in Minnesota—get away with saying it is a few bad apples and that is all we are going to deal with. No. We are going to deal with the conflict of interest and we are going to have structural reforms. We are going to have oversight. We are going to protect consumers, the little people, and give the business community more confidence so they do the investing in the economy. That is what is at stake with this legislation.

I yield the floor.

Mr. SARBANES. Mr. President, I ask unanimous consent that following Senator MCCAIN, who will speak later, Senator CORZINE be recognized to speak for up to 15 minutes.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

AMENDMENT NO. 4175

The PRESIDING OFFICER (Mr. REED). Under the previous order, the Senator from Kentucky is recognized for up to 30 minutes.

Mr. MCCONNELL. Mr. President, I wish to take the opportunity now to describe in detail the amendment currently pending before us, that which I was unable to do yesterday.

There are two fundamental points to the amendment. What it seeks to do is require independent audits of union funds which, of course, are raised from union members in the vast majority of our States. You don't have a choice; you must belong to a union, and those dues are taken. So we have mandatory auditing of those funds to ensure they are being accurately accounted for, civil penalties for violating those auditing requirements, and, third—this is all the amendment is about, these three points—the president and the secretary of the union must certify as to the accuracy of the audit.

We are talking about guaranteeing the integrity of the funds raised from union members. The reason we require corporations to file financial statements is so corporate shareholders know how their money is being spent. As a second layer of protection for shareholders, we also require those financial statements to be independently audited. Why? So investors know that information filed is actually correct, so they know it is not just the creative writing of a crooked bookkeeper or a corrupt executive.

We take this independent audit requirement, or this second layer, very seriously—so seriously, in fact, that we are creating a third layer in the Sarbanes bill, an entirely new audit oversight board to better police these required audits for the benefit of corporate shareholders.

This third layer is a good idea, especially given today's stories of corporate fraud, deception, and outright theft that we all cite as the real motivation behind the underlying bill. My colleagues have cited the well-publicized financial failures and the endless corporate scandals and the need to hold corporate crooks accountable. I could not agree more. But we also have union corruption, union greed, union scandals.

My amendment will give American workers the assurances that their labor unions' books have been independently audited—the same second layer of protection we have given to corporate shareholders since 1933.

Unions already have to file financial statements. They do so with the Department of Labor on a form called the LM–2. Why? For the same reason corporations do: So American workers, the card-carrying, dues-paying union workers can see where their money goes. But we don't currently require independent audits of union financial statements. Unlike the corporate shareholder, the rank-and-file American worker has no earthly idea if the financial information they rely on is correct—no idea at all. So why shouldn't the American steelworker or longshoreman be entitled to the same assurances as the corporate shareholder who has recklessly overinvested in a bundle of Internet stocks? Isn't the workers' money just as hard earned and deserving of protection—maybe even more so?

I cannot imagine that anyone in this body would argue that American workers do not suffer from the same type of greed and corruption that plagues our corporate and accounting culture, nor can I imagine that as a result of these scandals anybody in this body believes that American workers do not deserve the very same assurances that their unions' financial statements are correct.

But just in case, let me read for my colleagues a few recent accounts of union corruption. I am going to read quite a few, and I will do so for a specific reason—so nobody can stand up and say that greed and corruption only affects corporate shareholders, so no one can say the only stories here are Enron and WorldCom, and so no one can stand up and say we are wasting time by trying to protect the American workers from being cheated out of their money.

We have all heard of Arthur Andersen, but has anybody heard of Thomas Havey? That is the accounting firm where a partner confessed last month to helping a bookkeeper conceal her embezzlement of hundreds of thousands of dollars from a worker training fund of the International Association of Iron Workers.

Yesterday, a colleague of mine said that the problem at Global Crossing

had nothing to do with labor unions. Maybe he hasn't heard of ULLICO. That is the multibillion-dollar insurance company owned primarily by unions and their members' pension funds that invested $7.6 million in Global Crossing. Apparently, ULLICO directors received a sweetheart stock investment deal that allowed them to make millions on the sale of the stock. All the while, union pension funds, however, suffered the fate of Global Crossing.

There is plenty more, beginning with a couple of stories I briefly mentioned yesterday. An accountant with the National Association of Letter Carriers embezzled more than $3.2 million from union funds over an 8-year period to buy 8 cars, 2 boats, 3 jet skis, a riding mower, and 105 collectible dolls.

A former official of the Laborers' Union District Council in Oregon, Idaho, and Wyoming is in jail for accepting hundreds of thousands of dollars in kickbacks for directing money into a Ponzi-like investment scheme that defrauded Oregon labor unions of $355 million.

A former business manager and financial secretary of the International Association of Heat and Frost Insulators and Asbestos Workers Local 87 was indicted by the U.S. attorney for the Western District of Texas for embezzling tens of thousands of dollars in union funds.

Mr. President, a comptroller of the American Federation of State, County and Municipal Employees, Council 71 of New Jersey, was sentenced to 13 months in prison and fined for embezzling tens of thousands of dollars from the union.

A trustee of Glass, Molders, Pottery, Plastics & Allied Workers International Union Local 63B, headquartered in Minneapolis, was charged with forgery and embezzlement in connection with the theft of thousands of dollars from the union.

Fourteen officers and members of Local 91 of the Laborers International Union in Niagara Falls were arrested on charges of labor racketeering, extortion, assault, vandalism, and bombing a dissenting union member's home and stabbing a worker.

A former business manager of IBEW Local 16 in Evansville, IN, was indicted for diverting union dues checks to his personal bank account.

A Federal grand jury recently indicted an ex-business manager of the United Association of Plumbers and Pipefitters Local 15 in Minneapolis in connection with the theft of tens of thousands of dollars from the union.

A former officer of United Food and Commercial Workers Local 1288, in Fresno, CA, was sentenced to 18 months in prison for embezzling almost $300,000 from the union's credit union.

An ex-business manager and financial secretary of the United Union of Roofers, Waterproofers and Allied Workers Local 86, in Columbus, OH, was sentenced to 21 months in prison for embezzling $130,000 from the union to pay his gambling debts.

An ex-president of the American Postal Workers Union Local 1616, in Roanoke Rapids, NC, was indicted for embezzling thousands in union funds and making false entries in union records.

Laborers International Union of North America Local 2, in Chicago, which recently came out of Federal trusteeship imposed because of its close ties to organized crime, failed an oversight audit and is again having significant accounting and bookkeeping problems.

An ex-secretary-treasurer of the American Postal Workers Union Local 761 in Las Vegas and ex-treasurer of the Postal Workers Nevada State Association pled guilty to embezzling $200,000 in union funds.

Two former officers of Steelworkers Local 9339 in Virginia and a former administrator of the local union's disaster relief fund were indicted for conspiracy to embezzle union funds and make false recordkeeping entries.

A grand jury is investigating claims that a local United Auto Workers Union ended an 87-day strike against General Motors only after union officials received phony overtime payments and jobs for their relatives. Union members have also filed civil suits to recover over half a billion dollars—half a billion dollars—from alleged self-dealers.

My good friend, the senior Senator from Texas, always says you cannot argue about facts. Facts are a powerful thing. These are the cold hard facts of union corruption. Just like Enron, just like WorldCom, just like Global Crossing, these are the cold hard facts, and there are plenty more of these facts.

I have a stack of papers filled with what is called a union corruption update. If you look at this stack, this is just for the year 2002. This stack is just for the year 2002—this whole stack—and 2002 is only half over. It is compiled by the National Legal Policy Center. The Department of Labor's Office of Labor Management Standards reports 12 new indictments and 11 convictions of union fraud per month over the last 4 years.

Let's go over that one more time. DOL's Office of Labor Management Standards reports 12 new indictments and 11 convictions of union fraud per month over the last 4 years. This is a serious problem, and the Senate should not let whatever allegiance some Members may have to the leaders of organized labor affect their concern about the workers themselves, and that is what this amendment is about: Providing the same protection for union members that we insist on providing for investors in corporations.

We have a choice before us. Who should bear the cost of union corruption against the rank-and-file, dues-paying American workers? The unions, the perpetrators of much of this fraud, by bearing an incremental cost of an audit that will help prevent future workers from being cheated out of their money? Or the workers, whose money will continue to be embezzled, concealed? And if we do not provide them with minimal assurances of an independent audit, it will go on and on.

To me, this choice is identical—absolutely identical—to the choice in the Sarbanes bill. Who should bear the cost of the corporate and accounting corruption against shareholders, the corporations and accountants, obviously, through improved oversight, enforcement, and corporate responsibility or the investing public whose stock holdings will continue to be embezzled, concealed, if we do not provide them a new accounting oversight board?

Choosing the unions over the workers in this case is no different than siding with the accountants and corporate executives who quietly oppose the Sarbanes bill.

Mr. President, about the complaints I have heard of the burdens and costs associated with this bill. It would not surprise me if the leaders of organized labor have been on the phone calling particularly our Democratic colleagues over the last 24 hours concerned about the burdens and costs associated with this bill.

First of all, I find it absolutely astounding, given the pervasiveness of union corruption, that some of our colleagues are worried about the incremental cost of stopping that corruption, the cost of giving union workers the same quality assurance answers that we are prepared to give corporate shareholders in the underlying bill.

I do not hear any complaints about the cost of a new accounting oversight board or the cost of corporate responsibility or enhanced disclosure requirements in the Sarbanes bill. Why not? Because the accountants and executives are the ones responsible for the fraud and deception of investors. But for some reason, when it comes to unions, some of our colleagues speak less about the cost to the workers being ripped off and more about the burdens this amendment will place on unions whose officials are responsible for the greed and corruption documented in the binder I just held up a few minutes ago which represented only half of the year 2002.

We hear that unions are saddled with too many requirements on their financial statements. I am not concerned with the quantity of disclosure requirements. I am only concerned about the quality of that disclosure, specifically whether the information is accurate and certified as such for the benefit of the dues-paying American union workers.

We hear that we do not need audits. Some have said we do not need audits because the Department of Labor can conduct enforcement audits, if necessary. Well, let's play with that logic a little. If that is the case, we do not need public corporations to be audited either. Let's get the SEC to conduct

enforcement audits. Could you imagine the uproar if someone suggested that? And no one has.

Think about the message this would send to American workers that it is not worth requiring your union to assure you that your money is going where they say it is; just take a number and hope the Department conducts an audit of your union.

At any rate, the Department, as most Federal agencies, needs more money to conduct the few enforcement audits that they conduct. The Deputy Secretary of the Department of Labor testified recently that the number of departmental audits has fallen from 1,583 in 1984 to a mere 238 last year, and the President has requested an additional $3.4 million and 40 new staff positions to combat union fraud.

We hear that audits will be too expensive. Here is an easy tip for union officials to save money: Stop stealing it. That is a good way to save money. My amendment only requires audits to any union that already bears the cost of filing financial disclosure statements. In other words, this would apply only to unions that already have to file financial disclosure statements. That is unions with receipts topping $200,000 annually. It goes to my original point. If you have to file an annual report, it ought to be verified as accurate.

We hear that smaller unions will be hit hardest by having to conduct an audit. Well, there is no national one-rate plan for audits of which I am aware. As any professional service, the rates are proportional to the size and scope of the client. Obviously, a union with $500,000 is not going to pay in audit fees what a $60 million corporation pays for an audit.

Let me close this part of my remarks with a simple suggestion for my colleagues who have been tricked into worrying about the cost this amendment would impose on unions. Just imagine this: the cost to American workers of not requiring audits. Let us think about the cost to American workers of not requiring audits: More embezzlement, more crooked bookkeeping, more abuse and concealment of workers' hard-earned money.

We do not need more embezzlement, more crooked bookkeeping, and more concealment of workers' hard-earned money. We have a choice. We can extend to American workers the same financial protection afforded corporate shareholders, or we can extend to unions the ability to continue to pilfer and profit off the workers' money. That is the choice.

How much time do I have remaining?

The PRESIDING OFFICER. The Senator from Kentucky has 8 minutes 30 seconds remaining.

Mr. MCCONNELL. I know the Senator from Arizona has been waiting patiently. I would like to reserve my 8 minutes because I am not clear how long this debate is going to go on. We do not have a time agreement yet for a vote. Is that correct? I guess I am asking my friend from Maryland what his plans are for the disposition of the McConnell amendment.

Mr. SARBANES. If the Senator will yield, we have people lined up to speak once the Senator has concluded, Senator MCCAIN and then Senator CORZINE. After that, I anticipate then dealing with the McConnell amendment.

Mr. MCCONNELL. So is it the plan of the Senator from Maryland to have a vote sometime in the next hour or so?

Mr. SARBANES. I would anticipate a vote in relation to the McConnell amendment—well, we have 30 minutes.

Mr. MCCONNELL. Could we do this, then? I ask unanimous consent that I have 2 minutes prior to the vote to sum up what I think this amendment is about.

Mr. SARBANES. I certainly think that could be done. I intend to speak to it for a few minutes.

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

Mr. MCCONNELL. Therefore, I yield the floor.

AMENDMENT NO. 4174

The PRESIDING OFFICER. Under the previous order, the Senator from Arizona is recognized for up to 15 minutes.

The Senator from Arizona.

Mr. MCCAIN. Mr. President, for the benefit of the managers, I do not intend to consume all 15 minutes.

I rise in strong support of the underlying Leahy amendment, and I hope we can dispose of that amendment within a reasonable length of time and move on to other changes that need to be made to this very important legislation.

Our publicly owned companies are an essential component to the economic health of our country. As we have seen over the past few months, the continued lapses of our corporate leaders, whether they are ethical, criminal or just plain ignorant, have a significant, sometimes crippling, effect on the welfare of our nation. We must make some fundamental changes in the current system of corporate oversight to protect Americans from avarice, greed, ignorance and criminal behavior. Now is the time for Congress to restore investor confidence and take the necessary action to protect the interests of the public shareholders and place those interests above the personal interests of those entrusted with managing and advising those companies. The deterioration of the checks and balances that safeguard the public against corporate abuses must be reversed.

We have to address the shortcomings in Federal law and send the message that prosecutors now have the tools to incarcerate persons who defraud investors or alter or destroy evidence in certain Federal investigations. This amendment is a step in the right direction. It creates two new criminal states that would clarify current criminal laws relating to the destruction or fabrication of evidence and the preservation of financial and audit records. The Enron debacle clearly indicated that there were gaping holes in the current framework. There will be a 10 year criminal penalty for the destruction or creation of evidence with the intent to obstruct a federal investigation. There will be a new 5 year criminal penalty for the willful failure to preserve, for a minimum of five years, audit papers of companies that issue securities.

The amendment also provides for the review and enhancement of criminal penalties in cases involving obstruction of justice and serious fraud cases. All of these actions are necessary to deter future criminal action. Until somebody responsible goes to jail for a significant amount of time, I am not sure that these people are going to get the message. Defrauding the shareholder has to carry a meaningful penalty. Corporate decision-makers can make millions, tens of millions, even hundreds of millions of dollars by cheating investors. A relatively small fine or short prison term is not a deterrent; it's a slap on the wrist. The threat of real time in jail is a deterrent that will make people pay attention.

This amendment also creates a new securities fraud offense. The provision makes it easier, in a limited class of cases, to prove securities fraud. Currently prosecutors are forced to resort to a patchwork of technical offenses and regulations that criminalize particular violations of securities law, or to treat the cases as generic mail or wire fraud that results in a five-year maximum penalty. This new provision would criminalize any scheme or artifice to defraud persons in connection with securities of publicly traded companies or to obtain their money or property. This new ten-year felony is comparable to existing bank and health care fraud statutes. To those who would say that it's hard to define a scheme or artifice to defraud, I would say that full and honest disclosure of material dealings and accounting treatments is the best way for the officers who run America's corporations to protect themselves and those who invest in their companies. There are plenty of felony laws on the books that provide long prison terms for crimes that cause less damage than the losses to shareholders in Enron or WorldCom.

It is important to emphasize that when criminal charges are pursued, it is not necessarily the firm that should be charged but the individuals at the helm of the corporate ship who should be prosecuted. If they are the ones making the decisions out of self-interest, they are the ones that should be held accountable. I also believe that we must protect the ''corporate whistleblower'' from being punished for having the moral courage to break the corporate code of silence. This amendment does that.

This amendment also extends the current statute of limitations for matters concerning securities fraud, deceit or manipulation. The current statute

of limitations for securities fraud cases is short given the complexity of many of these matters, and defrauded investors may be wrongly stopped short in their attempts to recoup their losses under current law. The existing statute of limitations for most securities fraud cases is one year after he fraud was discovered but no more than three years from the date of the fraud regardless of when it was discovered. Because this statute of limitations is so short, the worst offenders may avoid accountability and be rewarded if they can successfully cover up their misconduct for merely three years. The more complex the case, the easier it will be for these wrongdoers to get away with fraud. According to at least one state Attorney General, the current short statute of limitations has forced some states to forgo claims against Enron based on alleged securities fraud in 1997 and 1998.

This situation essentially encourages offenders to attempt to cover up their misdeeds however they can, including by using questionable accounting procedures and financial shell games. Furthermore, in some cases, the facts of a case simply do not come to light until years after the fraud. If a person does not and cannot know they have been defrauded, it is unfair to bar them from the courthouse. We need to recognize the sophistication and complexity of modern-day schemes designed to defraud investors. The Leahy amendment does this.

Finally, this provision amends the federal bankruptcy code to prevent the corporate wrongdoer, the CEO or CFO, from sheltering their assets under the umbrella of bankruptcy and protecting them from judgments and settlements arising from federal and state securities law violations. Too many of these highly paid corporate officers are using bankruptcy laws to protect their assets while maintaining their high-rise penthouses and ski chalets. It is time to force accountability and punish the person, not the institution, who is not willing to abide by the moral and legal codes that accompany leadership and public trust.

I hope we will have an early and overwhelming vote in favor of the Leahy amendment.

I yield the floor.

Mr. SARBANES. Mr. President, so Members may have a sense of what the program is in the short term, I will propound a unanimous consent request and I hope it will be accepted and then we can move forward.

I ask unanimous consent that following Senator CORZINE, there be 15 minutes allotted to Senator GRAMM, 5 minutes allotted to Senator MCCONNELL, 10 minutes to myself as the manager of the bill—or up to these amounts of time; hopefully, they won't all be used—and at the conclusion thereof, there be a vote on or in relation to the McConnell amendment.

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

Under the previous order, the Senator from New Jersey is recognized for up to 10 minutes.

Mr. CORZINE. Mr. President, today I rise to speak on both the amendment proposed by Senator LEAHY and also to the underlying bill which I feel quite strongly about.

I am quite pleased to support Senator LEAHY's amendment. It creates tough new securities fraud penalties and punishes corporate wrongdoers we have just heard the Senator from Arizona speak to. It is a meaningful and appropriate response to the kind of corruption we have seen and makes sure that punishment meets the nature of the act. It also protects corporate whistleblowers, prohibits corporate executives who violate securities laws from hiding behind the bankruptcy code.

In summary, this is more than mere lip service with regard to enforcement and punishment of corporate fraud. It is real reform. It is real response as a methodology to deter criminal conduct. It will go a long way toward providing incentives that are necessary to protect investors and pensioners and others who operate in the marketplace, in contrast to strong rhetoric from some with regard to what we need to do about punishment but not putting reality into place to deal with the issues. I am proud to cosponsor the Leahy amendment, and I urge all colleagues to do so as well.

Mr. President, we need to speak clearly and directly in the Senate about restoring and sustaining the trust in America's capital markets, trust in America's economic security going forward. For several days leading up to yesterday morning's Presidential speech on Wall Street, there was a buzz of anticipation that we would see a real embracing of change. Some went so far as to suggest the President's speech might lead to a Roosevelt moment, an embrace, a change in policy, a change in direction, maybe counterintuitive to the history of the man because it was in the Nation's best interests.

In retrospect, it is safe to say, while the President's speech was good with respect to rhetoric, it was hardly Rooseveltian or a Ruthian moment in the home of the New York Yankees. Unfortunately, it was far from a home run, in my view, and did emphasize rhetoric as a substitute for reform. Its lack of specifics or detail I found unfortunate.

It is not to say that the President's speech did not include some important themes, or, by the way, embrace an initiative that is quite important; that is, the corporate fraud task force in the Justice Department which will be a strong step in carrying out pursuit of wrongdoers.

However, stating the commitment of his administration pursuing these folks, while an important message, needs to be more substantive. We need specific undertakings to protect investors and shareholders. It was what the President did not say in terms of offering specifics, particularly specifics with regard to structural changes that will solve the problems, deal with the problems, provide checks and balances to the problems that we have seen from the Enrons, WorldComs, Global Crossings, et cetera. That is why the speech fell short of what many expected.

The best way, in my view, the President could have accomplished that simple important message would have been to acknowledge the comprehensive structural reform that needs to be put in place and is expressed most clearly, most effectively, by the legislation we are considering on this floor right now, the Public Company Accounting Reform and Investor Protection Act.

The Sarbanes bill, the bill we are talking about on this floor, comprehensively reforms our accounting profession. It is detailed, it is specific, and it is quite a strong element with regard to accounting professionals' responsibilities. It enhances corporate accountability, improves transparency of corporate financial statements, truly strengthens the ability of the SEC to operate as an enforcement agency, and as a regulatory agency to a significant degree. In combination, all those factors together will go a long way to restore investor confidence in American capital markets and, more importantly, restore faith in our economic system.

I think this is the direction it should take. But before I discuss the merits of the legislation in specific, I take a moment to pay tribute to the leadership of the distinguished chairman of the Banking Committee, Senator SARBANES. In shepherding this bipartisan legislation to the floor of the Senate, he has really done an outstanding job of bringing together a lot of disparate views on a very difficult and complex problem, synthesized into a terrific response to a real problem.

I see Senator ENZI in the Chamber. I also congratulate him for his help in making sure we have a bipartisan effort in this process. His contributions have been enormous. There are a number of people on staff who I think have done a terrific job to make sure this happens.

But PAUL SARBANES, chairman of the Banking Committee, has done an incredible job, a thorough job, making sure we have measured, balanced, deliberate steps to be taken to meet a crisis of confidence. I think the American people will be grateful that we have responded in a proper way. It has been a privilege for me to work with all my colleagues in the Banking Committee, but particularly the chairman. Particularly as a freshman, I learned so much of how this legislative process works.

I must say, after 30 years in business, working my way up, the 10 days of hearings we had with respect to this particular subject, with exhaustive testimony, thoughtful testimony provided from a large range of perspectives, was

one of the best graduate seminars I have ever had in business. I hope actually somebody will take the time to try to publish these, and they will be used as an example both of how the legislative process should work but also how the structure and nature of public policy debates with regard to business policy will occur. It is extraordinary. I think it forms an enormously positive foundation for the kind of thoughtful legislation the chairman has brought to bear.

With that as backdrop, we all know that there are serious problems in our system. The list of companies involved is way too long and way too important—many of them supposed models of the new economy. But I want to move a little bit away from just some of the simple concepts we talk about, the most headlined, the name concepts or companies, to focus on the fact that we are going to have almost 300 restatements of earnings this year, this year in our economy—300 restatements. There have been almost 1,100 restatements since 1997 of company earnings reports. This is a problem.

It is not just the individual headline companies, it is the fact that this is going on every day in our marketplace. It is no wonder that investors—institutional, retail, foreign, pensioners—do not have a sense of where we should be or how they should make their commitments to markets. That is because they cannot trust the numbers. There have been broken retirement dreams, lost jobs, and companies shut down. This really needs to change.

Roughly 10 percent of major companies—of the 12,000 actively traded companies, almost 10 percent of them have had statements of change in the last 4 years. That is just bad. That is why investors worldwide have developed some skepticism about our markets. Some might even say that is why our dollar has depreciated as sharply as it has in the last 2 or 3 months. Confidence is shaken—it is real.

American financial markets have been a tremendous engine for economic growth. We have had a highly efficient capital market, and that has fueled our economy. We need to act.

While the depth and breadth of efficiency of our markets is still substantial, if we continue to have this kind of erosion of confidence, we are going to be missing one of the important drivers of America's great success in leadership in the world. While I will not go through every detail of this bill, if we do not come up with a strong oversight of our accounting industry, make sure the information that people make their decisions and take their decisions to the marketplace with is sound and secure, then we will not have those strong capital markets and strong economy. I think we can all agree upon that, in the nature of a bipartisan initiative, to make sure we are moving in the right direction.

I hope we can focus on the reality that some of the conflicts of interest that exist in our practices in the accounting world have been part of the cause and the focus. Some of the conflicts of interest in the investment banking business, the world I came from, with regard to our analysts, have undermined our security with regard to how people analyze and understand where companies fit.

Other issues that need to be dealt with are the ''revolving doors''—executives from accounting firms going to companies they worked for—and the lack of independence of audit committees. All of these factors underlie a growing public distrust in the corporate financial information. It really needs to be acted upon.

While these things are real, I think we need structural response. We cannot just identify a few bad apples. This is more than that. Remember: 1,100 corporate restatements in the last 4 years. There is a structural problem, a systemic problem that is undermining the health security of our economy. I hope people will realize that in the context of the kind of debates we are going to have with regard to this bill—but maybe even more important, when we get into a conference and try to put it together with the House response, and get it to the President.

Unfortunately, I think the other elements of proposals on the table just do not meet the kind of standards that the Sarbanes proposal, the Banking Committee proposal, brings to bear. I hope we will be able to deal with that going forward.

I would be happy to talk about the specifics as we go forward. I know others need to get into this aspect. Other than we need to have a real reform of the accounting industry, we need a strong oversight board. We need to really deal with the corporate accountability issues, which I think the Leahy amendment goes a long way to strengthen in this bill. There are many elements inside it.

We need to give the SEC the kinds of resources so it can actually do the job it is expected to do. The President talked about giving them $100 million additional resources. Even the House has talked about $300 million increments. We do not provide for pay parity. There are just so many weaknesses in some of the proposals that are watered down relative to what we have on the table before the Senate.

I can only say I hope we can keep this bipartisan effort together because I think what we need is a final product that will deal with the reality of the undermining of confidence we have across the board, in a whole host of ways with regard to our financial markets, with regard to our accounting statements and with regard to the economy itself. This is too important to make a political issue. This is one to make sure we move forward in a way that we secure America's economic future.

The continued vitality of America's markets is at stake. We need to make this a priority. We need to move quickly. We need to understand it is systemic, it is not just anecdotal, it is not just a few bad apples. I think the bill we have on this floor will go a long way. Some of the amendments that are brought forward can strengthen it.

We need real reform. We need it now. We do not need rhetoric. We need to be able to restore the confidence the American people want to see, move away from the era of Enron and WorldCom, and get to an era where we have markets that are balanced and fair, where they have the checks and balances in them to give people the confidence that when they make an investment, that investment is what they thought it was when they entered into it.

I thank the chairman for an extraordinary effort in bringing together an exceptional bill. I am proud to be part of this effort. I look forward to continued debate and hopefully bringing it to the President's desk as soon as possible.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. SARBANES. Mr. President, I ask unanimous consent to speak for 30 seconds.

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

Mr. SARBANES. Mr. President, I thank the able Senator for his very kind comments.

I underscore, as I said last night on the floor when Senator DODD was here, my deep appreciation for the very positive and constructive contribution which Senator DODD and Senator CORZINE have made to this legislation. Early on, they introduced S. 2004, the Dodd-Corzine bill that formed the basis of a great deal of what is now before the Senate. I really appreciate the tremendous effort on the part of the two Senators.

I think it is very important that I make it very clear how much I appreciate the Senator's continuing, very strong contributions in the committee and now as we consider this legislation.

The PRESIDING OFFICER. Who yields time?

Mr. SARBANES. Mr. President, I think under the agreement there are 15 minutes allotted to Senator GRAMM, 5 minutes to Senator MCCONNELL, and I have reserved 10 minutes before we go to a vote on or in relation to the McConnell amendment.

Mr. LEAHY. Mr. President, I ask unanimous consent to proceed for 30 seconds without taking the time reserved for my colleagues.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from Vermont is recognized.

Mr. LEAHY. Mr. President, I thank the distinguished Senator from Arizona, Mr. MCCAIN, for his kind words earlier this morning. He is the supporter of the Leahy-McCain-Daschle, et al, amendment pending before the

body. I will speak further at an appropriate time when I am not imposing on the time reserved by our colleagues. I wanted to thank Senator MCCAIN for his support of the amendment and for his kind remarks.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

The Senator from Kentucky.

Mr. MCCONNELL. Mr. President, I believe the Senator from Texas is on the way. He is not here yet, so I will go ahead with my closing remarks.

Let me describe again what the McConnell amendment does. It is really quite simple. I think the first thing to remember is that it doesn't change in any way the Leahy proposal. It doesn't change in any way the Sarbanes proposal. It does not alter either of those. This is an addition to the underlying Sarbanes bill, and to the Leahy amendment, which I assume is going to be adopted sometime today. This doesn't in any way detract from the efforts underway to get greater accountability in corporate America.

The McConnell amendment is about adding to that union accountability so that rank-and-file union members can be assured—just as shareholders will now be assured in the underlying bill—that independent audits are being done. They can be assured that there will be civil penalties for violating these new auditing standards. They will be further assured by the fact that the president and the secretary-treasurers of the unions will have to certify as to the accuracy of the financial reports for unions just as we are requiring that for corporate CEOs and CFOs for publicly traded corporations.

We are simply completing the circle of protection for Americans, whether they be investors in corporations or union members whose dues are being paid every payday and who have a right to expect that those funds are going to be treated carefully and correctly.

It has been suggested—I expect it will be suggested again—that this is going to be expensive for the unions. My amendment has been carefully crafted to ensure that it does not impose any egregious new costs, especially on labor. And it only applies to unions with annual receipts over $200,000.

Why did I pick that number for unions that already file financial information with the Department of Labor? They are already having to file. This amendment simply requires that labor organizations with over $200,000 in annual receipts incur the incremental costs of running their financial statement and pass an independent audit, and abide by generally accepted accounting principles. This is a cost borne by any public company with as little as $1 million in total assets.

The additional costs here only apply to the larger unions that already have to file with the Department of Labor in any event.

I want to say again that this is the union corruption update. This massive stack is just for the first half of 2002. There are numerous examples of the problems about which I have been talking. This stack here represents just the first half of 2002.

Some will suggest that the examples I have given show how well DOL is catching and prosecuting union fraud. Unfortunately, that is not the case. The Department of Labor auditing of unions accounts for just 9 percent of all embezzlement cases. The other 91 percent of embezzlement comes from other sources. Without a required audit, union officials do not have to contend with the threat of an annual independent audit hanging over their heads.

The stories speak for themselves. Union corruption is rampant. It is absolutely rampant on the local, national, and pension fund levels all across our country. In the last 2 years, there has been a union embezzlement or closely related case in 40 out of our 50 States. This is a huge problem.

With regard to the financial information already required to be filed, it is not verified by an independent auditor. The current union filings are not verified by an independent auditor. The independent audits required in the McConnell amendment will help verify that the information is indeed accurate. Unions in many instances have not been complying with the filing requirement.

The PRESIDING OFFICER. The Senator has used 5 minutes.

Mr. MCCONNELL. I ask unanimous consent for a couple of more minutes of Senator GRAMM's time.

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

Mr. MCCONNELL. Unions have not been complying with the filing requirements. Up to 40 percent of unions required to file LM–2 reports filed late or not at all. The Department of Labor, under current law, can't even fine these organizations for noncompliance. My amendment would at least give them the ability to fine these organizations for noncompliance.

Let me summarize what this is about. We have decided in the Sarbanes bill and in the Leahy amendment that we want accountability in corporate America. We want to hold the CEOs and the CFOs responsible. We want the auditing done accurately. If it is not done accurately, somebody needs to be held responsible.

Why are we doing that? We are doing that because we want to reassure the shareholders that somebody is not cooking the books, that we don't have more WorldComs and Enrons and Global Crossings and the like.

The McConnell amendment seeks to provide those very same protections to rank-and-file citizens who may or may not be big enough to invest in the market. But they are investing their dues every week in the majority of our States where they do not have a choice to not pay their dues. And they have every right to expect independent audits of their funds to make sure they are not being stolen and not being misused. They have every right to expect the presidents of those unions and the secretary-treasurers of those unions to certify as to the accuracy of those audits.

That is what this amendment is about. It is about providing the same fairness to the union member as we provide to the shareholder. Simple justice. I urge that the McConnell amendment be adopted.

I yield the floor.

The PRESIDING OFFICER (Mr. JOHNSON). Who yields time?

The Senator from Texas.

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

The PRESIDING OFFICER. Thirteen minutes.

Mr. GRAMM. Mr. President, first, I thank Senator MCCONNELL. I do not think anybody who listened to Senator MCCONNELL is going to believe the assertion that somehow this amendment has nothing to do with the logic of this bill. You can take a view that business is for real and that standards should apply there, but organized labor is a different kind of institution and they should not apply there; but if you are making that argument, you have to argue it on the basis of politics. You cannot argue it on the basis of logic. You cannot argue it on the basis of justice or fairness.

What Senator MCCONNELL has done, it seems to me—and I think it is a service to the process that he has done it—is that his amendment in no way changes Senator LEAHY's amendment. So whether you are for or against the Leahy amendment is not a relevant factor in whether you are for or against Senator MCCONNELL's amendment because he does not change the Leahy amendment. He simply says, at that moment in history where we are trying to enhance the quality of financial reporting in corporate America, to protect the investor and to strengthen the economy, that we should make the same changes with regard to financial reporting by labor unions.

There have been several arguments made against this amendment, but I do not believe any of them hold water, at least in terms of my ability to understand the amendment and the arguments.

The first argument that has been made is: There are already requirements that apply to unions, that they have this vast array of reporting requirements.

The same thing is true with corporate America. If you accept that argument that there already is a body of law, and if that means that it should not be improved or strengthened, then what are we doing here?

There are differences over this bill, differences about how the board should be structured, differences about what the board should decide and what Congress should decide, but there is no difference over the issue that we need

higher standards in accounting. There is no difference over the issue that people who knowingly violate the law ought to be held accountable.

So to say that unions are subject to requirements is not an argument that we should not have better requirements, because if it were an argument, that would be an argument against the bill; and not one Member of the Senate has bought that argument or made it or believes it.

The fact that there are requirements today does not mean, in a time when we are enhancing transparency and efficiency and honesty in reporting, that we should not improve it for both corporate America and for organized labor.

The second argument that is made is: Companies are public and unions are private. Not only is that argument invalid, but unions are more public than private investments, more public than public companies. Nobody made anybody invest in WorldCom. Nobody made them do that. But in some 40 States of the Union you have to pay union dues in order to work.

I do not think that is right. I think that is fundamentally wrong. I thank God every day that in Texas we have right-to-work laws that say I do not have to join a union to earn a livelihood. But in some 40 States you do.

I think the case is even stronger than the Senator from Kentucky made because nobody made anybody buy WorldCom, but in some 40 States you have to pay union dues. Surely, there is a public interest, in a mandatory institution, in seeing that it keeps straight books.

So this argument that we are talking about, public companies and private unions, what is private about a union that I have to join in order to have a job? Nothing is private about that union. It is as public as something can be public.

It seems to me—and Senator MCCONNELL made the point—nobody made people invest in WorldCom, but people are forced every day to pay union dues. Every day they are forced to pay them. So they are as public as public companies are, I would argue more public, and we have a stronger interest in protecting that money which was involuntarily taken, it seems to me, or just as strong an interest in protecting that money that was involuntarily taken versus money that was voluntarily invested.

The strongest argument of this amendment—and something that is absolutely breathtaking to me—is that the annual report that is required of unions does not have to be certified and prepared by a CPA.

We are going to great lengths in every bill that has been proposed to set up an independent body to proctor high standards in accounting for CPAs. Shouldn't a union that is handling my money that they took from me involuntarily have its books audited by a CPA?

Why is that important? In fact, why do we care about accounting ethics? We care about them because there is no way the Government has enough resources to spot audit every company in America. So we have to rely on the integrity of the CPA. And it is the problem we have with that today that brings us to the floor of the Senate.

While we are enhancing that integrity through this oversight board, shouldn't we require organized labor that is taking people's money involuntarily to have their annual report certified and prepared by a certified public accountant? How can anybody—how can anybody—argue against requiring a CPA to do these audits?

You could say the Labor Department ought to go out and audit every one of these unions. Clearly, they do not have the resources to do it. The President has asked for more money to do it. I would guess this Congress will not provide that money. I will be watching the appropriations to see if they do. But even if they provide it, it is not enough money to audit every union in America.

What we have to do to bring honesty to union financial reports, as we bring honesty to corporate reports, is to require a CPA to do the audit. I can see no logic whatsoever to opposing requiring a CPA to certify.

Finally, we have gone to great lengths—and I think appropriately—to require the guy who is drawing the big check, the head man or head woman, to sign this annual financial statement to put their credibility on the line and give them nobody to hide behind. Should we not require the president of the union sign this audited report? And shouldn't the annual report be done by a certified public accountant?

Now, it is astounding to me—and, boy, it shows you the different level of enforcement of the law. If anybody does not believe that politics play a part in law enforcement in America, look at the fact that was given to us by the Senator from Kentucky, that 34 percent of unions are out of compliance in terms of filing these reports. Some of them just don't file the report.

It seems to me if 34 percent of the companies in America didn't file reports, we would be outraged, and rightly so. In fact, you couldn't trade your stock on the New York Stock Exchange or the American Stock Exchange or the Nasdaq because of the enforcement that exists in private entities.

The McConnell requirement that the reports be filed is straightforward and reasonable.

I reserve the remainder of my time by simply saying, what harm can come from requiring unions to have CPAs do these reports? I see good can come. I can see no possible harm that could come.

Secondly, why not have the union president certify the veracity of that report just as the corporate president does? Some people say this is punitive. Some people say this is political. If this were being used to try to kill the Leahy amendment, you might be able to make that argument. But this amendment in no way takes away any part of the Leahy amendment. It simply adds to it that the high standards we set for corporate America should apply likewise to unions.

I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time? The Senator from Maryland.

Mr. SARBANES. Could I ask what the time situation is?

The PRESIDING OFFICER. The Senator from Maryland has 10 minutes.

Mr. SARBANES. And how much time is left to the Senator from Texas?

The PRESIDING OFFICER. The Senator from Texas has a minute and a half.

Mr. SARBANES. Mr. President, it is important, in considering this amendment, to realize there exists now, under the labor management reporting and disclosure procedure, extensive and intensive provisions for reporting by labor organizations, officers, and employees of labor organizations.

If all of these provisions are not being carried out fully, the responsibility rests with the Secretary of Labor. The Secretary of Labor ought to be doing her job. If the Congress is not providing sufficient resources for that, that is an issue for the Congress. We ought to address that issue.

This supposed parallelism that is being argued completely misses the mark in the sense that there is already an existing statutory scheme covering reporting and disclosure by labor organizations.

I want to go through some of those provisions so Members appreciate how extensive they are and the amount of review and oversight that now exists.

I am now reading from the statute:

> Every labor organization shall file annually with the secretary a financial report signed by its president and treasurer—

So much for this argument about they ought to sign, put their signature on the report—

> or corresponding principal officers containing the following information in such detail as may be necessary accurately to disclose its financial condition and operations for its preceding fiscal year.

Listen to what they have to set out: Assets and liabilities at the beginning and end of the fiscal year; receipts of any kind and the sources thereof; salaries, allowances, and other direct or indirect disbursements, including reimbursed expenses to each officer and also to each employee who, during the fiscal year, received more than $10,000 in the aggregate from such labor organization and any other labor organization.

Ten thousand dollars? Ken Lay of Enron got $177 million. Twenty executives of Enron got over $3 million in salary. Here we are talking about a $10,000 figure which they have to report.

I am reading from the statute that governs labor organizations on their

reporting and disclosure: Direct and indirect loans made to any officer, employee, or member which aggregated more than $250 during the fiscal year, together with a statement of the purpose, security, if any, and arrangement for repayment. A $250 loan, $250. Bernard Ebbers of WorldCom got a $366 million loan. This is just to underscore in a sense the tightness of this framework governing the labor organizations—a $250 loan. WorldCom executive Ebbers, $366 million? The Adelphia situation with the Rigas family, $3 billion in loans.

Let's look at the power of the Secretary of Labor to enforce these requirements: Any person who willfully violates this subchapter shall be fined not more than $10,000 or imprisoned for not more than 1 year. Any person who makes a false statement or representation of a material fact or who knowingly fails to disclose a material fact in any document, report required under the provisions of this subchapter shall be fined not more than $10,000 or imprisoned for not more than 1 year. Any person who makes a false entry or willfully conceals, withholds or destroys books, records, reports shall be fined not more than $10,000 or imprisoned for not more than 1 year.

''Personal responsibility of individuals required to sign report,'' I earlier said the president and the treasurer of the labor organization had to sign the reports. Listen to this:

> Each individual required to sign reports under sections 431 and 433 of this title shall be personally responsible for the filing of such reports and for any statement contained therein which he knows to be false.

Of course, we have just noted from the previous provisions, that is a fine and possible imprisonment for up to 1 year. So we have a statutory scheme in place to control the labor organizations. If it is not fully adequate, it needs to be addressed in that context. But clearly, it goes well beyond many of the provisions that apply to corporate officers. It has been carefully worked out over the years. The Labor-Management Reporting and Disclosure Act dates from 1959 originally, with subsequent modifications and adjustments, as we have proceeded.

There is a system in place to govern labor organizations. It has been asserted: well, the Labor Department has not been able to do everything it needs to do. That burden is on the Labor Department. In a sense, what has been raised represents a challenge to the Secretary of Labor.

If, in fact, the Congress hasn't given her adequate resources, that point needs to be made to the Congress and we need to address that.

But we have established a well-thought-out, comprehensive scheme with respect to the reporting and disclosure of the labor organizations, and if they are falling short of the statutory requirements, that needs to be addressed in the context of the statute.

The Labor Department has enormous authority over the labor organizations. Make no mistake about it, the powers and the authorities that reside in the Secretary of Labor and the Department are quite extensive to deal with the labor organizations. I mentioned only some of them, including these imprisonment for 1-year provisions.

So I am in opposition to the amendment. I think any shortcomings that one might perceive need to be addressed in the context of the reporting and disclosure provisions applicable to labor organizations; and I must say to you—and the Senator from Kentucky has outlined some of the problems—the Department needs to come to grips with them and come to the Congress, if it deems that necessary, to seek an appropriate congressional response in order to deal with them.

I very much hope my colleagues, when the time comes, will not be supportive of this amendment. When all time is used, I am prepared to make a motion with respect to the amendment.

Mr. SPECTER. Mr. President, I am voting against the McConnell amendment because existing law already accomplishes what he seeks to do. There exists now under the Labor Management Reporting and Disclosure Act of 1959 extensive and intensive provisions for reporting by the President and Treasurer of labor organizations.

Furthermore, the audit requirements of this amendment, which apply to union filers with receipts of $200,000 or more, impose under regulation of small entities. Public corporations subject to the SEC typically have many more assets with initial public offerings are customarily in the range of $40 million. The annual costs of compliance might exceed the annual receipts of many filers who would be subjected to these requirements. To require audits of all unions regardless of size or complexity of financial reports would cause an unreasonable burden on many smaller locals who already must file LM–2 reports. Unions with annual receipts of $200,000 or more covered by the McConnell amendment come in an extremely wide range of types, sizes, and of performing services. Of the more than 5,000 labor organizations that currently meet this criterion and file LM–2 reports, only about 70 are national or international unions. The rest are locals—largely voluntary organizations, many with no or few full-time employees. The current Department of Labor reporting requirements take this ''no one-size-fits-all'' approach into account and build in some flexibility that the McConnell amendment does not allow. For example, many smaller locals do not need to retain outside CPAs because their financial statements are very simple and consistent from year to year.

The amendment's certification requirements are also redundant. For more than 40 years, union officers have been required to sign annual financial reports under penalty of perjury, attesting that the report's information accurately describes the union's financial condition and operations.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mr. GRAMM. Mr. President, let me paraphrase our colleague from Maryland. The SEC already has power. Let them do their job. We are not saying that. We are saying they need more power and they need help doing their job because the job is not getting done.

The same is true for unions. The Senator from Maryland said there is already a regulatory scheme. There is already a regulatory scheme for corporate America, but we are saying it is not good enough, not tough enough, it is not working, and we need to improve it.

The same is true for unions. The president of a corporation already has to sign an annual report. We are trying to expand that in this bill. Why not require the president—not other officers, but the president—to sign the report? I submit that illegality, whether it is $100 million or $10,000, is still theft. The President has asked us to bar loans.

The issue here is, should we have the same integrity standards for unions? I believe the answer is yes.

I yield the remainder of my time.

The PRESIDING OFFICER. The Senator from Texas has 17 seconds and the Senator from Maryland has 50 seconds.

Mr. MCCONNELL. Mr. President, it is true that unions file a lot of papers. The problem is that accuracy is not required. This requires certified records—certified by a CPA—and it requires the presidents and secretaries of their treasuries to certify that the records are accurate.

Union corruption is a serious problem. This will help correct it. I urge colleagues to support the amendment.

Mr. SARBANES. Mr. President, I only observe that if they file a false statement of representation, they can be fined and sent to jail for up to 1 year. That is a pretty heavy remedy if you stop and think about it.

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

Mr. GRAMM. Mr. President, is any time remaining?

The PRESIDING OFFICER. No time remains.

Mr. SARBANES. Mr. President, I move to table the McConnell amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the motion. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS) and the Senator from Ohio (Mr. VOINOVICH), are necessarily absent.

I further announce that if present and voting the Senator from North Carolina (Mr. HELMS) would vote ''nay.''

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

The result was announced—yeas 55, nays 43, as follows:

[Rollcall Vote No. 168 Leg.]

YEAS—55

Akaka	Dorgan	Mikulski
Baucus	Durbin	Miller
Bayh	Edwards	Murkowski
Biden	Feingold	Murray
Bingaman	Feinstein	Nelson (FL)
Boxer	Graham	Nelson (NE)
Breaux	Harkin	Reed
Byrd	Hollings	Reid
Cantwell	Inouye	Rockefeller
Carnahan	Jeffords	Sarbanes
Carper	Johnson	Schumer
Chafee	Kennedy	Smith (OR)
Cleland	Kerry	Specter
Clinton	Kohl	Stabenow
Conrad	Landrieu	Torricelli
Corzine	Leahy	Wellstone
Daschle	Levin	Wyden
Dayton	Lieberman	
Dodd	Lincoln	

NAYS—43

Allard	Enzi	McConnell
Allen	Fitzgerald	Nickles
Bennett	Frist	Roberts
Bond	Gramm	Santorum
Brownback	Grassley	Sessions
Bunning	Gregg	Shelby
Burns	Hagel	Smith (NH)
Campbell	Hatch	Snowe
Cochran	Hutchinson	Stevens
Collins	Hutchison	Thomas
Craig	Inhofe	Thompson
Crapo	Kyl	Thurmond
DeWine	Lott	Warner
Domenici	Lugar	
Ensign	McCain	

NOT VOTING—2

Helms	Voinovich

The motion was agreed to.

Mr. SARBANES. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

DIVISION OF AMENDMENT 4174

Mr. GRAMM. Mr. President, I ask for a division of the amendment with sections 801, 802, and 803 in division 1, section 804 in division 2, and the remainder of the amendment in division 3.

The PRESIDING OFFICER (Mrs. CARNAHAN). The amendment is divisible and is so divided.

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

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

Mr. SARBANES. Madam President, I would like to put forward a couple of inquiries. Could the Senator outline what his division of the amendment does?

Mr. GRAMM. The amendment was divisible, and my division divided it into three amendments. The amendment having to do with statute of limitations in filing a lawsuit is now division 2. So division 1 would be the pending business, as I understand it. Then division 2, and then division 3, seriatim, unless there was some other agreement that took us to another order or other amendments.

Mr. SARBANES. What does division 3 provide for?

Mr. GRAMM. I sent the division to the desk. Basically, division 1 was everything up to section 804. Then division 2 is 804. And then division 3 is 805 through the end of the bill.

Mr. SARBANES. Did the Senator consider dividing it only for section 804?

Mr. GRAMM. The way it was done, the easiest division was to do it in three parts.

Mr. SARBANES. It is that division you want a separate vote on, I take it?

Mr. GRAMM. It is that division on which I want an opportunity for the Senate to work its will, as well as the others.

Mr. LEAHY. Madam President, if the Senator will yield, there is another way, of course, for the Senate to work its will. The reason I mention it, this is a critical part of the legislation. It is nice to say, and we should say, my cosponsor of the Sarbanes bill, which I think is superb—we should say we should have better accounting methods, we should say we should have more accountability, but we have a lot of these executives who have proven by their past behavior they are not going to do squat unless they think they are going to go to jail for what they do.

The Leahy-McCain, et al, amendment makes it very clear that these people are going to face jail terms if they loot the pension funds, if they defraud their investors, if they defraud the people of their own company. And I might suggest if the Senator from Texas agrees, there ought to be real penalties; let's vote on Leahy-McCain. Let's vote on it, not divide it up. If he believes there is something he may want to do better—such as shield some of these people with a shorter statute of limitations or with a more restrictive statute of limitations—he has every right to do whatever he wants to shield these people. But bring it up as a separate amendment and let the Senate vote up or down on that.

When I look at places such as Washington State alone where the pension funds of firefighters and police lost $50 million because of the fraud of the leaders of Enron, I don't feel too sympathetic. We already have a very short statute of limitations in here anyway. We ought to at least have that so people might be able to recover some of the money they have lost, if it is at all possible, instead of just a few executives going up and building their $50 million mansions and hiding it there.

There ought to be some way for the people who lost their pensions, lost their live savings, to get it back. We ought to have criminal penalties for those who did this in the first place so they end up in the slammer.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Madam President, a wonderful speech, and it might be appropriate for another occasion, but what has happened is that a comprehensive bill has been offered as an amendment to the pending bill. All I asked for, which every Senator has the right to ask for, was a division of the question so that the Senate could work its will on individual parts.

I know of no living person, at least anyone who is in the Senate or the executive branch of Government—I don't know about the judicial branch of Government—who is not for the provision related to putting people in jail for knowing and willful behavior where they violate the law.

This bill which has been offered, however, has many different sections. The part I am concerned about has to do with statute of limitations and the security reform legislation we adopted in 1995.

I remind my colleagues that in 1995 we had these massive strike lawsuits. One firm filed 80 percent of them. Almost all were settled out of court. It created an abuse that generated a bipartisan consensus that something should be done about it.

We passed a law, and then, incredibly, with Democrat support, we overrode President Clinton's veto of the bill. The only veto override of the Clinton administration was on this issue.

One of the reforms had to do with shortening the statute of limitations. I remind my colleagues, this has nothing to do with the SEC or the Justice Department. We are not shortening their statute of limitations. In 1995, when we passed this bill with a strong bipartisan vote, we said: If I want to sue Senator SARBANES, I have to file the suit within a year of discovering that I believe I have been wronged, or I have to file it within 3 years of when I was wronged. That was the decision we made then.

Now, hidden away in this bill, which has been offered as an amendment, is a provision that effectively extends that to 5 years.

All my division of the amendment did was to say this ought to be dealt with separately so that those who are for mandatory prison sentences for knowing and willful behavior that violates the law can be for that without being for repealing our Private Securities Litigation Reform Act. The reason behind the rules of the Senate that give Members the ability to divide bills goes to exactly the heart of this point; that is, if someone could take a bill—if someone could take——

Mr. SARBANES. Will the Senator yield on that point?

Mr. GRAMM. Let me just finish my point and I will be happy to yield, as I try to always do.

Someone could take the securities bill of 1933 and they could put in it all kinds of things that the vast majority of Members of the Senate are for, and then they could put one little provision in one line in that virtually nobody is for, and they could send it as an amendment to the desk and then we would have no recourse except to vote

against all the things that we are for in order to vote against the one little thing that we are against.

It seems to me there is nothing worse in public life than to have someone attack you for voting against a great big old bill and say: Well, you were against. It says here motherhood and the flag and Christmas and Easter—you were against that because you voted against a bill that busted the budget and bankrupt the public.

So in writing the rules of the Senate, we wrote the rules in such a way that when someone offered such a bill as an amendment that had different parts, any Member could ask for a division so it could be dealt with separately. All I have done is exercise that right.

We now have three amendments pending before the Senate—I guess four, counting the Miller amendment—but that is all I have done. Two of these amendments I am supportive of, one of them I am not supportive of, but that is where we are.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. Madam President, let me say, first of all, the Senator is obviously within his rights to divide the amendment. The Senator could have offered an amendment striking section 804, which is the section to which he objects. As I understand it, he approves of the remainder of the bill. By dividing it, he gains a one-vote advantage because if he moved to strike and we had a tie vote, he would lose. By dividing the bill, if there is a tie vote on section 804 the proponents of that provision lose. So by the division the Senator from Texas has gained a one-vote step up. I recognize that. That is permitted under the rules. I am not complaining about it.

I think it is inaccurate to use an example of the whole bill and say I either have to vote for all of the amendment or none of it because certainly he hasn't been in that position.

He could have offered an amendment to strike the section—am I right; 804 is the section on which the Senator is focused?

I make the following suggestion in order to try to move matters forward, if I could have the attention of my colleague.

Why don't we proceed and adopt the two divisions other than 804 right now and get those taken care of. Then we can address 804, which is the division to which the Senator objects. We can have an appropriate debate with respect to that division.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Madam President, we do have someone who wishes to speak. I am not sure whether it is on one of these sections or not. I am not ready to do that right now. We may reach a point where I will be ready to do that, but I am not ready to do that at this point.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. Madam President, given that the Senator has indicated he is supportive of the Leahy amendment—I think he said that on more than one occasion—except for section 804, what is it that would have to transpire?

Mr. LEAHY. Madam President, if I might step in for just a moment, if the Senator from Maryland will not mind?

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. I keep hearing this discussion by the senior Senator from Texas that my bill somehow changed the Securities Litigation Reform Act. It does not. It does not do that at all. It changes no provision in it at all.

The PSLRA did not establish the current statute of limitations. It did not deal with that issue at all. The Leahy bill does not impact on these provisions. It was a 5-to-4 Supreme Court case that overturned years of established law to set the current limitation periods in Lampf v. Gilbertson.

In fact, interestingly enough, former Secretary General Kenneth Starr and I take the same position on these statutes of limitations. In the dissent in that case, two of the dissenters, Justices Kennedy and O'Connor, said the one in three statute of limitation makes the possibility of injured investors recovering basically a dead letter.

Here are some numbers. Florida lost $335 million because of Enron; the University of California, $144 million—all the way down to Vermont; we lost millions of dollars. These are people who would like, in these kinds of cases, at least to have a statute of limitations such that we can go after them.

We are not suggesting changing in any way—I want everybody to be clear on this—we are not suggesting changing the basic standards of the law on a statute of limitation. We are talking about extending the time. We are talking about extending the time so it will not be, as the Supreme Court said, with a short statute of limitations, a dead letter. We are saying we want enough of a statute of limitation—still very short but a long enough one so people can recover. We are perfectly willing to have exactly the same words as the law says now, with the exception the statute is slightly longer.

I cannot speak for an activist Supreme Court that seems to be meddling in most of our laws, but their case law, their stare decisis impacts on every single Federal court in this country—district level, court of appeals level. So there, with the exact same law, the stare decisis is Lampf v. Gilbertson. That would be controlling except it would be a longer statute of limitations.

The Senator from Texas, or anybody else, if they think that statute of limitations is too long, fine, vote against it. But I am here to try to protect people and give them an opportunity—when there has been such enormous fraud and all the pension funds have been lost, and all the people who have lost their life savings—give them at least some chance to recover something, especially as the executives of these companies walk off with tens of millions of dollars. We go two-five instead of one-three.

It makes sense to me. That was negotiated and voted on in the Judiciary Committee, and the final bill was passed unanimously.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. Madam President, I want to resume my discussion with the Senator from Texas. I am not going to engage in a substantive debate with respect to section 804 of the Leahy amendment, which is division 1 of the divisions the Senator has made.

I want to go back to the prospects of getting division 1 and division 3 accepted, to which the Senator has repeatedly indicated he has no objection. In fact, as I understand it, he is supportive of it.

I renew my inquiry as to whether we could move ahead and accomplish that, since in our previous discussions the Senator has indicated concurrence with the notion that we need to move this legislation along. I don't understand what the objection would be to doing that. The Senator has divided the amendments. He has improved his holding position by doing so with respect to section 804. He has accomplished that objective under the rules. But as I understood it, he does not object to all of the matters in division 1 and division 3. I think it would help move the work along if we could adopt those two divisions, and then we could address division 2.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Madam President, first of all, let me say as the ranking member of the committee that I have yet to have an opportunity to offer an amendment. I only have two amendments I want to offer. No one is more eager to get this bill to conference where we might come up with something for which there would be virtually unanimous support. But I assume at some point during the deliberations we will have votes on division 1 and division 3. But I would like to have an opportunity to offer amendments myself.

All I want to do is follow the rules of the Senate.

Let me say that I am concerned, as I listen to colleagues on both sides of the aisle, that we are going to have a literal blizzard of amendments not directly related to this bill. I continue to believe that at some point, in order to finish the bill, we are going to have to file cloture.

I intend, as I said at the beginning of the debate, to support that cloture motion. I think someone would have a hard time portraying me as someone who is slowing down the process when I am ready to vote to bring debate on this bill to an end and force amendments to be germane to the bill itself.

My proposal is that we simply go on with the business of the Senate. I am

ready to offer an amendment. I am ready to deal with the amendment of the Senator from Georgia. That amendment is amendable. All of these amendments are amendable. I suggest we simply proceed, let Members be recognized, and have those Members move forward.

In light of that, I send an amendment to the desk in the form of a second-degree amendment to division 1. It is a very short amendment. I think the best thing to do is to have it read.

Madam 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. REID. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. REID. Madam President, I have spoken to the manager of the bill. He has indicated he has no problem with someone speaking on the bill as long as there is no effort to do anything in a parliamentary fashion because there are negotiations pending at the present time. We understand that. I ask unanimous consent that the Senator from Illinois be recognized to speak for purposes of debate only.

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

Mr. REID. Following his remarks, the quorum call will be reinstituted.

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

The Senator from Illinois.

Mr. DURBIN. I thank my colleague from Nevada as well as the Senator from Wyoming for allowing me to speak to the bill.

I am happy to be an original cosponsor of this amendment with Senators LEAHY and DASCHLE. The Public Company Accounting Reform and Investor Protection Act is a long title, but what it basically seeks to do is to address what most Americans view as one of the most dangerous developments in our Nation's economy in the last several years, if not longer.

When you ask the average American what they think of all this corporate corruption, all of the disclosures about corporations that have literally lied to the public, to their shareholders, to their employees, and to pensioners, people across America say it does not give them much hope for recovery for our economy. It does not give them much confidence in terms of investing in the stock market. And it makes them feel very sad and worried about their own pension and retirement.

We were proud to announce several years ago that almost half of Americans owned stock. We had developed to that point where the average person thought owning stock was a normal thing to do.

I grew up in a family with a mother and father who never once purchased a share of stock until my mother in her later years decided ''to gamble,'' as she called it. But it was unthinkable in their working years to buy stock. They were working people. They worked for a railroad. Workers didn't buy stock.

That has changed. More and more people across America buy mutual funds and stocks, 401(k)s, retirement plans. And why wouldn't they? Look at what happened over the last 10 years. If you were smart enough to buy yourself a dart board and put the Wall Street Journal up on it and throw the dart, just about any stock you hit was going to give you more money.

People came to realize that. They bought their mutual funds and stocks and sat back and relaxed and said: This is easy. I will be able to retire a lot sooner than I ever dreamed, and we have more financial security in our family than ever before.

Boy, have things changed in the last 2 or 3 years. We have seen a recession, the economy slow down, and then we watch as day after painful day reports come of the Dow Jones and the Nasdaq, all the rest of them, hitting new lows every single day.

It has to do with the state of the economy, the recession, but it has to do as much with consumer confidence, the belief that you just can't trust the corporate big boys.

There are too many instances where they decided to cash in with big stock options and walk away with millions—sometimes hundreds of millions—of dollars and leave a floundering corporation. They call it ''restatement.'' When I went to grade school, if I tried to tell the nuns I wanted to restate something I had said, I never got by with it. I got slapped on the back of the hand with a ruler. They knew it was an admission that you lied, misrepresented something. Now that is commonplace when you deal with corporations across America. Every week, there is some new disclosure.

Senator LEAHY, Senator DASCHLE, and I sat down to say we have to get to the heart of this issue and try to resolve it, in terms of making certain there are penalties in place for those who are deceitful, misleading, lying to the American people about the status of corporations. From Wall Street to Main Street, confidence has been shaken. It started off with Enron, the poster child of runaway corporate greed. Isn't it curious that today, as we debate corporate corruption, and isn't it an oddity that there is an actress in Hollywood who is facing possible jail time for shoplifting and she is facing more time in jail than any officer of the Enron Corporation? What is wrong with this picture? Somebody who shoplifts might go to jail, but not the first person has been indicted at Enron, the seventh largest corporation in America, which goes bankrupt.

We had a series of hearings, and everybody on Capitol Hill was wringing their hands and calling in the cameras, saying we have to do something about it. Yet the Department of Justice has yet to indict the first person at Enron.

So what we are saying with this amendment is that we want to establish standards and practices so that those who violate the law, who are guilty of corporate corruption, will pay a price for it, not just a fine that may be ignored or paid off by the corporation but more.

In our criminal code, we establish mandatory minimum sentences for people who are caught with a thimbleful of cocaine. We will put them in jail, and we won't give the judge any flexibility. They go to jail for x number of years, no ifs, ands, or buts. But if a person is engaged in ripping off stockholders of a major corporation, lying about their books, causing tens of thousands of people to lose their jobs, jeopardizing the retirement plans of millions of Americans, then, frankly, we say to them that yours is going to be a much easier punishment.

What is wrong with this picture? Where are the scales of justice? We should have known, when you have executives and board members who stand to gain millions of dollars from acting on insider information in the corporations they serve, that many would be tempted to do exactly that—especially when they knew there weren't any cops on the beat to keep an eye on them—no auditors, accountants, or government agencies.

In the Gingrich revolution that occurred a few years ago, we passed something called the ''Contract on America.'' One of its provisions said, we are going to take away the power of individuals to sue corporations when there has been securities fraud. The argument was made that there were too many litigious people and greedy lawyers who were meddling in the corporate business and that we had to really close the door to that opportunity. Well, that law was enacted. I voted against it because it took away one more safeguard, one more protection for the public.

Isn't it coincidental that now we stand here and talk about the disintegration of corporate confidence? There were fewer people watching then, and some of these corporate leaders were reaching into the cookie jar and pulling out with both hands. It happened over and over again. We should have known that when you condition the salary of executives on potential gains from how the company's stock prices will rise—known as options—that would be a temptation to raise the stock prices artificially, especially when those on the inside knew that, as the prices would fall, they would already have their money.

We should have known that when you have auditors and accountants shifting numbers to come up with the right set of bottom-line figures they need to produce for Wall Street, they would be tempted to do that even when the audited numbers didn't add up. We should have known that when you have the smartest lawyers and bankers in the country scheming all night to come up

with borderline legal ways to avoid paying taxes through a maze of fictitious straw companies, they would be tempted to do just that, especially when they knew Congress wrote the laws with plenty of loopholes for which their lobbyists paid.

We stand in the Senate and reflect upon the sad state of business in America, and we have to wonder who is really at fault.

Let me add that the vast majority of business leaders in America are honest, hard-working people who have taken a risk in our free enterprise system to produce goods and services of value to our country and to the world, to create jobs and wealth. They deserve our admiration and respect. But, clearly, day after day, week after week, month after month, we read on the front pages of our major newspapers about the exceptions to what I just said.

Is it the executives who are responsible as the bad actors, or their accountants, their auditors, their bankers? The answer is all of the above. Every one of these must face up to their responsibilities.

In due course, I hope we will enact stricter rules for these corporate players. But we have to accept our responsibility; Government and Congress has a responsibility.

I salute Senator SARBANES of Maryland for what he has done with Senator ENZI in bringing this bill to the floor. There is an effort to divide up this bill in the hopes of changing a statute of limitations.

Why is a statute of limitations of importance in this debate? It really defines the reach of the law. If you tell me there is a statute of limitations that limits the liability of these corporate bad actors, I can tell you some people are going to get off the hook. The Leahy amendment to Senator SARBANES' bill broadens the statute of limitations so that more wrongdoers will be held accountable; those who have lied, cheated, and stolen will be held accountable.

The opponents of this approach are now suggesting we need to shorten the statute of limitations, limit the inquiry and investigation of the Government, and limit the liability of the bad actors. This is an answer to the prayers of many corporate big wigs who have ripped off their stockholders, employees, and pensioners across America.

This suggestion that we would lessen and shorten the statute of limitations is what they want to hear. Some will now be able to retire to their mansions, and they will be able to live in the lap of luxury with the hundreds of millions of dollars they have taken from these corporations and never be called to answer for their violations of the law. That is what happens when you shorten a statute of limitations. It is an answer to the prayer of the corporate big wigs' defense attorneys. Why in the world would we be doing that?

Why do we want to insulate from liability the very people who are guilty of wrongdoing? Why would we not support Senator LEAHY's amendment to say that those who have violated the public trust, those who have lied, misled, and been deceitful should be held accountable both on a criminal and civil standard?

So I certainly hope that at the end of this debate the Senate, on a bipartisan basis, will stand by Senator SARBANES and his bill. I also hope that when it is all said and done, the underlying amendment I have offered with Senator LEAHY and Senator DASCHLE will be accepted.

Let me tell you what the amendment does, in brief. It punishes corporate criminals and creates a 10-year securities fraud felony for any ''scheme or artifice'' to defraud shareholders, and directs the U.S. Sentencing Commission to raise penalties in obstruction of justice cases.

Two, it preserves evidence of fraud, establishes a new felony for destroying evidence when records are under subpoena. It requires key financial audit documents to be retained for 5 years, and it creates a new 5-year felony for intentional destruction of documents.

Do you know what happened? As soon as Enron got in trouble, they called some of their buddies at Arthur Andersen, and the next thing you know, the documents are being shredded, evidence is disappearing. This underlying amendment, the Leahy-Daschle-Durbin amendment, addresses that specifically.

The third thing is that it protects victims. It creates protections for corporate whistleblowers. We need them. If insiders don't come forward, many times you don't know what is happening in large corporations. It lengthens the statute of limitations to 5 years from the date of fraud and 2 years from the date of discovery for victims to bring claims against the corporations. It prevents securities laws violators from using bankruptcy to shield debts based on fraud judgments.

What they are trying to do—I see Senator LEAHY in the Chamber; he is the major sponsor of this amendment—is to gut the provision that extends the statute of limitations and say that these people will not have to be held accountable for their wrongdoing.

I urge my colleagues in the Senate to resist this effort. We have to hold these corporate wrongdoers accountable. We should not be party to any kind of effort to reduce their liability; otherwise, what message are we sending? Mandatory minimum sentences for a thimbleful of cocaine, but allowing those guilty of corporate wrongdoing to get off the hook. What is wrong with this picture of justice?

I urge my colleagues to resist the change in the statute of limitations, and I yield the floor.

Mr. GRAMM addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas.

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

Mr. GRAMM. Madam President, was I recognized?

The PRESIDING OFFICER. The Senator from Texas was recognized.

Mr. GRAMM. Madam President, let me answer what has just been said and straighten out the facts. In 1995, we had a major problem in America in that we had strike lawsuits being filed against high-tech industries where one firm filed 80 percent of the cases and settled almost all the cases out of court.

We had a bipartisan consensus that this represented abuse. So under the leadership of Senator DODD, Senator DOMENICI, and others, we passed a bill which President Clinton vetoed. We then overrode the veto. An important part of that reform was to say—and let me make it clear, this does not have anything to do with committing a crime where you can be put in jail. It has nothing to do with the SEC's jurisdiction. It has nothing to do with the Justice Department's jurisdiction. It simply has to do with my right to file a lawsuit against you and anybody else's right to file a lawsuit against anybody else.

We had a lot of reforms in that bill. You had to actually have a client. The lawyer who was the lead lawyer in 80 percent of these cases said he loved these type lawsuits because he did not have to fool with a client. In essence, he was suing on behalf of himself. Virtually a huge percent of the money went to the lawyer filing the suit, not to the people who supposedly had been harmed.

Part of the reform was to set a statute of limitation that if you believe I have done something wrong, and you want to sue me for it, you have 1 year from the time you find it out, or 3 years from when it happens to file a lawsuit.

When the Senator was talking about letting people off the hook, surely everybody understands that our system has no ex post facto laws. So if the provision raising that statute of limitation to 5 years became law, it would have no effect on anybody who has committed one of these violations about which we are talking.

AMENDMENT NO. 4184 TO DIVISION 1 OF AMENDMENT NO. 4174

Mr. GRAMM. Mr. President, having straightened that out, that is not even the subject about which we are talking. We now have three amendments pending, and I send a second-degree amendment to the first amendment and ask for its immediate consideration.

This is a very short amendment and I ask it be read because the language of it is so clear that a lot of times we have an amendment, and what we say does not have much to do with the amendment. I want people to read the language.

The PRESIDING OFFICER (Mr. CARPER). The clerk will report.

The legislative clerk read as follows:

The Senator from Texas [Mr. GRAMM], for himself and Mr. SANTORUM, proposes an amendment numbered 4184 to division 1 of amendment No. 4174:

(Purpose: To provide the Board with appropriate flexibility in applying non-audit services restrictions to small businesses)

At the end of the division, insert the following new section:

"SEC. . EXEMPTION AUTHORITY.

''(1) CASE-BY-CASE WAIVERS.—Notwithstanding section 201(b) of this Act. The Board may, on a case by case basis, exempt any person, issuer, public accounting firm, or transaction from the prohibition on the provision of services under section 10A(g) of the Securities Exchange Act of 1934 (as added by this section), to the extent that such exemption is necessary or appropriate in the public interest and is consistent with the protection of investors, and subject to review by the Commission in the same manner as for rules of the Board under section 107.

''(2) SMALL BUSINESS EXEMPTION.—The Board may, by rule exempt any person, issuer or public accounting firm (or classes of such persons, issuers or public accounting firms) from the prohibition on the provision of services under section 10A(g) of the Securities Exchange Act of 1934 (as added by this section), based upon the small business nature of such person, issuer or public accounting firm, taking into consideration applicable factors such as total asset size, availability and cost of retaining multiple service providers, number of public company audits performed, and such other factors and conditions as the Board deems appropriate consistent with the purposes of this Act.''.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I ask unanimous consent that I be allowed to yield to the Senator from Georgia.

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

AMENDMENT NO. 4176 WITHDRAWN

Mr. MILLER. Mr. President, I ask unanimous consent that the Miller amendment be withdrawn.

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

Mr. REID. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The senior assistant bill clerk proceeded to call the roll.

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

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

DIVISION 1 OF AMENDMENT NO. 4174 WITHDRAWN

Mr. DASCHLE. Mr. President, I withdraw Division 1 of the amendment.

The PRESIDING OFFICER. The division is withdrawn.

DIVISION 2 OF AMENDMENT NO. 4174 WITHDRAWN

Mr. DASCHLE. I withdraw Division 2 of the amendment.

The PRESIDING OFFICER. The division is withdrawn.

DIVISION 3 OF AMENDMENT NO. 4174 WITHDRAWN

Mr. DASCHLE. I withdraw Division 3 of the amendment.

The PRESIDING OFFICER. The division is withdrawn.

AMENDMENT NO. 4185

(Purpose: To provide for criminal prosecution of persons who alter or destroy evidence in certain Federal investigations or defraud investors of publicly traded securities, and for other purposes.)

Mr. DASCHLE. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from South Dakota [Mr. DASCHLE], for Mr. LEAHY, for himself, Mr. MCCAIN, Mr. DASCHLE, Mr. DURBIN, Mr. HARKIN, Mr. CLELAND, Mr. LEVIN, Mr. KENNEDY, Mr. BIDEN, Mr. FEINGOLD, Mr. MILLER, Mr. EDWARDS, Mrs. BOXER, Mr. CORZINE, and Mr. KERRY, proposes an amendment numbered 4185.

Mr. DASCHLE. 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 printed in today's RECORD under ''Text of Amendments.'')

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

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

Mr. DASCHLE. Mr. President, first, let me say that we have had a very productive period over the last several minutes, and I think we now are in a position to move to a vote on the Leahy amendment.

Mr. President, I ask unanimous consent that a vote occur on the Leahy amendment at 3:15 this afternoon, and that there be no amendments offered prior to the vote.

The PRESIDING OFFICER. Is there objection?

The Chair hears none, and it is so ordered.

Mr. DASCHLE. I thank the Chair.

Mr. LEAHY. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be.

The yeas and nays were ordered.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Mr. President, first, let me say, I am pleased we have reached an agreement on the Leahy amendment. This is one of these little technical things that does not mean much to many people, and it is one where, in fact, there is a dispute, but we have reached an agreement that will allow the Leahy amendment to go forward with certainty on our part that the 2-year statute of limitation is a real statute of limitation, that we simply change the number and that in the process, by the way we do it, we do not do anything that would challenge the current court ruling.

Mr. REID. Will my friend yield for a unanimous consent request?

Mr. GRAMM. I am happy to yield.

Mr. REID. Mr. President, I ask unanimous consent that the time from now until 3:15 be divided equally between the two managers of the bill.

The PRESIDING OFFICER. Is there objection?

The Chair hears none, and it is so ordered.

Mr. GRAMM. Mr. President, I thank the majority leader for helping us work this out. I think this will give us the ability now to move forward. As part of this agreement, we will have cloture filed on the bill. While that cloture is ripening, we will continue to consider amendments.

I think this agreement guarantees we will have an opportunity, if not to finish the bill this week, the opportunity to assure that it would be finished early next week.

Let me also say, for the record, I would not object to a unanimous consent request to have the cloture vote today or tomorrow. From my point of view, we do not need to wait until Friday to have the cloture vote. I would be willing to ask unanimous consent that it be moved up, if that were appropriate. I think that is up to the majority leader, obviously. But from my point of view, we are ready to move and head to conference with this bill.

This one small part of the Leahy amendment I do not think is prudent policy, but there is greater certainty about what it means in terms of the statute of limitations. So I am more satisfied at least in terms of certainty.

I thank Senator LEAHY for working this out. There is no doubt about the fact that he had the votes if we could have brought it all to a vote, but I think what we are doing, by working out this simple compromise, is guaranteeing that we are going to pass this bill in short order.

I am hopeful in conference we will be able to bring in the changes the President has proposed. I understand the Republican leader will offer them as an amendment. I will support them. I hope they are adopted unanimously.

But in any case, I think this agreement paves the way to guarantee we will pass this bill, hopefully, this week if not early next week.

Let me say to my colleagues on the Republican side of the aisle, I intend to vote for cloture. I think this is an important piece of legislation. I would do important parts of it differently than Senator SARBANES, but he is chairman and I am ranking member; and we have been in the different positions. There is a difference between the two, but we cannot get a bill which I want unless we go to conference.

The House bill is very different. I think we have an opportunity to work out a compromise, just as we did on financial services modernization. Senator SARBANES opposed it when we dealt with it on the floor of the Senate, but by the time we came back from conference, we got 90 votes. My guess is, we will do as well or better on this bill after going to conference.

So I think we have taken a major step toward moving on. I think it is important. I think the American people want this bill passed. If we were willing to move up the cloture vote, which I am willing to do, we could pass

it this week. If not, we will pass it next week.

The PRESIDING OFFICER. Who yields time?

Mr. LEAHY. Mr. President, would the distinguished senior Senator from Maryland yield me, say, 5 minutes?

Mr. SARBANES. Would the Senator mind if I made a very short statement?

Mr. LEAHY. I would be delighted if the distinguished chairman did.

Mr. SARBANES. Mr. President, I rise to commend the distinguished Senator from Vermont for the excellent work that he and the Committee on the Judiciary did with respect to the amendment that is now pending at the desk.

This amendment will create tough new penalties to punish corporate fraud. It has very important provisions to protect corporate whistleblowers. Previously, they have been acting under wire and mail fraud provisions. And those are not adequate to deal with securities fraud. The committee recognized that and dealt directly with that question.

The President is talking about doubling the penalties for wire and mail fraud, as I understand it, but did not have a proposal to actually have a securities fraud offense. And that is very important because it would have been very difficult under those other statutes because they are not directly focused on securities fraud.

I think the committee has stepped into what was clearly a vacuum and has filled it in an exceedingly effective and craftsmanlike way.

There are also important provisions in this amendment to prohibit individuals from destroying documents or falsifying records with the intent to obstruct or influence a Federal investigation or a matter in bankruptcy. That is also very important. We have some provisions of that sort but, once again, they are not fully developed or fully focused. The committee, again, has applied itself in order to do that and obviously made a very substantial contribution in that regard.

I also want to touch, very briefly, on the provisions for whistleblower protection for employees of public companies. The legislation, as reported out of the Banking Committee, requires audit committees to have in place procedures to receive and address complaints regarding accounting and internal control or auditing issues and to establish procedures for employees' anonymous submissions of concerns regarding accounting or auditing matters. That was a provision championed by Senator STABENOW. We were very pleased to adopt it.

But Senator LEAHY and his colleagues on the Judiciary Committee have moved ahead to provide additional protections and remedies for corporate whistleblowers that I think will help to ensure that employees will not be punished for taking steps to prevent corporate malfeasance.

There are a number of other very important provisions in this legislation of which I am very strongly supportive, but I, in deference to the limitation on time, will withhold with respect to those.

But, again, I thank the able chairman of the Judiciary Committee and his colleagues for this very important contribution to the legislation we are trying to develop.

Let me simply say it is a pleasure, once again, as we did back in the fall when we did money laundering, to be able to work closely with the committee in furthering the public interest.

I yield the remainder of my time to the Senator from Vermont.

The PRESIDING OFFICER. Thirteen minutes remain for the majority. The Senator from Vermont.

Mr. LEAHY. I thank the distinguished Senator from Maryland. I appreciate his comments also about last fall after the tragedies of September 11. He and I and our committees worked closely on the terrorism legislation. Realizing it was more than simply having a penalty against terrorism, we had to have the tools against terrorism, and the distinguished senior Senator from Maryland was very helpful in putting together the money-laundering legislation so we could come out with a counterterrorism package on which the Senate could vote for 99–1.

That is what we are trying to do today. I am a proud cosponsor of Senator SARBANES' legislation before the body. After years of experience in this body, I know how helpful it is if you have bills where the jurisdiction of various aspects may be in different committees. And considering having turf battles, when you work together, as we have in the Banking and Judiciary Committees, and others worked, you usually end up with a better package for the Senate.

The final product becomes better and more complete because of our joint work. Having served here for a quarter of a century with the Senator from Maryland, I know such things can be done.

With the members of his committee, he has had to craft a very complex, worthwhile bill on the issue of how do you account, how do you keep records, of all the various things to come under the SEC, to come under the jurisdiction of his committee.

What I am concerned about, from the Judiciary Committee, is, if you get these people, you get them; that if you have somebody who has gone and spent all their efforts to defraud their own company and the pension holders in their company and the investors in their company, that they not walk off scot-free with their mansions in protected States and their offshore money.

When you look at what has happened, when you look at the out-and-out fraud of some of these executives as they have ruined their own company, actually damaged their own country as well, at the same time lining their pockets as if anybody could even have pockets as huge as the amounts of money they have put in, and they walk away scot-free and they say: This is such a tragedy. I hate to see my company collapse like that and tens of thousands of people out of work and all those pensioners gone and all those States defrauded. And I am just going to have to comfort myself for the rest of my life with my $100 or $200 or $300 million I have absconded with.

Their comfort might be a little bit less if they find that those same pension holders and stockholders have the ability to go after the money they are walking away with, and their comfort might be a little bit less if instead of a very large mansion they are in a 12-by-12 cell behind steel doors. Instead of a complacent board of directors, they may have to be dealing with their fellow inmates who may not take very kindly to them.

Why do we have to have that kind of a tough law, and why do we have to have the statute of limitations? Just take a look at this chart. This is what Enron did. Does this look like a company that wants to be transparent in their dealings? Does this look like a company that wants to be on the up and up? These are their off-the-book transactions, hidden debt, fake profits, inflated stock.

What were some of the companies they were hiding this behind? Here is one named Ponderosa. If you look at that, you do not know it belongs to Enron. Or Jedi Capital or Big Doe—that is not D-O-U-G-H—or Sundance or Little River or Yosemite or OB–1 Holdings or Peregrine or Kenobe. I guess Kenobe is a different company than OB–1. And we have Braveheart and Mojave and Chewco and Condor. It seems the only time they had free between trying to hide the money was going to movies, when you look at some of the secret partnerships they created here, Jedi II, OB–1, Kenobe.

My point is, do you think if anybody stumbled across one of these companies they would think for even 1 minute that it belonged to Enron? Of course not. If you were the person who was to protect the pension rights of the employees, do you think if you found Ospry or Zenith or Egret or Cactus or Big River or Raptor you would think the money that was being tucked away and hidden in there could actually belong to the employees of Enron?

But Kenneth Lay comes up here, sidles up to the table where he is going to be called to testify and says: I wish you could know the whole story, but not from me. I am taking the fifth.

Well, he has that constitutional right. But he doesn't have a constitutional right to steal and defraud, and other people like him don't have the constitutional right to steal and defraud and hide the money.

This isn't a question of whether they walk away with only $100 million instead of $200 million. It is a question of a middle-age couple reaching retirement time and having virtually all

their retirement save Social Security tied up in a pension fund such as this and seeing it wiped out that day. They are not facing a question of whether they will have $200 million or $100 million. They are going to face the question of whether they can even keep their home, whether they will have the money to visit their grandchildren, or have the money to take care of their medical needs in their old age. That is what we are talking about. Or the people who work so hard, show up for work every single day, help make the fortune for the Ken Lays of the world, but they suddenly find they can't make the mortgage payment, they can't make the car payment, they can't pay for their children's braces. They can't do any of these other things because the big guys have walked off with all the money.

That is why I wrote the legislation I did. I wrote legislation that is going to punish criminals. I wrote legislation that will preserve the evidence of fraud and protect victims.

As one who has prosecuted people, I know nothing focuses their attention more than knowing they will not go to jail. Suddenly that overlooked ethics course when they were getting their MBA, or that overlooked ethics course in the accounting school or law school, they are going to start looking at it again. If they think, because they can walk away from this, they will go to jail, they are going to go to jail. It is not going to be a complacent board of directors they will deal with. It will be a criminal in the cell next door. That is what they have to worry about.

These people deserve to go to jail. They have ruined the lives of thousands of people, good people, hard-working people, honest people. They have destroyed much of the confidence in Wall Street. They have destroyed the confidence in people who should be investing.

I am proud to be an American and proud to be in a country such as ours where you can invest, where people can grow companies, where they can make money if they do the right thing. But I am not proud of these kinds of people who destroy that sort of American dream.

The President says he is outraged. I suspect he is. But I am also outraged. I would hope the President's outrage will go to the point of supporting this kind of legislation, this kind of legislation which doesn't just say it is wrong for you to do that, but if you do it, you are going to go to jail. Those iron bars are going to close.

We have worked hard on this legislation. That is why I compliment the distinguished senior Senator from Maryland. He and the members of his committee worked very hard. The people of my staff, including Ed Pagano, Steve Dettelbach, Jessica Berry, and Bruce Cohen worked so hard. They brought in people from across the political spectrum, Republicans and Democrats alike, to join us. I think all of those who joined it joined in one basic thing. They set aside their philosophical or partisan differences. They set aside their feelings of party and said they were overwhelmed with feelings of outrage.

Even in my own little State of Vermont, pension funds were damaged because of the excesses of Enron. And then we see WorldCom and Tyco and Xerox, and we say we had better look back 5 years.

That is not the American way. That is the way of some of the most arrogant, self-centered, spoiled criminals. That is what they are; they are criminals. They cooked the books in California during an energy crisis, so millions of people in California paid more for their electricity. Their arrogance was such that they did not care because all of those offshore corporations were hiding the money. Lord knows how much money is still there. You are not going to find out from these executives because they will take the fifth. They have the constitutional right to do that, and I will defend that right, as I will the rights of everybody else. But let us not shed tears for them. Just as Democrats and Republicans will join in voting for this, I call on the President and the Attorney General to step forward and say they support it. And I call on our Justice Department to go forward and find some of these people not just to say maybe we will find a corporation guilty of a crime; let's send some of these people to jail for what they have done. Let's send them to jail, and let's do everything we can to let the people defrauded by them recover some of their ill-gotten gains.

I see the Senator from Michigan has taken over the chair. Madam President, I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. LEAHY. I note that the Senator from Michigan is a cosponsor of this amendment.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mr. GRAMM. Madam President, I think all time has expired on the majority side. I think I have about 13 minutes. I have said all I intended to say. I think we have cleared the way for this bill to be passed. I want to reiterate that when cloture is filed in a few minutes, I will be supportive of having that cloture vote earlier than Friday, which would be the normal time it would ripen. Maybe others would not be supportive of having the vote, and they are perfectly within their rights. I think the agreement we worked out has guaranteed we are going to pass this bill either this week or very early next week.

The net result is that we can go to conference with the House, and we will have an opportunity, I believe, to come back with a strong bipartisan bill. I have to say that I think we have sort of reached the point where a lot of debate on this issue is more about the next election than it is about corporate integrity. I wonder if the debate has not reached the point where we are hurting equity values by making people fear not only the disease, but the absurd prescription of the doctor that might come from the Government.

I think the sooner we can finish this bill and go to conference and come out with a final product so that people know with certainty what the new rules are and how we are going to go about them, everybody will benefit. I think the only thing that will be lost by invoking cloture is that we will have fewer speeches, we will have fewer opportunities to denounce evil, however we define it, and we will be less likely to get on the 6 o'clock news; but we will also be less likely to spook the markets and more likely to get our job done; we will be more likely to produce a good bill we can all be proud of, not just when we read the editorial in the Washington Post, but when we submit it all to the front-porch-of-the-nursing-home test, as to how we feel about it someday when we are sitting on the front porch of the nursing home.

Mr. HARKIN. Mr. President, our economic system is based on transparency. Investors need accurate financial information about a company so that they can make informed investment decisions. They need information they can trust. Getting honest information requires accountability and honesty from three entities: corporate executives, stock brokers, and public auditors. Clearly, we are seeing breakdowns, if not outright criminality, at all three levels. And it requires additional accountability at all three levels in order to restore investor confidence.

First, we must expect that corporations present an honest portrait of the companies economic health and well-being. Corporate executives who cooks the books are no different than used car salesmen who roll back the car odometers, both are engaged in a fraud. They must be held accountable for their actions and severely punished.

Second, we must expect brokers provide their investors with honest, accurate, and unbiased advice. I stress unbiased. Unfortunately, many brokerage firms have a conflict of interest because they bring in businesses and increase their own profits by pushing bad stocks. One recent report indicated that 94 percent of Wall Street firms continued to recommend stocks for companies that went bankrupt this year up to the very day that companies filed for Chapter 11.

Third, we have to expect that public accounting firms are acting as watchdogs over corporate financial statements. Yet many of the auditing firms, not just Arthur Andersen, have had major failures.

Accounting firms gave a clean bill of health to over 93 percent of publicly traded companies that were subsequently involved in accounting problems within the year. And 42 percent of publicly traded companies that filed

for bankruptcy were given a clean bill of health. Clearly, we need fundamental reform at all three levels to restore investor confidence and punish criminal behavior. Some say may say that Enron, Worldcom and the others are a few bad apples. That ignores the much wider, systemic problems that now plague corporate America.

Advocating half measures or saying that we do not need to strengthen the law is like saying that bank robbery should not be severely punished and banks should not have vaults because most people do not rob banks. Well, some people do rob banks. And some corporate executives rip off investors. But they are both criminals and both should be punished accordingly.

I commend Chairman SARBANES for his accounting reform bill, S. 2673, which is an excellent start at providing for stronger rules regarding accounting procedures. I am also pleased to be an original cosponsor of Senator LEAHY's ''Corporate and Criminal Fraud Accountability Act,'' that is now being offered as an amendment. Will some key executives go to jail if this amendment passes? If they are guilty of fraud or destroying evidence of wrong doing, I certainly hope so.

First, the amendment creates a new crime for security fraud and helps prosecutors punish corporate criminality. This amendment is a lot like the ''Go to Jail'' card in the board game ''Monopoly.'' It says to corporate criminals ''go to jail, do not pass go and do not collect $200.'' The amendment also increases penalties for obstruction of justice. The people who would shred documents to cover up criminal behavior are not better than the ''wheel man'' in a robbery. They may not have pulled the robbery, but the crook cannot getaway without them. This amendment would make sure the shredders are held accountable as well.

Incidentally, the amendment also lengthens the statute of limitations on these crimes and protects corporate whistleblowers. Corporate criminals should not be allowed to run out the clock and avoid prosecution. And workers who discover corporate fraud should be protected just as we protect government whistleblowers. I believe this amendment will go a long way toward preventing corporate crime and prosecuting those who would rip off their stock holders and employees. Restoring confidence and punishing criminal behavior is in everyone's best interest—honest corporate executives, their employees, investors, and the public at large. I urge adoption of the amendment and look forward to seeing it become law.

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. SARBANES. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Ms. STABENOW). Without objection, it is so ordered.

Under the previous order, the question is on agreeing to amendment No. 4185. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS), the Senator from Ohio (Mr. VOINOVICH), and the Senator from Idaho (Mr. CRAPO), are necessarily absent.

I further announce that if present and voting the Senator from North Carolina (Mr. HELMS) would vote ''yea.''

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

The result was announced—yeas 97, nays 0, as follows:

[Rollcall Vote No. 169 Leg.]

YEAS—97

Akaka	Durbin	McCain
Allard	Edwards	McConnell
Allen	Ensign	Mikulski
Baucus	Enzi	Miller
Bayh	Feingold	Murkowski
Bennett	Feinstein	Murray
Biden	Fitzgerald	Nelson (FL)
Bingaman	Frist	Nelson (NE)
Bond	Graham	Nickles
Boxer	Gramm	Reed
Breaux	Grassley	Reid
Brownback	Gregg	Roberts
Bunning	Hagel	Rockefeller
Burns	Harkin	Santorum
Byrd	Hatch	Sarbanes
Campbell	Hollings	Schumer
Cantwell	Hutchinson	Sessions
Carnahan	Hutchison	Shelby
Carper	Inhofe	Smith (NH)
Chafee	Inouye	Smith (OR)
Cleland	Jeffords	Snowe
Clinton	Johnson	Specter
Cochran	Kennedy	Stabenow
Collins	Kerry	Stevens
Conrad	Kohl	Thomas
Corzine	Kyl	Thompson
Craig	Landrieu	Thurmond
Daschle	Leahy	Torricelli
Dayton	Levin	Warner
DeWine	Lieberman	Wellstone
Dodd	Lincoln	Wyden
Domenici	Lott	
Dorgan	Lugar	

NOT VOTING—3

Crapo	Helms	Voinovich

The amendment (No. 4185) was agreed to.

Mr. DASCHLE. Madam President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 4186

Mr. DASCHLE. Madam President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from South Dakota [Mr. DASCHLE], for Mr. BIDEN and Mr. HATCH, proposes an amendment numbered 4186.

Mr. DASCHLE. Madam 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:

(Purpose: To increase criminal penalties relating to conspiracy, mail fraud, wire fraud, and certain ERISA violations, and for other purposes)

At the end, add the following:

TITLE VIII—WHITE-COLLAR CRIME PENALTY ENHANCEMENTS

SEC. 801 SHORT TITLE.

This title may be cited as the ''White-Collar Crime Penalty Enhancement Act of 2002''.

SEC. 802. CRIMINAL PENALTIES FOR CONSPIRACY TO COMMIT OFFENSE OR TO DEFRAUD THE UNITED STATES.

Section 371 of title 18, United States Code, is amended by striking ''If two or more'' and all that follows through ''If, however,'' and inserting the following:

''(a) IN GENERAL.—If 2 or more persons—

''(1) conspire to commit any offense against the United States, in any manner or for any purpose, and 1 or more of such persons do any act to effect the object of the conspiracy, each person shall be fined or imprisoned, or both, as set forth in the specific substantive offense which was the object of the conspiracy; or

''(2) conspire to defraud the United States, or any agency thereof in any manner or for any purpose, and 1 or more of such persons do any act to effect the object of the conspiracy, each person shall be fined under this title, or imprisoned not more than 10 years, or both.

''(b) MISDEMEANOR OFFENSE.—If, however,''.

SEC. 803. CRIMINAL PENALTIES FOR MAIL AND WIRE FRAUD.

(a) MAIL FRAUD.—Section 1341 of title 18, United States Code, is amended by striking ''five years'' and inserting ''10 years''.

(b) WIRE FRAUD.—Section 1343 of title 18, United States Code, is amended by striking ''five years'' and inserting ''10 years''.

SEC. 804. CRIMINAL PENALTIES FOR VIOLATIONS OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.

Section 501 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1131) is amended—

(1) by striking ''$5,000'' and inserting ''$100,000'';

(2) by striking ''one year'' and inserting ''10 years''; and

(3) by striking ''$100,000'' and inserting ''$500,000''.

SEC. 805. AMENDMENT TO SENTENCING GUIDELINES RELATING TO CERTAIN WHITE-COLLAR OFFENSES.

(a) DIRECTIVE TO THE UNITED STATES SENTENCING COMMISSION.—Pursuant to its authority under section 994(p) of title 18, United States Code, and in accordance with this section, the United States Sentencing Commission shall review and, as appropriate, amend the Federal Sentencing Guidelines and related policy statements to implement the provisions of this title.

(b) REQUIREMENTS.—In carrying out this section, the Sentencing Commission shall—

(1) ensure that the sentencing guidelines and policy statements reflect the serious nature of the offenses and the penalties set forth in this title, the growing incidence of serious fraud offenses which are identified above, and the need to modify the sentencing guidelines and policy statements to deter, prevent, and punish such offenses;

(2) consider the extent to which the guidelines and policy statements adequately address—

(A) whether the guideline offense levels and enhancements for violations of the sections amended by this title are sufficient to deter and punish such offenses, and specifically, are adequate in view of the statutory increases in penalties contained in this title; and

(B) whether a specific offense characteristic should be added in United States Sentencing Guideline section 2B1.1 in order to provide for stronger penalties for fraud when the crime is committed by a corporate officer or director;

(3) assure reasonable consistency with other relevant directives and sentencing guidelines;

(4) account for any additional aggravating or mitigating circumstances that might justify exceptions to the generally applicable sentencing ranges;

(5) make any necessary conforming changes to the sentencing guidelines; and

(6) assure that the guidelines adequately meet the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States Code.

SEC. 806. CORPORATE RESPONSIBILITY FOR FINANCIAL REPORTS.

(a) IN GENERAL.—Chapter 63 of title 18, United States Code, is amended by adding at the end the following:

"§ 1348. Failure of corporate officers to certify financial reports

''(a) CERTIFICATION OF PERIODIC FINANCIAL REPORTS.—Each periodic report containing financial statements filed by an issuer with the Securities Exchange Commission pursuant to section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a) or 78o(d)) shall be accompanied by a written statement by the chairman of the board, chief executive officer, and chief financial officer (or equivalent thereof) of the issuer.

''(b) CONTENT.—The statement required under subsection (a) shall certify the appropriateness of the financial statements and disclosures contained in the periodic report or financial report, and that those financial statements and disclosures fairly present, in all material respects, the operations and financial condition of the issuer.

''(c) CRIMINAL PENALTIES.—Notwithstanding any other provision of law—

''(1) any person who recklessly violates any provision of this section shall upon conviction be fined not more than $500,000, or imprisoned not more than 5 years, or both; or

''(2) any person who willfully violates any provision of this section shall upon conviction be fined not more than $1,000,000, or imprisoned not more than 10 years, or both.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The section analysis for chapter 63 of title 18, United States Code, is amended by adding at the end the following:

''1348. Failure of corporate officers to certify financial reports.''.

Mr. DASCHLE. Madam President, I know there are a number of Senators who wish to be recognized to offer amendments. I think Senator LOTT would like very much to offer an amendment as well. What I would like to do is to propound a unanimous consent request involving a number of Senators who have amendments to be offered so they will know the sequence. I know Senator EDWARDS has been waiting a long time to offer an amendment, as well as Senator LEVIN, Senator SCHUMER, Senator GRAMM, and Senator MCCAIN. Perhaps in the next couple of minutes we can put together a unanimous consent request which will sequence these amendments so Senators will know they are protected and have the opportunity to then have their amendments called up. I ask that all of our colleagues work with us over the course of the next few minutes.

I yield the floor to accommodate Senator LOTT's interest in offering his amendment. We will lay aside the Biden amendment temporarily as that amendment is considered as well.

The PRESIDING OFFICER. The Republican leader.

Mr. LOTT. Madam President, first, I thank Senators SARBANES, GRAMM, and LEAHY for the work they have put into moving through the amendment on which we just voted. That allows us to move on to other germane or important amendments that will be offered.

AMENDMENT NO. 4188

Madam President, I understand the Biden amendment will be set aside. So I send to the desk my amendment.

The PRESIDING OFFICER. Without objection, the pending amendment is set aside, and the clerk will report.

The legislative clerk read as follows:

The Senator from Mississippi [Mr. LOTT] proposes an amendment numbered 4188.

Mr. LOTT. Madam 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:

(Purpose: To deter fraud and abuse by corporate executives)

At the appropriate place, insert the following:

SEC. . HIGHER MAXIMUM PENALTIES FOR MAIL AND WIRE FRAUD.

(a) MAIL FRAUD.—Section 1341 is amended by striking ''five'' and inserting ''ten''.

(b) WIRE FRAUD.—Section 1343 is amended by striking ''five'' and inserting ''ten''.

SEC. . TAMPERING WITH A RECORD OR OTHERWISE IMPEDING AN OFFICIAL PROCEEDING.

Section 1512 of title 18, United States Code is amended—

(a) by re-designating subsections (c), (d), (e), (f), (g), (h), and (i) as subsections (d), (e), (f), (g), (h), (i) and (j);

(b) by inserting after subsection (b) the following new subsection:

''(c) Whoever corruptly—

''(1) alters, destroys, mutilates or conceals a record, document or other object, or attempts to do so, with the intent to impair the object's integrity or availability for use in an official proceeding; or

''(2) otherwise obstructs, influences, or impedes any official proceeding, or attempts to do so;

''shall be fined under this title or imprisoned not more than ten years, or both.''

SEC. . TEMPORARY FREEZE AUTHORITY FOR THE SECURITIES AND EXCHANGE COMMISSION.

(a) IN GENERAL.—The Securities Exchange Act of 1934 is amended by inserting after section 21C(c)(2) (15 U.S.C. 78u–3(c)(2)) the following:

''(3) TEMPORARY FREEZE.—

''(A) Whenever during the course of a lawful investigation involving possible violations of the federal securities laws by an issuer of publicly traded securities or any of its directors, officers, partners, controlling persons, agents or employees, it shall appear to the Commission that it is likely that the issuer will make extraordinary payments (whether compensation or otherwise) to any of the foregoing persons, the Commission may petition a federal district court for a temporary order requiring the issuer to escrow, subject to court supervision, those payments in an interest-bearing account for 45 days. Such an order shall be entered, if the court finds that the issuer is likely to make such extraordinary payments, only after notice and opportunity for a hearing, unless the court determines that notice and hearing prior to entry of the order would be impracticable or contrary to the public interest. A temporary order shall become effective immediately and shall be served upon the parties subject to it and, unless set aside, limited or suspended by court of competent jurisdiction, shall remain effective and enforceable for 45 days. The period of the order may be extended by the court upon good cause shown for not longer than 45 days, provided that the combined period of the order not exceed 90 days.

''(B) If the individual affected by such order is charged with violations of the federal securities laws by the expiration of the 45 days (or the expiration of any extended period), the escrow would continue, subject to court approval, until the conclusion of any legal proceedings. The issuer and the affected director, officer, partner, controlling person, agent or employee would have the right to petition the court for review of the order. If the individual affected by such order is not charged, the escrow will terminate at the expiration of the 45 days (or the expiration of any extended period), and the payments (with accrued interest) returned to the issuer.

(b) TECHNICAL AMENDMENT.—Section 21C(c)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78u–3(c)(2)) is amended by striking ''This'' and inserting ''Paragraph (1) of this''.

SEC. . AMENDMENT TO THE FEDERAL SENTENCING GUIDELINES.

(a) REQUEST FOR IMMEDIATE CONSIDERATION BY THE UNITED STATES SENTENCING COMMISSION.—Pursuant to its authority under section 994(p) of title 28, United States Code, and in accordance with this section, the United States Sentencing Commission is requested to—

(1) promptly review the sentencing guidelines applicable to securities and accounting fraud and related offenses;

(2) expeditiously consider promulgation of new sentencing guidelines or amendments to existing sentencing guidelines to provide an enhancement for officers or directors of publicly traded corporations who commit fraud and related offenses; and

(3) submit to Congress an explanation of actions taken by the Commission pursuant to paragraph (2) and any additional policy recommendations the Commission may have for combating offenses described in paragraph (1).

(b) OTHER.—In carrying out this section, the Sentencing Commission is requested to:

(1) ensure that the sentencing guidelines and policy statements reflect the serious nature of securities, pension, and accounting fraud and the need for aggressive and appropriate law enforcement action to prevent such offenses;

(2) assure reasonable consistency with other relevant directives and with other guidelines;

(3) account for any aggravating or mitigating circumstances that might justify exceptions, including circumstances for which the sentencing guidelines currently provide sentencing enhancements;

(4) make any necessary conforming changes to the sentencing guidelines; and

(5) assure that the guidelines adequately meet the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States Code.

(c) EMERGENCY AUTHORITY AND DEADLINE FOR COMMISSION ACTION.—The Commission is requested to promulgate the guidelines or amendments provided for under this section as soon as practicable, and in any event not later than the 120 days after the date of the

enactment of this Act, in accordance with the procedures set forth in section 21(a) of the Sentencing Reform Act of 1987, as though the authority under that Act had not yet expired.

SEC. . AUTHORITY OF THE COMMISSION TO PROHIBIT PERSONS FROM SERVING AS OFFICERS OR DIRECTORS.

(a) In section 21C of the Exchange Act of 1934, add at the end a new subsection as follows:

''( ) AUTHORITY OF THE COMMISSION TO PROHIBIT PERSONS FROM SERVING AS OFFICERS OR DIRECTORS.—In any cease-and-desist proceeding under subsection (a), the Commission may issue an order to prohibit, conditionally or unconditionally, and permanently or for such period of time as it shall determine, any person who has violated section 10(b) of this title or the rules or regulations thereunder from acting as an officer or director of any issuer that has a class of securities registered pursuant to section 12 of this title or that is required to file reports pursuant to section 15(d) of this title if the person's conduct demonstrates unfitness to serve as an officer or director of any such issuer.''

(b) In section 8A of the Securities Act add at the end a new subsection as follows:

''( ) AUTHORITY OF THE COMMISSION TO PROHIBIT PERSONS FROM SERVING AS OFFICERS OR DIRECTORS.—In any cease-and-desist proceeding under subsection (a), the Commission may issue an order to prohibit, conditionally or unconditionally, and permanently or for such period of time as it shall determine, any person who has violated section 17(a)(1) of this title from acting as an officer or director of any issuer that has a class of securities registered pursuant to section 12 of the Securities Exchange Act of 1934 or that is required to file reports pursuant to section 15(d) of that Act if the person's conduct demonstrates unfitness to serve as an officer or director of any such issuer.''

AMENDMENT NO. 4189 TO AMENDMENT NO. 4188

Mr. GRAMM. Madam President, I send a second-degree amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Texas [Mr. GRAMM] proposes an amendment numbered 4189 to amendment No. 4188.

Mr. GRAMM. Madam 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:

(Purpose: To deter fraud and abuse by corporate executives)

Strike all after the first word, and insert the following:

HIGHER MAXIMUM PENALTIES FOR MAIL AND WIRE FRAUD.

(a) MAIL FRAUD.—Section 1341 is amended by striking ''five'' and inserting ''ten''.

(b) WIRE FRAUD.—Section 1343 is amended by striking ''five'' and inserting ''ten''.

SEC. . TAMPERING WITH A RECORD OR OTHERWISE IMPEDING AN OFFICIAL PROCEEDING.

Section 1512 of title 18, United States Code is amended—

(a) by re-designating subsections (c), (d), (e), (f), (g), (h), and (i) as subsections (d), (e), (f), (g), (h), (i) and (j);

(b) by inserting after subsection (b) the following new subsection:

''(c) Whoever corruptly—

''(1) alters, destroys, mutilates or conceals a record, document or other object, or attempts to do so, with the intent to impair the object's integrity or availability for use in an official proceeding; or

''(2) otherwise obstructs, influences, or impedes any official proceeding, or attempts to do so;

''shall be fined under this title or imprisoned not more than ten years, or both.''

SEC. . TEMPORARY FREEZE AUTHORITY FOR THE SECURITIES AND EXCHANGE COMMISSION.

(a) IN GENERAL.—The Securities Exchange Act of 1934 is amended by inserting after section 21C(c)(2) (15 U.S.C. 78u–3(c)(2)) the following:

''(3) TEMPORARY FREEZE.—

''(A) Whenever during the course of a lawful investigation involving possible violations of the federal securities laws by an issuer of publicly traded securities or any of its directors, officers, partners, controlling persons, agents or employees, it shall appear to the Commission that it is likely that the issuer will make extraordinary payments (whether compensation or otherwise) to any of the foregoing persons, the Commission may petition a federal district court for a temporary order requiring the issuer to escrow, subject to court supervision, those payments in an interest-bearing account for 45 days. Such an order shall be entered, if the court finds that the issuer is likely to make such extraordinary payments, only after notice and opportunity for a hearing, unless the court determines that notice and hearing prior to entry of the order would be impracticable or contrary to the public interest. A temporary order shall become effective immediately and shall be served upon the parties subject to it and, unless set aside, limited or suspended by court of competent jurisdiction, shall remain effective and enforceable for 45 days. The period of the order may be extended by the court upon good cause shown for not longer than 45 days, provided that the combined period of the order not exceed 90 days.

''(B) If the individual affected by such order is charged with violations of the federal securities laws by the expiration of the 45 days (or the expiration of any extended period), the escrow would continue, subject to court approval, until the conclusion of any legal proceedings. The issuer and the affected director, officer, partner, controlling person, agent or employee would have the right to petition the court for review of the order. If the individual affected by such order is not charged, the escrow will terminate at the expiration of the 46 days (or the expiration of any extended period), and the payments (with accrued interest) returned to the issuer.

(b) TECHNICAL AMENDMENT.—Section 21C(c)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78u–3(c)(2)) is amended by striking ''This'' and inserting ''Paragraph (1) of this''.

SEC. . AMENDMENT TO THE FEDERAL SENTENCING GUIDELINES.

(a) REQUEST FOR IMMEDIATE CONSIDERATION BY THE UNITED STATES SENTENCING COMMISSION.—Pursuant to its authority under section 994(p) of title 28, United States Code, and in accordance with this section, the United States Sentencing Commission is requested to—

(1) promptly review the sentencing guidelines applicable to securities and accounting fraud and related offenses;

(2) expeditiously consider promulgation of new sentencing guidelines or amendments to existing sentencing guidelines to provide an enhancement for officers or directors of publicly traded corporations who commit fraud and related offenses; and

(3) submit to Congress an explanation of actions taken by the Commission pursuant to paragraph (2) and any additional policy recommendations the Commission may have for combating offenses described in paragraph (1).

(b) OTHER.—In carrying out this section, the Sentencing Commission is requested to:

(1) ensure that the sentencing guidelines and policy statements reflect the serious nature of securities, pension, and accounting fraud and the need for aggressive and appropriate law enforcement action to prevent such offenses;

(2) assure reasonable consistency with other relevant directives and with other guidelines;

(3) account for any aggravating or mitigating circumstances that might justify exceptions, including circumstances for which the sentencing guidelines currently provide sentencing enhancements;

(4) make any necessary conforming changes to the sentencing guidelines; and

(5) assure that the guidelines adequately meet the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States Code.

(c) EMERGENCY AUTHORITY AND DEADLINE FOR COMMISSION ACTION.—The Commission is requested to promulgate the guidelines or amendments provided for under this section as soon as practicable, and in any event not later than the 120 days after the date of the enactment of this Act, in accordance with the procedures set forth in section 21(a) of the Sentencing Reform Act of 1987, as though the authority under that Act had not yet expired.

SEC. . AUTHORITY OF THE COMMISSION TO PROHIBIT PERSONS FROM SERVING AS OFFICERS OR DIRECTORS.

(a) In section 21C of the Exchange Act of 1934, add at the end a new subsection as follows:

''( ) AUTHORITY OF THE COMMISSION TO PROHIBIT PERSONS FROM SERVING AS OFFICERS OR DIRECTORS.—In any cease-and-desist proceeding under subsection (a), the Commission may issue an order to prohibit, conditionally or unconditionally, and permanently or for such period of time as it shall determine, any person who has violated section 10(b) of this title or the rules or regulations thereunder from acting as an officer or director of any issuer that has a class of securities registered pursuant to section 12 of this title or that is required to file reports pursuant to section 15(d) of this title if the person's conduct demonstrates unfitness to serve as an officer or director of any such issuer.''

(b) In section 8A of the Securities Act add at the end a new subsection as follows:

''( ) AUTHORITY OF THE COMMISSION TO PROHIBIT PERSONS FROM SERVING AS OFFICERS OR DIRECTORS.—In any cease-and-desist proceeding under subsection (a), the Commission may issue an order to prohibit, conditionally or unconditionally, and permanently or for such period of time as it shall determine, any person who has violated section 17(a)(1) of this title from acting as an officer or director of any issuer that has a class of securities registered pursuant to section 12 of the Securities Exchange Act of 1934 or that is required to file reports pursuant to section 15(d) of that Act if the person's conduct demonstrates unfitness to serve as an officer or director of any such issuer.''

Mr. DASCHLE. Madam 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. DASCHLE. Madam President, I ask unanimous consent the order for the quorum call be rescinded.

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

AMENDMENT NO. 4186, AS MODIFIED

Mr. DASCHLE. Madam President, I think we are working through the number of procedural issues with which we have to deal. I want to make sure we are in a position to be able to complete that work. So I call for the regular order.

The PRESIDING OFFICER. Amendment No. 4186 is pending.

Mr. DASCHLE. I modify the original amendment that I offered with the changes that are at the desk.

The PRESIDING OFFICER. The amendment is so modified.

The amendment, as modified, is as follows:

On page 117 in line 12 strike ''Act'' and insert the following: Act.

TITLE VIII—WHITE-COLLAR CRIME PENALTY ENHANCEMENTS

SEC. 801 SHORT TITLE.

This title may be cited as the ''White-Collar Crime Penalty Enhancement Act of 2002''.

SEC. 802. CRIMINAL PENALTIES FOR CONSPIRACY TO COMMIT OFFENSE OR TO DEFRAUD THE UNITED STATES.

Section 371 of title 18, United States Code, is amended by striking ''If two or more'' and all that follows through ''If, however,'' and inserting the following:

''(a) IN GENERAL.—If 2 or more persons—

''(1) conspire to commit any offense against the United States, in any manner or for any purpose, and 1 or more of such persons do any act to effect the object of the conspiracy, each person shall be fined or imprisoned, or both, as set forth in the specific substantive offense which was the object of the conspiracy; or

''(2) conspire to defraud the United States, or any agency thereof in any manner or for any purpose, and 1 or more of such persons do any act to effect the object of the conspiracy, each person shall be fined under this title, or imprisoned not more than 10 years, or both.

''(b) MISDEMEANOR OFFENSE.—If, however,''.

SEC. 803. CRIMINAL PENALTIES FOR MAIL AND WIRE FRAUD.

(a) MAIL FRAUD.—Section 1341 of title 18, United States Code, is amended by striking ''five years'' and inserting ''10 years''.

(b) WIRE FRAUD.—Section 1343 of title 18, United States Code, is amended by striking ''five years'' and inserting ''10 years''.

SEC. 804. CRIMINAL PENALTIES FOR VIOLATIONS OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.

Section 501 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1131) is amended—

(1) by striking ''$5,000'' and inserting ''$100,000'';

(2) by striking ''one year'' and inserting ''10 years''; and

(3) by striking ''$100,000'' and inserting ''$500,000''.

SEC. 805. AMENDMENT TO SENTENCING GUIDELINES RELATING TO CERTAIN WHITE-COLLAR OFFENSES.

(a) DIRECTIVE TO THE UNITED STATES SENTENCING COMMISSION.—Pursuant to its authority under section 994(p) of title 18, United States Code, and in accordance with this section, the United States Sentencing Commission shall review and, as appropriate, amend the Federal Sentencing Guidelines and related policy statements to implement the provisions of this title.

(b) REQUIREMENTS.—In carrying out this section, the Sentencing Commission shall—

(1) ensure that the sentencing guidelines and policy statements reflect the serious nature of the offenses and the penalties set forth in this title, the growing incidence of serious fraud offenses which are identified above, and the need to modify the sentencing guidelines and policy statements to deter, prevent, and punish such offenses;

(2) consider the extent to which the guidelines and policy statements adequately address—

(A) whether the guideline offense levels and enhancements for violations of the sections amended by this title are sufficient to deter and punish such offenses, and specifically, are adequate in view of the statutory increases in penalties contained in this title; and

(B) whether a specific offense characteristic should be added in United States Sentencing Guideline section 2B1.1 in order to provide for stronger penalties for fraud when the crime is committed by a corporate officer or director;

(3) assure reasonable consistency with other relevant directives and sentencing guidelines;

(4) account for any additional aggravating or mitigating circumstances that might justify exceptions to the generally applicable sentencing ranges;

(5) make any necessary conforming changes to the sentencing guidelines; and

(6) assure that the guidelines adequately meet the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States Code.

SEC. 806. CORPORATE RESPONSIBILITY FOR FINANCIAL REPORTS.

(a) IN GENERAL.—Chapter 63 of title 18, United States Code, is amended by adding at the end the following:

''§ 1348. Failure of corporate officers to certify financial reports

''(a) CERTIFICATION OF PERIODIC FINANCIAL REPORTS.—Each periodic report containing financial statements filed by an issuer with the Securities Exchange Commission pursuant to section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a) or 78o(d)) shall be accompanied by a written statement by the chairman of the board, chief executive officer, and chief financial officer (or equivalent thereof) of the issuer.

''(b) CONTENT.—The statement required under subsection (a) shall certify the appropriateness of the financial statements and disclosures contained in the periodic report or financial report, and that those financial statements and disclosures fairly present, in all material respects, the operations and financial condition of the issuer.

''(c) CRIMINAL PENALTIES.—Notwithstanding any other provision of law—

''(1) any person who recklessly violates any provision of this section shall upon conviction be fined not more than $500,000, or imprisoned not more than 5 years, or both; or

''(2) any person who willfully violates any provision of this section shall upon conviction be fined not more than $1,000,000, or imprisoned not more than 10 years, or both.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The section analysis for chapter 63 of title 18, United States Code, is amended by adding at the end the following:

''1348. Failure of corporate officers to certify financial reports.''.

Mr. DASCHLE. Madam President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

AMENDMENT NO. 4190 TO AMENDMENT NO. 4186, AS MODIFIED

Mr. DASCHLE. Madam President, I send up an amendment in the second degree.

What we have done now is to assure that both the Biden amendment and the Lott amendment will have an opportunity to be considered and debated. I am hoping we might even be able to continue to work to see if we can have one vote rather than two.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from South Dakota [Mr. DASCHLE], for Mr. BIDEN, proposes an amendment numbered 4190 to amendment No. 4186, as modified.

The amendment is as follows:

(Purpose: To increase criminal penalties relating to conspiracy, mail fraud, wire fraud, and certain ERISA violations, and for other purposes)

Strike all after the first word and insert the following:

VIII—WHITE-COLLAR CRIME PENALTY ENHANCEMENTS

SEC. 801 SHORT TITLE.

This title may be cited as the ''White-Collar Crime Penalty Enhancement Act of 2002''.

SEC. 802. CRIMINAL PENALTIES FOR CONSPIRACY TO COMMIT OFFENSE OR TO DEFRAUD THE UNITED STATES.

Section 371 of title 18, United States Code, is amended by striking ''If two or more'' and all that follows through ''If, however,'' and inserting the following:

''(a) IN GENERAL.—If 2 or more persons—

''(1) conspire to commit any offense against the United States, in any manner or for any purpose, and 1 or more of such persons do any act to effect the object of the conspiracy, each person shall be fined or imprisoned, or both, as set forth in the specific substantive offense which was the object of the conspiracy; or

''(2) conspire to defraud the United States, or any agency thereof in any manner or for any purpose, and 1 or more of such persons do any act to effect the object of the conspiracy, each person shall be fined under this title, or imprisoned not more than 10 years, or both.

''(b) MISDEMEANOR OFFENSE.—If, however,''.

SEC. 803. CRIMINAL PENALTIES FOR MAIL AND WIRE FRAUD.

(a) MAIL FRAUD.—Section 1341 of title 18, United States Code, is amended by striking ''five years'' and inserting ''10 years''.

(b) WIRE FRAUD.—Section 1343 of title 18, United States Code, is amended by striking ''five years'' and inserting ''10 years''.

SEC. 804. CRIMINAL PENALTIES FOR VIOLATIONS OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.

Section 501 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1131) is amended—

(1) by striking ''$5,000'' and inserting ''$100,000'';

(2) by striking ''one year'' and inserting ''10 years''; and

(3) by striking ''$100,000'' and inserting ''$500,000''.

SEC. 805. AMENDMENT TO SENTENCING GUIDELINES RELATING TO CERTAIN WHITE-COLLAR OFFENSES.

(a) DIRECTIVE TO THE UNITED STATES SENTENCING COMMISSION.—Pursuant to its authority under section 994(p) of title 18,

United States Code, and in accordance with this section, the United States Sentencing Commission shall review and, as appropriate, amend the Federal Sentencing Guidelines and related policy statements to implement the provisions of this title.

(b) REQUIREMENTS.—In carrying out this section, the Sentencing Commission shall—

(1) ensure that the sentencing guidelines and policy statements reflect the serious nature of the offenses and the penalties set forth in this title, the growing incidence of serious fraud offenses which are identified above, and the need to modify the sentencing guidelines and policy statements to deter, prevent, and punish such offenses;

(2) consider the extent to which the guidelines and policy statements adequately address—

(A) whether the guideline offense levels and enhancements for violations of the sections amended by this title are sufficient to deter and punish such offenses, and specifically, are adequate in view of the statutory increases in penalties contained in this title; and

(B) whether a specific offense characteristic should be added in United States Sentencing Guideline section 2B1.1 in order to provide for stronger penalties for fraud when the crime is committed by a corporate officer or director;

(3) assure reasonable consistency with other relevant directives and sentencing guidelines;

(4) account for any additional aggravating or mitigating circumstances that might justify exceptions to the generally applicable sentencing ranges;

(5) make any necessary conforming changes to the sentencing guidelines; and

(6) assure that the guidelines adequately meet the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States Code.

SEC. 806. CORPORATE RESPONSIBILITY FOR FINANCIAL REPORTS.

(a) IN GENERAL.—Chapter 63 of title 18, United States Code, is amended by adding at the end the following:

''§ 1348. Failure of corporate officers to certify financial reports

''(a) CERTIFICATION OF PERIODIC FINANCIAL REPORTS.—Each periodic report containing financial statements filed by an issuer with the Securities Exchange Commission pursuant to section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a) or 78o(d)) shall be accompanied by a written statement by the chairman of the board, chief executive officer, and chief financial officer (or equivalent thereof) of the issuer.

''(b) CONTENT.—The statement required under subsection (a) shall certify the appropriateness of the financial statements and disclosures contained in the periodic report or financial report, and that those financial statements and disclosures fairly present, in all material respects, the operations and financial condition of the issuer.

''(c) CRIMINAL PENALTIES.—Notwithstanding any other provision of law—

''(1) any person who recklessly violates any provision of this section shall upon conviction be fined not more than $500,000, or imprisoned not more than 5 years, or both; or

''(2) any person who willfully violates any provision of this section shall upon conviction be fined not more than $1,000,000, or imprisoned not more than 10 years, or both.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The section analysis for chapter 63 of title 18, United States Code, is amended by adding at the end the following:

''1348. Failure of corporate officers to certify financial reports.''.

This section shall take effect one day after date of this bill's enactment.

Mr. DASCHLE. Madam President, I yield the floor. It is my understanding Senator BIDEN and Senator LOTT would both like to address their amendments. I yield for that purpose now.

The PRESIDING OFFICER. The Republican leader.

AMENDMENT NO. 4188

Mr. LOTT. Madam President, if I could describe my amendment briefly. I understand Senator BIDEN is prepared to do the same thing.

First, I should note, in at least one area they overlap in what they propose. In some other areas, there are some differences. But I don't see there are major problems.

Senator BIDEN's amendment, as I understand it, just from looking at it quickly, would increase penalties in some areas that are not included in my amendment. What this amendment would do, though, is increase penalties for corporate fraud.

Section 1 would increase maximum sentences for fraud. Mail fraud and wire fraud statutes are often used in criminal cases involving corporate wrongdoing. So obviously this is an area that is of concern and needs to be addressed. This section proposes doubling the maximum prison term for these crimes from 5 years to 10 years by amending 18 U.S.C. sections 1341 and 1343.

The second section would enact stronger laws against document shredding. Current law prohibits obstruction of justice by a defendant acting alone, but only if a proceeding is pending and a subpoena has been issued for the evidence that has been destroyed or altered. Timing is very important.

Most people understand that shredding documents is a very bad thing to do. Obviously, you cannot do it if there is something pending or if there is a subpoena. But as was the case recently, they knew that an investigation was underway and a subpoena was likely, and the shredding of documents went forward.

So this section would allow the Government to charge obstruction against individuals who acted alone, even if the tampering took place prior to the issuance of a grand jury subpoena. I think this is something we need to make clear so we do not have a repeat of what we saw with the Enron matter earlier this year.

Section 3 freezes payments of potential wrongdoers. This section would allow the SEC, during an investigation, to seek an order in Federal court imposing a 45-day freeze on extraordinary payments to corporate executives.

Again, this year we have seen just that sort of thing happening. While an investigation is underway, basically rewards were given to these corporate executives. While it would require a court order, there would be this 45-day freeze.

The targeted payments would be placed in escrow, ensuring that corporate assets are not improperly taken from an executive's personal benefit.

If an executive is charged with violations of Federal securities laws prior to the expiration of the court order, the escrow would continue until the conclusion of legal proceedings, again, with court approval.

Section 4 involves sentencing guideline enhancements for crimes committed by corporate officers and directors. This section would implement President Bush's call on the Sentencing Commission to quickly adopt the new ''aggravating factor'' to provide stronger penalties for fraud when the crime is committed by a corporate officer or director. This ''aggravating factor'' is a term of art used in the law. It would provide, under this section, stronger penalties for such fraud.

Section 5 would bar corporate officers and directors who engage in serious misconduct. Under current law, only a Federal court can issue an order prohibiting a person from acting as an officer or director of a public company.

The SEC cannot order this remedy in its own administrative cease-and-desist proceedings, even in a case of securities fraud where the person's conduct would otherwise meet the standards for imposing such a bar. This section would grant the SEC the authority to issue such orders if a person had committed securities law violation and his or her conduct demonstrated unfitness to serve as an officer or a director.

These points are all points that were made by the President, asking that legislation be provided to provide for these additional increases and strengthening of the law. We have found clearly that in recent events there has been improper conduct. There have been questionable accounting procedures, and there has probably been some illegal conduct. So you can put all the laws in the world on the books, but if people act in bad faith, violate the law, you can never legislate morality.

We have also seen that there are some cases where the law had some loopholes or where it was not timely or where it was not strong enough. One example, of course, is where there has been shredding. Another example is the very bad image of corporate executives taking increased payments, extraordinary payments, while they are being investigated. You can't have that sort of thing.

I think these are basic things that should be added to this bill. It would strengthen the bill. I have checked with a number of Senators on both sides of the aisle. There is general support for this legislation.

I thank Senator BIDEN for allowing me to make this brief statement about the amendment. Again, I emphasize that there are some similarities between this amendment and his amendment, but he does add additional penalties beyond what is in this proposal. But I did want to put into the bill what the President specifically recommended.

The PRESIDING OFFICER (Mr. DAYTON). The Senator from Delaware.

Mr. BIDEN. Mr. President, this amendment is from Senator HATCH and

me. He had as much input in this as I had. Let me respond in the spirit in which I was asked to do this and explain what the Biden-Hatch amendment does and then yield to my colleague to make any additional statements.

Based on what Senator LOTT has just pointed out, he has indicated that there are four basic sections to his amendment. On the first one, doubling the penalties for title 18, sections 1341 and 1343, that is exactly the same provision that is in the Biden-Hatch bill.

Secondly, making it a crime for document shredding: If I am not mistaken, that is in the Leahy amendment we just passed and that I cosponsored, as well as many others.

The third part of the amendment discussed by the Republican leader is something with which I happen to agree. It is not in either the Leahy bill just passed or in the Biden-Hatch amendment. That is the 45-day freeze on corporate executives' extraordinary income based upon the SEC being able to hold that in escrow and freeze it for 45 days while they look at it. I, for one, would be willing—I will yield to my colleague from Utah at the appropriate time—to accept that or join that in our amendment.

Fourth, the Sentencing Commission provisions that were referred to by my friend from Mississippi are in the Biden-Hatch bill. There is only one piece of the legislation of the Senator from Mississippi, as I understand it, based on the summary, that is not either already passed or included in Biden-Hatch.

But there are three areas that are not included which we think are very important. One is in section 2 of our legislation, which relates to conspiracy. Under title 18, section 371, the maximum penalty for general conspiracy to commit a crime is 5 years in prison regardless of whether the penalty for the predicate offense—that is, the thing they are conspiring to do—is considerably more than 5 years. So what Senator HATCH and I do is we allow the penalty for conspiracy to be consistent with what the penalty would be for the underlying crime; that is, the predicate crime. That is not included in the amendment of the Senator from Mississippi.

Also, a very important provision of Biden-Hatch is that right now, under ERISA, the Employment Retirement Security Act of 1974—we were both here to vote for that—under current law, a violation for essentially squandering someone's pension to the tune of tens of millions, maybe billions, of dollars is a misdemeanor with a maximum penalty of 1 year. If you were to steal an automobile from my driveway, which is about 2 miles from the Pennsylvania line, drive it across the Pennsylvania line, under Federal law, it is a 10-year sentence. There is obviously a bizarre disparity.

What we do is we increase the penalty for criminal violation of ERISA to 1 to 10 years, based upon the value of what is stolen in ERISA. If the loss in ERISA is a $20,000 pension versus several billion dollars' worth, the Sentencing Commission can make that judgment, as they do now, to have the penalty be from 1 but up to 10 years. That is not in Senator LOTT's amendment.

Lastly, section 6 of Biden-Hatch. Currently, the Securities and Exchange Commission requires regulated companies to file periodic financial reports with the SEC. This section of Biden-Hatch creates a new section in title 18 of the United States Code to require certification, signed by the top officials of that corporation, that the financial reports being filed accurately reflect the financial condition of the company. Criminal penalties are created for failure to comply with this section. Reckless failure to certify—you have to be able to prove it; it is a high standard—requires a penalty of up to 5 years, while a willful failure to certify on the part of these executives includes a maximum penalty of up to 10 years.

The point is, A, everything but one provision of Senator LOTT's amendment either has been passed or is in Biden-Hatch. I will yield to my colleague, but I am willing to accept the one provision that is not included. That is the provision relating to freezing payments for up to 45 days under the authority of the SEC of compensation packages that are excessive so there is time to look at it. I am willing to accept that.

It does not include three sections: Conspiracy, the ERISA increased penalties, and the requirement of certification that the financial reports accurately reflect the financial condition of the company, with penalties to prevail if in fact they either recklessly or willfully do not sign such a document or they recklessly or willfully signed it and it does not reflect what in fact they say it reflects.

That is a response to the majority leader's request of what the difference is. That is the difference.

I now yield, with the permission of my colleagues, to the Senator from Utah, and I might add, this is not original stuff of JOE BIDEN; this was Hatch and Biden, Biden and Hatch. He takes equal responsibility for this. If we are wrong, we are equally wrong.

I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I am proud to stand here with my colleague from Delaware, who is one of the truly remarkable Senators who knows as much about criminal law as anybody in this body or in the Congress itself.

I also rise today and applaud President Bush and Senator LOTT, as well as Senator BIDEN, for offering what really, combined, will be a comprehensive legislative proposal that calls for harsh, swift punishment of corporate executives who exploited the trust of their shareholders and employees while enriching themselves.

Senator BIDEN and I have worked together for years now on many important pieces of legislation. This is not new for us. I always feel good when I can work with my colleagues on the other side. It is always a pleasure to work with him. I commend him for the care and attention he has given to the subject of white-collar penalties, as well as for his leadership in this area. Just in the past 4 weeks, Senator BIDEN scheduled two hearings to review the adequacy of current penalties for white-collar criminal offenses. I am thankful that he did so for I think this is a critically important area for us to focus on, especially in today's unprecedented climate of market turmoil and corporate responsibility—or should I say irresponsibility.

All of us well know that the past few months have been painful ones for our Nation's financial markets. At least some of the blame can be laid at the doors of some multibillion-dollar corporations, their highly paid executives, and the accounting firms that were supposed to assure the public's trust. We learn—each week it seems—of more and more accounting and corporate fraud and irregularities that have caused billions of dollars of losses to innocent investors. I am personally outraged by these scandals.

The amendment I cosponsor today is a product of much thoughtful attention and scrutiny. No Member feels more strongly than I do about the importance of our criminal laws. They must be fair, and they must be just. If our criminal laws are to bear credibility and provide deterrence, they must adequately reflect the severity of the offenses. But right now they do not do so in the context of so-called white collar crimes. They are, to put it bluntly, out of whack.

A person who steals, defrauds, or otherwise deprives unsuspecting Americans of their life savings—no less than any other criminal—should be held accountable under our system of justice for the full weight of the harm he or she has caused. Innocent lives have been devastated by the crook who cooks the books of a publicly traded company, the charlatan who sells phony bonds, and the confidence man who runs a Ponzi scheme out there. These sorts of white-collar criminals should find no soft spots in our laws or in their ultimate sentences, but all too often they have done so.

It is time for us to get tough with these offenders. We need to make crystal clear that we will not tolerate this sort of outrageous criminal conduct, conduct that not only devastates the savings of citizens, but also has lasting effects on the entire world's confidence in our American financial markets. This amendment will take away the soft landings these criminals have expected and obtained for far too long.

The amendment Senator BIDEN and I propose—with the acceptance of the additional language of the President and

Senator LOTT—makes several notable improvements to current law. As Senator BIDEN said, and I will reiterate, first, our amendment increases the maximum penalties for those who commit mail fraud, wire fraud, and ERISA offenses, as well as those who conspire to violate Federal criminal laws. These changes are long overdue. The maximum penalty under current law for most of these offenses is 5 years, which is the same as the maximum penalty that could be handed down for mutilating a coin produced by the U.S. Mint. The current maximum penalty for ERISA fraud violations is just 1 year. In other words, a fraud committed in connection with employment retirement plans, no matter how severe or wide, is punishable now only as a misdemeanor. Under current law, one could get 5 years for scratching George Washington's face off a quarter but only 1 year for defrauding an entire company's pension plan. It goes without saying that we need to fix this problem.

Think about it. Pension plans go down the drain because of dishonest business people, which is sometimes hundreds of millions of dollars. Think of all the people who lose as a result of that.

Second, our amendment would make corporate officials criminally responsible for their public filings with the SEC. Make no mistake, these filings are critically important to investors who rely upon them to make decisions affecting how they should invest billions and billions of dollars. They need to be accurate. Our amendment makes it possible to hold somebody criminally accountable if they are not accurate.

Third, our amendment directs the U.S. Sentencing Commission to review the adequacy of current guidelines for white-collar offenders. We heard just a few weeks ago from the Department of Justice that these types of criminals often get off with a slap on the wrist and that judges too often do contortions to avoid handing down terms of imprisonment. This simply is not good and will not do. It undermines the deterrent effect of our criminal laws, makes a mockery of our system of fair and evenhanded justice, and ultimately sends the wrong message to all Americans. Our amendment will ensure that the Sentencing Commission will take steps designed to ensure that our system of justice no longer coddles criminals simply because they ''just'' steal.

It is time for the Senate to act on this important matter of fraud and responsibility. I think these amendments are a big step in the right direction. I compliment the President, Senator LOTT, and, of course, my dear friend and colleague from Delaware, Senator BIDEN, for the work they have all done on these two amendments. I agree with Senator BIDEN that we are willing to accept that part of the preference package.

With that, I yield the floor.

The PRESIDING OFFICER. The Senator from North Carolina is recognized.

Mr. EDWARDS. Mr. President, I ask unanimous consent that the pending amendment be laid aside.

The PRESIDING OFFICER. Is there objection?

Mr. SARBANES. I object for the moment. 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. BIDEN. 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. 4190, AS MODIFIED

Mr. BIDEN. Mr. President, I ask unanimous consent to modify the Hatch-Biden amendment by changing on page 6 of our amendment, under the title ''Failure of corporate officers to certify financial reports,'' line 19—it presently reads:

(1) any person who recklessly violates any provision of this section. . . .

I ask unanimous consent to amend it to say on line 19, subsection 1:

Any person who recklessly—

And add the words ''and knowingly''—

recklessly and knowingly.

Page 6, line 19, fourth word in, add as a fifth word ''and'' and the sixth word ''knowingly.''

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

The amendment, as modified, reads as follows:

Strike all after the first word and insert the following:

VIII—WHITE-COLLAR CRIME PENALTY ENHANCEMENTS

SEC. 801 SHORT TITLE.

This title may be cited as the ''White-Collar Crime Penalty Enhancement Act of 2002''.

SEC. 802. CRIMINAL PENALTIES FOR CONSPIRACY TO COMMIT OFFENSE OR TO DEFRAUD THE UNITED STATES.

Section 371 of title 18, United States Code, is amended by striking ''If two or more'' and all that follows through ''If, however,'' and inserting the following:

''(a) IN GENERAL.—If 2 or more persons—

''(1) conspire to commit any offense against the United States, in any manner or for any purpose, and 1 or more of such persons do any act to effect the object of the conspiracy, each person shall be fined or imprisoned, or both, as set forth in the specific substantive offense which was the object of the conspiracy; or

''(2) conspire to defraud the United States, or any agency thereof in any manner or for any purpose, and 1 or more of such persons do any act to effect the object of the conspiracy, each person shall be fined under this title, or imprisoned not more than 10 years, or both.

''(b) MISDEMEANOR OFFENSE.—If, however,''.

SEC. 803. CRIMINAL PENALTIES FOR MAIL AND WIRE FRAUD.

(a) MAIL FRAUD.—Section 1341 of title 18, United States Code, is amended by striking ''five years'' and inserting ''10 years''.

(b) WIRE FRAUD.—Section 1343 of title 18, United States Code, is amended by striking ''five years'' and inserting ''10 years''.

SEC. 804. CRIMINAL PENALTIES FOR VIOLATIONS OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.

Section 501 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1131) is amended—

(1) by striking ''$5,000'' and inserting ''$100,000'';

(2) by striking ''one year'' and inserting ''10 years''; and

(3) by striking ''$100,000'' and inserting ''$500,000''.

SEC. 805. AMENDMENT TO SENTENCING GUIDELINES RELATING TO CERTAIN WHITE-COLLAR OFFENSES.

(a) DIRECTIVE TO THE UNITED STATES SENTENCING COMMISSION.—Pursuant to its authority under section 994(p) of title 18, United States Code, and in accordance with this section, the United States Sentencing Commission shall review and, as appropriate, amend the Federal Sentencing Guidelines and related policy statements to implement the provisions of this title.

(b) REQUIREMENTS.—In carrying out this section, the Sentencing Commission shall—

(1) ensure that the sentencing guidelines and policy statements reflect the serious nature of the offenses and the penalties set forth in this title, the growing incidence of serious fraud offenses which are identified above, and the need to modify the sentencing guidelines and policy statements to deter, prevent, and punish such offenses;

(2) consider the extent to which the guidelines and policy statements adequately address—

(A) whether the guideline offense levels and enhancements for violations of the sections amended by this title are sufficient to deter and punish such offenses, and specifically, are adequate in view of the statutory increases in penalties contained in this title; and

(B) whether a specific offense characteristic should be added in United States Sentencing Guideline section 2B1.1 in order to provide for stronger penalties for fraud when the crime is committed by a corporate officer or director;

(3) assure reasonable consistency with other relevant directives and sentencing guidelines;

(4) account for any additional aggravating or mitigating circumstances that might justify exceptions to the generally applicable sentencing ranges;

(5) make any necessary conforming changes to the sentencing guidelines; and

(6) assure that the guidelines adequately meet the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States Code.

SEC. 806. CORPORATE RESPONSIBILITY FOR FINANCIAL REPORTS.

(a) IN GENERAL.—Chapter 63 of title 18, United States Code, is amended by adding at the end the following:

''§ 1348. Failure of corporate officers to certify financial reports

''(a) CERTIFICATION OF PERIODIC FINANCIAL REPORTS.—Each periodic report containing financial statements filed by an issuer with the Securities Exchange Commission pursuant to section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a) or 78o(d)) shall be accompanied by a written statement by the chairman of the board, chief executive officer, and chief financial officer (or equivalent thereof) of the issuer.

''(b) CONTENT.—The statement required under subsection (a) shall certify the appropriateness of the financial statements and disclosures contained in the periodic report or financial report, and that those financial statements and disclosures fairly present, in all material respects, the operations and financial condition of the issuer.

''(c) CRIMINAL PENALTIES.—Notwithstanding any other provision of law—

''(1) any person who recklessly and knowingly violates any provision of this section shall upon conviction be fined not more than $500,000, or imprisoned not more than 5 years, or both; or

''(2) any person who willfully violates any provision of this section shall upon conviction be fined not more than $1,000,000, or imprisoned not more than 10 years, or both.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The section analysis for chapter 63 of title 18, United States Code, is amended by adding at the end the following:

''1348. Failure of corporate officers to certify financial reports.''.

This section shall take effect one day after date of this bill's enactment.

Mr. BIDEN. I thank the Chair and 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. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

The Senator from Maryland.

Mr. SARBANES. Mr. President, I ask unanimous consent that the pending second-degree amendments be withdrawn; that no second-degree amendments be in order to either of the two pending first-degree amendments; that the Daschle for Biden amendment No. 4186 be further modified with the changes that are at the desk; that the time until 4:45 p.m. today be for debate in relation to the pending first-degree amendments; that the time be equally divided between the two managers or their designees; that at 4:45 p.m., without further intervening action or debate, the Senate proceed to vote in relation to the Daschle for Biden amendment No. 4186, as further modified; that upon disposition of that amendment, the Senate vote in relation to the Lott amendment No. 4188; provided further that upon disposition of these amendments, Senator EDWARDS be recognized to call up amendment No. 4187.

The PRESIDING OFFICER. Is there objection?

The Senator from Nevada.

Mr. REID. Reserving the right to object, I ask the manager of this bill, the chairman of the committee, to insert after the words ''Senator EDWARDS be recognized to call up amendment No. 4187,'' that following the disposition of that amendment, Senator GRAMM be recognized.

Mr. GRAMM. Following.

Mr. REID. That is right. We were sequencing this, that following Senator EDWARDS, Senator GRAMM be recognized; following that, Senator LEVIN be recognized; and following that, Senator GRAMM be recognized.

The PRESIDING OFFICER. Does the Senator from Maryland so modify his request? Is there objection?

Without objection, it is so ordered.

The amendments (Nos. 4189, and 4190, as modified) were withdrawn.

The amendment (No. 4186), as further modified, reads as follows:

On page 117 in line 12 strike ''Act'' and insert the following: Act.

TITLE VIII—WHITE-COLLAR CRIME PENALTY ENHANCEMENTS

SEC. 801 SHORT TITLE.

This title may be cited as the ''White-Collar Crime Penalty Enhancement Act of 2002''.

SEC. 802. CRIMINAL PENALTIES FOR CONSPIRACY TO COMMIT OFFENSE OR TO DEFRAUD THE UNITED STATES.

Section 371 of title 18, United States Code, is amended by striking ''If two or more'' and all that follows through ''If, however,'' and inserting the following:

''(a) IN GENERAL.—If 2 or more persons—

''(1) conspire to commit any offense against the United States, in any manner or for any purpose, and 1 or more of such persons do any act to effect the object of the conspiracy, each person shall be fined or imprisoned, or both, as set forth in the specific substantive offense which was the object of the conspiracy; or

''(2) conspire to defraud the United States, or any agency thereof in any manner or for any purpose, and 1 or more of such persons do any act to effect the object of the conspiracy, each person shall be fined under this title, or imprisoned not more than 10 years, or both.

''(b) MISDEMEANOR OFFENSE.—If, however,''.

SEC. 803. CRIMINAL PENALTIES FOR MAIL AND WIRE FRAUD.

(a) MAIL FRAUD.—Section 1341 of title 18, United States Code, is amended by striking ''five years'' and inserting ''10 years''.

(b) WIRE FRAUD.—Section 1343 of title 18, United States Code, is amended by striking ''five years'' and inserting ''10 years''.

SEC. 804. CRIMINAL PENALTIES FOR VIOLATIONS OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.

Section 501 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1131) is amended—

(1) by striking ''$5,000'' and inserting ''$100,000'';

(2) by striking ''one year'' and inserting ''10 years''; and

(3) by striking ''$100,000'' and inserting ''$500,000''.

SEC. 805. AMENDMENT TO SENTENCING GUIDELINES RELATING TO CERTAIN WHITE-COLLAR OFFENSES.

(a) DIRECTIVE TO THE UNITED STATES SENTENCING COMMISSION.—Pursuant to its authority under section 994(p) of title 18, United States Code, and in accordance with this section, the United States Sentencing Commission shall review and, as appropriate, amend the Federal Sentencing Guidelines and related policy statements to implement the provisions of this title.

(b) REQUIREMENTS.—In carrying out this section, the Sentencing Commission shall—

(1) ensure that the sentencing guidelines and policy statements reflect the serious nature of the offenses and the penalties set forth in this title, the growing incidence of serious fraud offenses which are identified above, and the need to modify the sentencing guidelines and policy statements to deter, prevent, and punish such offenses;

(2) consider the extent to which the guidelines and policy statements adequately address—

(A) whether the guideline offense levels and enhancements for violations of the sections amended by this title are sufficient to deter and punish such offenses, and specifically, are adequate in view of the statutory increases in penalties contained in this title; and

(B) whether a specific offense characteristic should be added in United States Sentencing Guideline section 2B1.1 in order to provide for stronger penalties for fraud when the crime is committed by a corporate officer or director;

(3) assure reasonable consistency with other relevant directives and sentencing guidelines;

(4) account for any additional aggravating or mitigating circumstances that might justify exceptions to the generally applicable sentencing ranges;

(5) make any necessary conforming changes to the sentencing guidelines; and

(6) assure that the guidelines adequately meet the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States Code.

SEC. 806. CORPORATE RESPONSIBILITY FOR FINANCIAL REPORTS.

(a) IN GENERAL.—Chapter 63 of title 18, United States Code, is amended by adding at the end the following:

''§ 1348. Failure of corporate officers to certify financial reports

''(a) CERTIFICATION OF PERIODIC FINANCIAL REPORTS.—Each periodic report containing financial statements filed by an issuer with the Securities Exchange Commission pursuant to section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a) or 78o(d)) shall be accompanied by a written statement by the chairman of the board, chief executive officer, and chief financial officer (or equivalent thereof) of the issuer.

''(b) CONTENT.—The statement required under subsection (a) shall certify the appropriateness of the financial statements and disclosures contained in the periodic report or financial report, and that those financial statements and disclosures fairly present, in all material respects, the operations and financial condition of the issuer.

''(c) CRIMINAL PENALTIES.—Notwithstanding any other provision of law—

''(1) any person who recklessly and knowingly violates any provision of this section shall upon conviction be fined not more than $500,000, or imprisoned not more than 5 years, or both; or

''(2) any person who willfully violates any provision of this section shall upon conviction be fined not more than $1,000,000, or imprisoned not more than 10 years, or both.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The section analysis for chapter 63 of title 18, United States Code, is amended by adding at the end the following:

''1348. Failure of corporate officers to certify financial reports.''.

Mr. BIDEN. Mr. President, I rise today—along with my good friend, Senator HATCH—to offer our bill, the White-Collar Penalty Enhancement Act of 2002 as a second-degree amendment to amendment No. 4174, Senator LEAHY's amendment to S. 2637.

Let me begin by applauding Senator SARBANES for his leadership in sponsoring S. 2637, and guiding it through his Banking Committee with a 17–4 vote. It is my hope and expectation that it will win the same overwhelming support on the floor of the Senate. I also commend Senators LEAHY and DASCHLE for offering the Corporate and Criminal Fraud Accountability Act, of which I am a cosponsor.

Let me briefly recount the events which bring me to the floor today to offer this amendment to increase penalties on white collar criminals. In recent months, dramatic events have shaken our country out of complacency. A decade of peace and prosperity

came to an end, first with a shattering reminder of our vulnerability to external threats, and then with a series of spectacular corporate collapses that revealed cracks in the very foundation of our economic system.

Our response to terrorism was to come together as a nation, reminded of all we have in common, all we have to be proud of.

The shock of those high-flying corporations falling spectacularly to earth presents us with different problems. We have to examine our own system—the capitalist system that has brought us so much material success, the envy of the rest of the world.

As the stock market continues to lose value, as the dollar has dropped to a 2-year low, we know that investors, here at home and abroad, have lost some of their faith in the American economy.

That loss of faith has a material impact of the wealth of this country, as our currency and our securities lose value. Some observers worry aloud that a full-blown loss of faith in our economy could drain even more value from our markets.

The task before us is nothing less than restoring confidence in our market economy. There are many facets to this problem.

One is reforming the auditing process. On the Senate floor right now is the Sarbanes bill that is essential to any effort to restore investor's faith in our markets. Audit firms are supposed to be independent voices, providing disinterested information that investors need to assess risk and to allocate funds to those companies that will have the best chance of raising our standard of living.

We need more transparency, more accountability in the conduct of accounting firms, and more confidence that they have access to, and are willing to tell us, the truth about the businesses they audit. Senator SARBANES has done us all a service by bringing this bipartisan bill to the floor.

Yesterday, I was hoping to hear the President support this bipartisan approach to reform, reform that is supported by the business community in the form of the Business Roundtable, when he spoke yesterday. I still hope he will soon add his voice in support of this landmark reform.

Just as important is the amendment to the Sarbanes bill that I am cosponsoring with Senator LEAHY. It will put real teeth in securities fraud enforcement, providing substantial criminal penalties for those who defraud investors of publically traded securities or who destroy evidence to obstruct justice.

Yesterday, the President announced his support for tougher criminal penalties for fraud offenses. I applaud the President's call for increase penalties for wire and mail fraud, and my amendment contains identical provisions. But I am concerned that the President's proposals do not go far enough.

For example, in the wake of the publicly reported problems at Enron, WorldCom, and other companies, we need to restore people's faith in their pension plans. They need to know that the companies they work for will treat them fairly, handle their funds wisely, and that the investments made by pension funds are sound. Yet, I believe that the criminal penalties for violations under the Employment Retirement Investment Security Act of 1974, ERISA, limited to 1 year in jail, are woefully inadequate to protect defrauded pensioners.

As chairman of the Judiciary Subcommittee on Crime and Drugs, I held a hearing several weeks ago—and am holding a second hearing this afternoon—on the adequacy of criminal penalties to deter this type of corporate wrongdoing. Corporate executives who defraud investors by whatever means should go to jail—period—and we need to give investigators and prosecutors the tools they need to send them there.

One thing most of our hearing witnesses agreed on was that there is a ''penalty gap'' between white collar crimes and other crimes. For example, if a kid steals your car and drives it over the 14th Street Bridge into Northern Virginia, he could get up to 10 years in jail under the Federal interstate auto theft law. Yet, if a corporate CEO steals your pension and commits a criminal violation under ERISA, he is only subject to 1 year in jail.

At my hearing, we heard from Charlie Prestwood, a 63-year-old Enron retiree, who lives in Conroe, TX. Charlie worked proudly for some 33 years for that company, saved and invested in his pension, and retired with about $1.3 million in his plan. Within a few tragic months, that was nearly wiped out—only $8,000 remained. Charlie is not a lawyer, but he had the good sense to know that its just not fair that a car thief who steals a jalopy can get 10 years in prison and a Gucci-clad corporate crook can steal a person's life savings and might only end up with 1 year in prison.

Accordingly, the amendment that Senator HATCH and I offer today is carefully crafted to hold corporate officer responsible and to reduce the ''penalty gap'' between a number of white collar crimes and other serious crimes. It does 3 basic things.

First, it goes beyond President Bush's proposal by raising penalties for those white collar crimes that are most often violated but which have insufficient penalties to deter corporate crooks. For example, it raises the maximum penalties from 1 to 10 years for ERISA criminal violations. It double penalties for wire and mail fraud from 5 to 10 years, and it treats white collar who conspire with others like drug king pins, by mandating that they receive the same maximum penalty for the offense underlying the charged conspiracy, rather than their sentence being capped at a 5-year penalty as exists under current law.

When these penalty enhancements are taken in combination with the new 10-year felony for securities fraud contained in the amendment I have cosponsored with Senator LEAHY, the Government will have the full range of prosecutorial arrows in its quiver to fight pension crooks and corporate wrong doers. Respectfully, the President's penalty proposal is only one small piece of the white collar crime-fighting puzzle.

Second, our amendment tells corporate big wigs that they are no longer off the hook for their companies misdeeds. My amendment requires top corporate officials to certify to the Securities and Exchange Commission that the periodic financial reports filed by their companies with the Commission accurately reflect the financial health of these corporations. Reckless failure by a corporate official to do so will result in up to 5 years in prison, while willful failure to do so will trigger a jail term of up to 10 years.

Third, our amendment directs the U.S. Sentencing Commission to review and amend the federal sentencing guidelines to lengthen sentences for white collar criminals to reflect these new, more serious penalties. It also directs the Commission to impose sentencing enhancement where corporate officials defraud victims. I applaud President Bush for announcing a similar proposal.

Make no mistake—this amendment will not stamp out white collar crime. We live in a fallen world where bad people do bad things—whether its stealing cars or stealing pensions. But, its time to ''level the playing field'' between white collar and blue collar criminals.

I believe the amendment that Senator HATCH and I are offering will move us substantially in the direction of deterring corporate wrongdoers by holding them responsible for the criminal acts. It will also begin the restoration of confidence in our financial markets. We must do both. The time to act is now. I urge my colleagues to support this amendment.

I yield the floor.

AMENDMENT NO. 4188

Mr. HATCH. Mr. President, I want to applaud President Bush and Senator LOTT for offering a comprehensive legislative proposal that calls for harsh, swift punishment of corporate executives who exploit the trust of their shareholders and employees, while enriching themselves.

This bill, which tracks the President's recent proposal, increases the criminal penalties that apply to fraud statutes that are frequently used to prosecute corporate wrongdoers. It also strengthens an existing obstruction of justice statute, and calls for an aggravated sentencing enhancement for frauds perpetrated by corporate officers and directors. Finally, it increases the Security and Exchange Commission's administrative enforcement

tools by strengthening the SEC's ability to freeze improper payments to corporate executives while the company is under investigation, and by enabling the SEC to bar corporate officers and directors from continued service where they engage in serious misconduct.

I support these provisions because I strongly believe that it is critical that we hold corporate executives accountable for acts of wrongdoing. We can do so by supplying the SEC and federal prosecutors with the civil and criminal tools they need to investigate and prosecute acts of corporate misconduct.

Let me briefly elaborate on some of the specific provisions contained in this bill.

First, as I mentioned, the bill doubles the maximum prison term for mail and wire fraud offenses, from 5 years to 10 years. This is identical to a provision Senator BIDEN and I have included in our amendment. This is a necessary sentencing enhancement, and one that is long overdue. Because prosecutors frequently use the mail and wire statutes to charge acts of corporate misconduct, it is important that we ensure that the penalties that apply to such offenses are sufficiently severe to deter and punish corporate wrongdoers.

Second, like the suggested enhancement contained in the bill Senator BIDEN and I have proposed, this amendment directs the U.S. Sentencing Commission to review the sentencing guidelines that apply to acts of corporate misconduct and to enhance the prison time that would apply to criminal frauds committed by corporate officers and directors. As I have stated, I strongly support such an enhancement because corporate leaders who hold high offices and breach their duties of trust should face stiff penalties.

Third, the amendment strengthens an existing federal offense that is often used to prosecute document shredding and other forms of obstruction of justice. Section 1520 of Title 18 of the United States code currently prohibits individuals from persuading others to engage in obstructive conduct. However, it does not prohibit an act of destruction committed by a defendant acting alone. While other existing obstruction of justice statutes cover acts of destruction that are committed by and individual acting alone, such statutes have been interpreted as applying only where a proceeding is pending, and a subpoena has been issued for the evidence that is destroyed.

This amendment closes this loophole by broadening the scope of the Section 1512. Like the new document destruction provision contained in S. 2010, this amendment would permit the government to prosecute an individual who acts alone in destroying evidence, even where the evidence is destroyed prior to the issuance of a grand jury subpoena.

Prosecutors in the Andersen case succeeded in convicting the corporation. However, in order to so, they had to prove that a person in the corporation corruptly persuaded another to destroy or alter documents, and acted with the intent to obstruct an investigation. Certainly, one who acts with the intent to obstruct an investigation should be criminally liable even if he or she acts alone in destroying or altering documents. This amendment will ensure that individuals acting alone would be liable for such criminal acts.

This amendment also includes new statutory provision that will strengthen the SEC's ability to freeze improper payments to corporate executives while a company is under investigation. These provision would prevent corporate executives from enriching themselves while a company is subject to an SEC investigation, but before the SEC has gathered sufficient evidence to file formal charges.

In particular, these provisions would enable to SEC to freeze improper payments by obtaining a federal court order. The order, which could last for 45 days and be extended upon a showing of good cause, would freeze extraordinary payments to corporate executives and require that such payments be escrowed. And where an executive is charged with a securities law violation prior to the expiration of the court order, the escrow would continue, with court approval, until the conclusion of legal proceedings.

Finally, the amendment grants the SEC the authority to bar individuals who have engaged in serious misconduct from serving as officers and directors of nay public company. Under current law, only a court may order an officer and director bar. In an SEC enforcement action, a court may issue an order that bars a person from acting as an officer or director of a public company where the person has committed a securities fraud violation, and his or her conduct demonstrates ''substantial unfitness'' to serve as an officer or director. However, under current law, the SEC cannot order this remedy in an administrative cease-and-desist proceedings, even where the person's conduct would otherwise meet the standards for the bar.

This amendment would enable the SEC to issue such a bar where the officer or director has committed a securities law violation and his or her conduct demonstrates ''unfitness'' to serve as an officer or director. This will give the SEC the ability to punish an officer or director who has committed an unlawful act, where it has not yet instituted an enforcement action.

I strongly believe that if Congress and the President act together to increase corporate transparency and to enact tough civil and criminal provision, we will succeed in restoring confidence in our market economy. The Federal government plays an important role in upholding and enforcing standards of corporate conduct. I look forward to working with my colleagues and with the President to enact needed legislation to strengthen corporate accountability.

Mr. GRAMM. Mr. President, let me try to explain where we are. We are about to have two votes. One vote is on a bipartisan amendment that was put together prior to our receipt of the language of the President's proposal. That was done by Senator BIDEN and Senator HATCH. That amendment will be voted on first.

I believe that amendment deals with the same subject area as the President's proposal. The overlap is not perfect, but when you take Senator LEAHY's amendment that we have already adopted, when you take this amendment, the things that are covered in the President's proposal are covered.

We also have the legislative language proposed by the White House to follow on the proposals the President made yesterday in New York.

When we adopt these two amendments, we will have added a substantial amount to the underlying bill. We will have added, in essence, two different variants of the President's proposal of yesterday. I assume we will get a unanimous vote for both of these amendments. I commend to my colleagues to vote for both of them.

At that point, we will proceed in the outline we have. It is my understanding we will try to put together an additional list, depending on the amount of time we have. Once these two votes are taken, the subject matter of the President's proposal of yesterday will be part of this bill. I commend to my colleagues to vote for both amendments.

Mr. SARBANES. Mr. President, in just a few minutes, at 4:45, we will move to the first of two votes. The first vote will be on the Daschle amendment, and the second vote on the Lott amendment. I urge my colleagues to support both amendments.

At the conclusion of those votes, we will go to Senator EDWARDS, who has been waiting patiently, to call up an amendment. Then we have sequenced behind Senator EDWARDS, for purposes of calling up amendments, Senator GRAMM, and Senator LEVIN has an amendment involving the powers of the SEC, and then back to Senator GRAMM. That is the procedure we have managed to put into place so far while continuing to work to try to compile a list of amendments and to do some sequencing.

We urge our colleagues to inform us—I am not urging to add amendments, but just informing colleagues of the process so they can be on the alert.

Very shortly we will begin the first of two rollcall votes. Both of these are amendments which strengthen the penalties. Many are related to the Leahy amendment which we adopted earlier today, and in a sense deal primarily with the subject matter that was in the Leahy amendment.

I urge my colleagues to be supportive of both amendments.

Mr. GRAMM. I yield back any time I may have.

Mr. SARBANES. I yield back the time.

The PRESIDING OFFICER (Mr. MILLER). The question is on agreeing to amendment No. 4186 as further modified. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. REID, I announce that the Senator from New Jersey (Mr. CORZINE) is necessarily absent. I further announce that, if present and voting, the Senator from New Jersey (Mr. CORZINE) would vote ''aye.''

Mr. NICKLES, I announce that the Senator from North Carolina (Mr. HELMS), the Senator from Ohio (Mr. VOINOVICH), and the Senator from Idaho (Mr. CRAPO) are necessarily absent. I further announce that, if present and voting, the Senator from North Carolina (Mr. HELMS), would vote ''aye.''

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

The result was announced—yeas 96, nays 0, as follows:

[Rollcall Vote No. 170 Leg.]

YEAS—96

Akaka	Durbin	Lugar
Allard	Edwards	McCain
Allen	Ensign	McConnell
Baucus	Enzi	Mikulski
Bayh	Feingold	Miller
Bennett	Feinstein	Murkowski
Biden	Fitzgerald	Murray
Bingaman	Frist	Nelson (FL)
Bond	Graham	Nelson (NE)
Boxer	Gramm	Nickles
Breaux	Grassley	Reed
Brownback	Gregg	Reid
Bunning	Hagel	Roberts
Burns	Harkin	Rockefeller
Byrd	Hatch	Santorum
Campbell	Hollings	Sarbanes
Cantwell	Hutchinson	Schumer
Carnahan	Hutchison	Sessions
Carper	Inhofe	Shelby
Chafee	Inouye	Smith (NH)
Cleland	Jeffords	Smith (OR)
Clinton	Johnson	Snowe
Cochran	Kennedy	Specter
Collins	Kerry	Stabenow
Conrad	Kohl	Stevens
Craig	Kyl	Thomas
Daschle	Landrieu	Thompson
Dayton	Leahy	Thurmond
DeWine	Levin	Torricelli
Dodd	Lieberman	Warner
Domenici	Lincoln	Wellstone
Dorgan	Lott	Wyden

NOT VOTING—4

Corzine	Helms
Crapo	Voinovich

The amendment (No. 4186), as further modified, was agreed to.

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

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

The motion to lay on the table was agreed to.

VOTE ON AMENDMENT NO. 4188

The PRESIDING OFFICER. Under the previous order, the question is on agreeing to Lott amendment No. 4188.

Mr. HATCH. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS), the Senator from Ohio (Mr. VOINOVICH), and the Senator from Idaho (Mr. CRAPO) are necessarily absent.

I further announce that if present and voting the Senator from North Carolina (Mr. HELMS) would vote ''yea.''

The result was announced—yeas 97, nays 0, as follows:

(Rollcall Vote No. 171 Leg.)

YEAS—97

Akaka	Durbin	McCain
Allard	Edwards	McConnell
Allen	Ensign	Mikulski
Baucus	Enzi	Miller
Bayh	Feingold	Murkowski
Bennett	Feinstein	Murray
Biden	Fitzgerald	Nelson (FL)
Bingaman	Frist	Nelson (NE)
Bond	Graham	Nickles
Boxer	Gramm	Reed
Breaux	Grassley	Reid
Brownback	Gregg	Roberts
Bunning	Hagel	Rockefeller
Burns	Harkin	Santorum
Byrd	Hatch	Sarbanes
Campbell	Hollings	Schumer
Cantwell	Hutchinson	Sessions
Carnahan	Hutchison	Shelby
Carper	Inhofe	Smith (NH)
Chafee	Inouye	Smith (OR)
Cleland	Jeffords	Snowe
Clinton	Johnson	Specter
Cochran	Kennedy	Stabenow
Collins	Kerry	Stevens
Conrad	Kohl	Thomas
Corzine	Kyl	Thompson
Craig	Landrieu	Thurmond
Daschle	Leahy	Torricelli
Dayton	Levin	Warner
DeWine	Lieberman	Wellstone
Dodd	Lincoln	Wyden
Domenici	Lott	
Dorgan	Lugar	

NOT VOTING—3

Crapo	Helms	Voinovich

The amendment (No. 4188) was agreed to.

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

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

The motion to lay on the table was agreed to.

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

Mr. SARBANES. Mr. President, I ask for the regular order.

The PRESIDING OFFICER. Under the previous order, the Senator from North Carolina is recognized.

AMENDMENT NO. 4187

Mr. EDWARDS. Mr. President, I wish to say a few words about an amendment I intend to offer along with Senators ENZI and CORZINE. This amendment addresses an important player in the problem we have had with corporate misconduct in this country. It is a player with which I have a lot of personal experience. That player is a lawyer.

As most people know, I practiced law for 20 years and spent a lot of time representing kids and families against very powerful interests. I think I have a reasonably good understanding of what responsibilities we as lawyers have to the people we represent. While those are the kinds of folks that I mostly represented, other lawyers have different kinds of clients. Some lawyers represent corporations rather than individuals. The lawyers who represent corporations have the same kind of responsibility, but it is to a different entity and a different group of people. They have a responsibility, though, to represent that corporation, their client, zealously, the same way I had the responsibility to represent kids and families.

One of the problems we have seen occurring with this sort of crisis in corporate misconduct is that some lawyers have forgotten their responsibility. We have heard a great deal about managers and accountants, which Senator ENZI is familiar with, and scandals such as Enron and WorldCom. Managers and accountants are the focus of Senator SARBANES' bill, and they are critical to us doing what needs to be done to correct this problem and restore the public confidence.

The truth is that executives and accountants do not work alone. Anybody who works in corporate America knows that wherever you see corporate executives and accountants working, lawyers are virtually always there looking over their shoulder. If executives and/or accountants are breaking the law, you can be sure that part of the problem is that the lawyers who are there and involved are not doing their jobs.

For the sake of investors and regular employees, ordinary shareholders, we have to make sure that not only the executives and the accountants do what they are responsible for doing, but also that the lawyers do what they are responsible for doing as members of the bar and as citizens of the country.

Let me be a little more specific about what this amendment does and what the responsibility of a lawyer is and should be. If you are a lawyer for a corporation, your client is the corporation and you work for the corporation and you work for the shareholders, the investors in that corporation; that is to whom you owe your responsibility and loyalty. And you have a responsibility to zealously advocate for the shareholders and investors in that corporation.

What we have seen some lawyers do, unfortunately, is different. We have seen corporate lawyers sometimes forget who their client is. What happens is their day-to-day conduct is with the CEO or the chief financial officer because those are the individuals responsible for hiring them. So as a result, that is with whom they have a relationship. When they go to lunch with their client, the corporation, they are usually going to lunch with the CEO or the chief financial officer. When they

get phone calls, they are usually returning calls to the CEO or the chief financial officer. The problem is that the CEO and the chief financial officer are not the client. Their responsibility and the client they have to advocate for—and which they have an ethical responsibility to advocate for—is, in fact, the corporation, not the CEO or the chief financial officer.

One of the most critical responsibilities that those lawyers have is, when they see something occurring or about to occur that violates the law, breaks the law, they must act as an advocate for the shareholders, for the company itself, for the investors. They are there and they can see what is happening. They know the law and their responsibility is to do something about it if they see the law being broken or about to be broken.

This amendment is about making sure those lawyers, in addition to the accountants and executives in the company, don't violate the law and, in fact, more importantly, ensure that the law is being followed. For some time, the SEC actually tried to do that in the late 1970s and early 1980s. They brought legal actions to enforce this basic responsibility of lawyers—the responsibility to take steps to make sure corporate managers didn't break the law and harm shareholders in the process. If you find out that the managers are breaking the law, you must tell them to stop. If they won't stop, you go to the board of directors, which represents the shareholders, and tell them what is going on. If they won't act responsibly and in compliance with the law, then you go to the board and say something has to be done; there is a violation of the law occurring. It is basically going up the ladder, up the chain of command.

For years, the SEC recognized the principle that lawyers had a legal responsibility to go up the ladder if they saw wrongdoing occurring. But then they stopped. One of the reasons they stopped is because there were a lot of protests coming from the organized bar. With Enron and WorldCom, and all the other corporate misconduct we have seen, it is again clear that corporate lawyers should not be left to regulate themselves no more than accountants should be left to regulate themselves. There has been a lot of debate, rhetoric, and discussion—rightfully so—about the necessity about not ''letting the fox guard the chicken coop.'' The same is true with lawyers. This has become clear through various acts of misconduct. The lawyers have involvement and responsibility, and they also cannot be left to regulate themselves.

In January, a bipartisan group of the top securities lawyers and legal ethics experts in the country wrote a letter to Harvey Pitt telling him it was time for the SEC to enforce the up-the-ladder principle, as in the past. Mr. Pitt's top lawyer said: We are not going to do anything. If Congress wants something done, Congress should act. Then I wrote a letter to Mr. Pitt in essence saying: We are ready to act here. Will you help us in crafting legislation and working out this problem?

That was 3 weeks ago. As of now, I have not yet received a response.

The time has come for Congress to act. This amendment acts in a very simple way. It basically instructs the SEC to start doing exactly what they were doing 20 years ago, to start enforcing this up-the-ladder principle.

This is what the amendment says specifically: First, the SEC shall establish rules to protect investors from unprofessional conduct by lawyers, conduct that violates the legal standards of the profession.

Second, the SEC shall make one rule in particular, and it is a simple rule with two parts. No. 1, a lawyer with evidence of a material violation of the law has to report that evidence either to the chief legal counsel or the chief executive officer of the company. No. 2, if the person to whom that lawyer reports doesn't respond appropriately by remedying the violation, by doing something that makes sure it is cured, that lawyer has an obligation to go to the audit committee or to the board. It is that simple. You report the violation. If the violation isn't addressed properly, then you go to the board.

Three important details about this amendment address some of the concerns that I have heard voiced. First, the way we have drafted the bill, the duty to report applies only to evidence of a material violation of the law. That means no reporting is required for piddling violations or violations that don't amount to anything. The obligation to report is triggered only by violations that are material—violations that a reasonable investor would want to know about. So we have been very careful there.

Second, when the evidence is reported within the company, we have not specified how a CEO or a general counsel should act to rectify the violation. That is because the truth is that the appropriate response to cure the problem will vary dramatically, depending on the circumstances. If the CEO can do a short investigation, for example, and figure out that no violation occurred, then the obligation stops there. But if there is a serious violation of the law, the appropriate response is clear: The CEO has to act promptly to remedy the violation. If he doesn't, the lawyer has to go to the board. It is that simple.

One final point. Nothing in this bill gives anybody a right to file a private lawsuit against anybody. The only people who can enforce this amendment are the people at the SEC.

They will enforce this amendment not on behalf of any private party, but in the name of the American people. This is about forcing the SEC to do its job and protect the American people.

Mr. President, I call up amendment No. 4187 and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from North Carolina [Mr. EDWARDS], for himself, Mr. ENZI, and Mr. CORZINE, proposes an amendment numbered 4187.

Mr. EDWARDS. 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:

(Purpose: To address rules of professional responsibility for attorneys)

On page 108, line 15, insert before the end quotation marks the following:

''(c) RULES OF PROFESSIONAL RESPONSIBILITY FOR ATTORNEYS.—Not later than 180 days after the date of enactment of this section, the Commission shall establish rules, in the public interest and for the protection of investors, setting forth minimum standards of professional conduct for attorneys appearing and practicing before the Commission in any way in the representation of public companies, including a rule requiring an attorney to report evidence of a material violation of law by the company or any agent thereof to the chief legal counsel or the chief executive officer of the company (or the equivalent thereof) and, if the counsel or officer does not appropriately respond to the evidence (adopting, as necessary, appropriate remedial measures or sanctions with respect to the violation), requiring the attorney to report the evidence to the audit committee of the board of directors or to another committee of the board of directors comprised solely of directors not employed directly or indirectly by the company, or to the board of directors.

Mr. EDWARDS. I yield the floor.

Mr. GRAMM addressed the Chair.

Mr. SARBANES. Will the Senator yield for a question?

The PRESIDING OFFICER. The Senator from Texas.

AMENDMENT NO. 4200 TO AMENDMENT NO. 4187

(Purpose: To modify attorney practices relating to clients, and for other purposes)

Mr. GRAMM. Mr. President, on behalf of Senator MCCONNELL, I send a second-degree amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Texas [Mr. GRAMM], for Mr. MCCONNELL, proposes an amendment numbered 4200 to amendment No. 4187.

Mr. GRAMM. 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 printed in today's RECORD under ''Text of Amendments.'')

Mr. GRAMM. Mr. President, I am not going to talk about the amendment. Senator MCCONNELL was concerned—he has an appointment tonight and he wanted to be recognized, so I offered the amendment for him. I wish to say a few words before I yield, giving him an opportunity to speak on behalf of the second-degree amendment.

I wish to print in the RECORD the lead editorial from today's Wall Street Journal. I would like to read the first paragraph. I want to make it clear, I

am not talking about this amendment, I am just talking about the climate we are in. This is the lead editorial in today's Wall Street Journal:

As if investors weren't frightened enough, the politicians are now offering to help. That was worth more than 180 points off the Dow yesterday, but then stock prices aren't the point. Everything you're hearing now from Washington is aimed at winning the November elections, not calming financial markets.

This is an excellent editorial. One can agree with it or not agree with it. The point I want to make is the following: There is a wonderful line in a very famous economics book, ''The Wealth of Nations,'' where Adam Smith is talking about government and talking about problems. A line in ''The Wealth of Nations'' goes something like: The economy is powerful and it overcomes not only the illness but the absurd prescription of the doctor that comes from the Government.

I believe we have now put together the makings of a good bill. We still have differences of opinion. We still have differences not on whether we should set up a board, not on how strong it should be. We agree on those issues. We have differences about how independent the SEC should be. We have differences as to whether that board ought to set audit standards and independent standards or whether we ought to do it by law.

As we go through the process in the next 2 days, if the some 30 amendments that people on my side of the aisle are proposing to offer is any index, and as someone once said—and I am sorry I cannot remember his name—I have only seen the heart of a good man, not necessarily the heart of an evil man. I have just seen these amendments.

I am concerned that people who are looking at investing are going to say: My God, it is one thing that my stock has been battered because there were people who did things that were wrong, there were people who did things that were illegal, but now I am going to be battered by one-upmanship efforts to show that Congress is really tough, that Congress is tougher than the President, the President is tougher than the Congress, that Republicans are tougher than Democrats, or Democrats are tougher than Republicans.

I would just like to say, not that anybody is going to be calmed by what I say, but I would like to say, in the end, I think we will end up with a fairly responsible bill, and I hope people who are thinking about investing money will take into account that this, too, will pass; that this summer will pass; that after all the charges are made and the one-upmanship has occurred, in the end, normally this process has worked pretty well for over 200 years, and my guess is it will work well again and we will end up in a give-and-take in conference, with the White House involved, measuring each amendment in terms of what we think will work and what we think probably hurts more than it helps—the absurd prescription of the doctor about which Adam Smith talked.

If we do go too far in one area or we do not go far enough in another, there is going to be another Congress next year and the year after and for every year from now until the end of the world, I hope.

Just reading this article set me thinking about it. There are probably people trying to decide this afternoon what they are going to do tomorrow on Wall Street. We have this bill passed in the House where, if you are domiciled outside the United States and move your domicile, you cannot get Government contracts. This is the era of where, if you want to slap an accountant around, it is not going to do a lot of harm. It is not fair, it is not right, I am not for it, and I am not going to do it, but if you want to slap business around, this is a wonderful time to do it.

The problem is the market is going to open in the morning and people are going to either buy or sell or they are going to do both.

I ask unanimous consent to print this lead editorial from the Wall Street Journal in the RECORD.

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

[From the Wall Street Journal]

REVIEW & OUTLOOK: THE NOVEMBER MARKETS

''Congress must now act to restore public confidence.''—Senator Carl Levin (D., Mich.)

As if investors weren't frightened enough, the politicians are now offering to help. That was worth 180 more points off the Dow yesterday, but then stock prices aren't the point. Everything you're hearing now from Washington is aimed at winning the November elections, not calming financial markets.

That includes President Bush's much-touted Wall Street speech yesterday on ''corporate responsibility.'' His stern words for CEO wrongdoers were perfectly apt, and some of his proposals might even help. But coming so long after the Enron scandal first broke, and amid election season, the speech was widely and accurately described as an exercise in defensive politics.

Democrats immediately panned it as inadequate, but they'd have said that if Mr. Bush had proposed public hangings. Their goal is to associate Republicans with corporate ''greed,'' to knock Mr. Bush's approval rating from its war-time pedestal and develop a campaign issue.

You can judge their sincerity by the sop to trial lawyers that has suddenly appeared in the ''reform'' queue. For months Maryland Democrat Paul Sarbanes has worked to form a bipartisan coalition for accounting reform. But now Senate Democrats are also demanding that Mr. Bush sign onto expanding the time available for plaintiff plutocrat Bill Lerach to file shareholder suits. In other words, what they're really after is a Bush veto, which they will then run against.

It's not as if Mr. Bush is letting business off the moral hook. He's creating a new Justice Department task force on corporate fraud, which as these things go will find someone to indict. He's also painted a bull's-eye on CEOs, who will now be personally and criminally liable (and face stiff penalties) for their companies' financial results.

We only hope Justice keeps in mind the requirement of mens rea, or criminal intent, when it's CEO hunting. This legal principle got trampled in the rush to convict Arthur Andersen. If otherwise honest CEOs can be indicted merely for putting their names to a statement that turns out to be false, good luck finding competent executives.

The brighter CEOs have also been busy cleaning up their own act. They understand something that politicians won't admit, which is that only business is truly capable of restoring confidence in business. The New York Stock Exchange and Goldman Sachs chief Hank Paulson have proposed more CEO supervision by independent directors, among other reforms.

Just as significant, major pension funds and large investors have begun to scrutinize stock options and other forms of executive compensation. This sort of due diligence too often went missing in the ''decade of greed,'' as liberals now like to call the 1990s. (Or are we confusing our decades?)

Mr. Bush put it well yesterday: ''I challenge every CEO in America to describe in the company's annual report, prominently and in plain English, details of his or her compensation package, including salary and bonus and benefits. And the CEO, in that report, should also explain why his or her compensation package is in the best interests of the company he serves.'' The point isn't that there is a moral taint to high pay but that it has to be justified in shareholders value.

The one place we've thought regulatory change might help is audit reform. Clearly the culture of the accounting trade went awry in the 1990s, and not only at Arthur Andersen. We favored Paul Volcker's plan, which would have restored some internal accounting-firm discipline and reduced conflicts of interest. But the accounting lobby resisted and now finds itself fending off much more intrusive regulation in Congress. Serves them right.

As a political matter, Republicans are also paying for protecting the accountants. Bush SEC Chairman Harvey Pitt, who once worked for the Big Five, is now being urged to resign by the likes of Al Gore, Tom Daschle and John McCain. As these columns noted long before these politicians wet their finger to the wind, Mr. Pitt's temptation now will be to appease these critics by cracking down too hard on too many, in a way that further roils financial markets. A regulator with more credibility usually has to regulate less.

The investing public, fortunately, seems to understand this. While rightly angry about WorldCom and Enron, the public hasn't panicked even after three years of stock-market losses. Americans know that even scarier than a bear market in stocks is a bull market for politicians.

Mr. GRAMM. Mr. President, I ask my colleagues to read the editorial and pray over it. As I say, there are some things in it one may like, some one may not like; one may not like any of it, or one may like all of it.

In the next couple of days, we are going to have a lot of proposals that are going to be frightening to investors. I wanted to take this opportunity tonight to tell them that—I know my dear colleague who is sitting in the chair as a Presiding Officer remembers the old hymn, ''This is My Father's World.'' Remember that hymn? It talks about all these things that are happening, all these bad things that happen, but in the end it is going to be right. I think the Lord is going to count on us to right it. I hope it is in good hands.

In any case, I wanted to say that as we hear all these ideas brought up, if

you are thinking about investing money tomorrow or next week or next year, do not be frightened. I think this issue is going to move back toward a middle course, and if we go too far—and I hope we will not, and I am dedicated to not doing more harm than good—then we will fix it, and if in some areas we do not go far enough, we can come back and fix it, too.

As I said, I offered the second-degree amendment for Senator MCCONNELL who has an appointment and wanted to get his amendment in. I yield the floor.

The PRESIDING OFFICER. The Senator from Kentucky is recognized.

Mr. MCCONNELL. Mr. President, I say to my friend from Texas, I have enjoyed his wisdom over the last 18 years. I am going to save my remarks about how I feel about his departure until later in the year. We have just heard another example of the extraordinary wisdom of the senior Senator from Texas from which I have benefited for 18 years. I wish to tell him again how much his service has meant not only to his State but to our Nation.

I say to my friends from Wyoming and North Carolina, they will be relieved to know I do not intend to make my speech on the second-degree amendment. This is an amendment about which I am sure the junior Senator from South Carolina is going to be particularly enthusiastic. I say that with tongue in cheek. I will briefly describe what it is.

This is an amendment to provide a client's bill of rights for clients with Federal claims or who are in Federal court. Fundamentally, what this client's bill of rights would provide is an opportunity for an orderly and systematic notice from their lawyers of the fee arrangements to which they are subjecting themselves; in addition to that, a bereavement rule which would prevent the solicitation of business within 45 days of the occurrence of the event. That is a brief summary of what my amendment is about. There will be ample time for everyone to take a look at the amendment over the evening. It does not in any way detract from the underlying Edwards-Enzi amendment, which I support and commend the authors for offering. I think it is right on the mark. I would like to see these principles expanded to a larger class of clients so they, too, can receive adequate protection.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I ask unanimous consent that following the previous sequence already in place, the amendments listed in this agreement be the next six amendments in the sequence, in the order listed: Carnahan amendment regarding electronic filing; McCain amendment regarding accounting treatment/stock options; Dorgan amendment regarding bankruptcy/disgorgement; Enzi amendment regarding materiality; Schumer amendment regarding restitution; and Murkowski amendment regarding the Ninth Circuit.

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

Several Senators addressed the Chair.

Mr. REID. Mr. President, I would say to the Chair that I ask the Senator to yield to me for a unanimous consent request so the Senator from Illinois would have the floor.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, I want to make a comment about the second-degree amendment that is pending. I want to commend my colleague, the Senator from Kentucky.

Last night, at the close of the session, there was an amendment offered by the Senator from Kentucky and the Senator from Texas. Now remember, this bill is about corporate misconduct. This is about corporate corruption. Last night, they decided we ought to expand the jurisdiction and scope of this debate to include reforming labor unions.

I have followed Enron, WorldCom, and others very closely and do not recall ever hearing anybody say the root cause of the problem of these corporations was labor unions. Thank goodness the Senate rejected that notion.

The Senator from Kentucky comes back tonight and says, no, it is not just labor unions, it is the fees paid to lawyers; that is the problem. When you are dealing with corporate corruption, it is the fees paid to lawyers, contingency fee contracts, and class actions.

I was stopped cold when I heard this amendment being described to try to understand what this has to do with making certain that criminal misconduct by corporate officers will result in time in jail. I do not get the connection. Perhaps the Senator from Kentucky can help me understand this. How does the issue of attorney's fees relate to corporate misconduct and corporate corruption?

I am sorry he cannot join us in this debate to respond, but I say to my colleagues I am beginning to get the distinct impression that the other side of the aisle is trying to change the subject on us. I do not think they want to talk about wrongdoing in corporate boardrooms and what we can do to restore confidence.

Yesterday, the President used the bully pulpit and turned the bears loose on Wall Street. Today, we had another dip in the stock market. We had better get honest. We had better get real. We had better make some real changes in the law to bring honesty in transactions with major businesses if we want to restore America's confidence in business dealings and bring people back to the stock market and get this economy back on track and give people a chance to save for their retirement. That is what this is all about.

Somehow or another the other side of the aisle wants us to veer off now and talk about attorney's fees. I do not get the connection, and I urge my colleagues to take a close look at this long amendment and try to join me in divining what they are trying to achieve other than to perhaps change the subject.

I yield the floor.

The PRESIDING OFFICER. The Senator from Wyoming is recognized.

Mr. ENZI. Mr. President, I do rise in support of the Edwards-Enzi-Corzine amendment. I am disappointed there has been a second-degree amendment to this, on which amendment we are working. It does not deal with the same topic. It does not deal with the same bill. It is going off in a different direction. If we keep having second-degree amendments throughout that go off in other directions, we are not going to get this bill finished and through the process. So it would be my hope it would be withdrawn.

I will concentrate my efforts on the amendment I have worked on with Senator EDWARDS, Senator CORZINE, and others. This amendment is designed to assure that attorneys are responsible for fully informing their corporate client of evidence of material violations of Federal securities law. That is what we are talking about through the whole accounting reform.

Over the past few months, Congress and the public have concentrated on the role of accountants and auditors involved in Enron, WorldCom, Global Crossing, and others. We have held hearings and drafted legislation intended to restore a high level of ethical behavior to corporate America and the accounting industry. This breach in ethical behavior led to the problems these companies are now experiencing. I have to say through all of those hearings, as an accountant, I felt the profession was very picked on, and the profession deserved to be picked on—not everybody in the profession. Again, it is that one-half of 1 percent or one-tenth of 1 percent who are fouling up everything for everybody. It happens in a lot of different professions.

As we beat up on accountants a little bit, one of the thoughts that occurred to me was that probably in almost every transaction there was a lawyer who drew up the documents involved in that procedure. I know as to the companies we looked at, that was the case. It seemed only right there ought to be some kind of an ethical standard put in place for the attorneys as well. All of the people who are involved should be looking at a new way of doing business.

As an accountant, I have been deeply disturbed by the action taken by some in my profession, and as a result I have taken a more personal interest than others might in drafting legislation which will ensure that accountants act professionally and responsibly, and which will protect the interests of corporate shareholders.

Following hearings on this matter, it has become clear that the role of attorneys who counseled these corporations and their accountants must be scrutinized as well. Just like accountants,

these lawyers are expected to represent the corporation in the best interests of the shareholders. In doing so, these attorneys are hired to aid the corporation and its accountants in adhering to Federal securities law.

When their counsel and advice is sought, attorneys should have an explicit, not just an implied, duty to advise the primary officer and then, if necessary, the auditing committee or the board of directors of any serious legal violation of the law by a corporate agent. Currently, there is no explicit mandate requiring this standard of conduct. It is clearly in the best interest of their client to disclose this kind of information to the board, rather than just upper management.

Maybe it could be called the ''smell test.'' If something smells wrong, somebody who can do something to fix it ought to be told.

It is important to understand the corporate attorney's client is the whole corporation and its shareholders, and not just the CEOs or some of the executives, accountants, or auditors. As a result, their ultimate duty of representation is not to the people to whom they normally report but to the shareholders through the board of directors.

This amendment would require the Securities and Exchange Commission to enact rules within 180 days to set forth minimum standards of professional conduct and responsibility for attorneys appearing and practicing before the Commission; not all attorneys, just attorneys appearing and practicing before the Commission; that is, those who are dealing with documents that deal with companies listed by the Securities and Exchange Commission.

This amendment instructs the Commission to establish rules that require an attorney, with evidence of material legal violation by the corporation or its agent, to notify the chief legal counsel or the chief executive officer of such evidence and the appropriate response to correct it. If these officers do not promptly take action in response, the Commission is instructed to establish a rule that the attorney then has a duty to take further appropriate action, including notifying the audit committee of the board of directors or the board of directors themselves, of such evidence and the actions of the attorney and others regarding this evidence. It is all within the corporation.

This amendment is simple. It requires the attorney to contact specific persons who are part of the management hierarchy and explain the problem. If that fails to correct the problem, the attorney must contact the audit committee or the board of directors.

I am usually in the camp that believes States should regulate professionals within their jurisdiction. However, in this case, the State bars as a whole have failed. They have provided no specific ethical rule of conduct to remedy this kind of situation. Even if they do have a general rule that applies, it often goes unenforced. Most States also do not have the ability to investigate attorney violations involved with the complex circumstances of audit procedures within giant corporations.

Similarly, the American Bar Association's Model Rules of Professional Responsibility do not have mandatory rules for professional conduct for corporate practitioners which require them to take specific action. The ABA merely has a general rule that an attorney must represent the best interests of an organization and suggests a number of ways an attorney could respond, including reporting illegal conduct to a responsible constituent of the organization, such as the board of directors. But this does not mandate action.

In response to Enron and the current environment concerning corporate integrity, on March 27 of this year the ABA did form a task force on corporate responsibility. But how many task forces have been formed and accomplished nothing? Task forces are often used to delay implementation of necessary changes. When task forces are used, we all know it takes years to set up the rules. When they are established, States may not actively enforce them or even have the means to enforce them.

In any event, it is my understanding that the ABA's task force's preliminary recommendations are for the attorney to report law violations through a chain or ladder of the corporation. That is what, in fact, this amendment does, first through the legal counsel or CEO and then to the audit committee or the board of directors.

While I almost always advocate a State solution, in this instance I must advocate a Federal solution. In the past, Congress has authorized a Federal commission to regulate the conduct of attorneys through promulgation of rules on attorneys practicing before them. For example, 31 U.S.C. section 330 provides the Treasury Department authority to regulate the practice of attorneys appearing before the Internal Revenue Service. Accordingly, the IRS has promulgated rules on the conduct of attorneys.

Under 31 CFR, part 10.21 of the IRS regulations, each attorney who knows the client has not complied with the revenue laws or who has made an error or omission on any return or document required by the IRS shall advise the client promptly of the fact of such noncompliance, error, or omission. The amendment I am supporting will give the SEC authority to promulgate a rule similar to the IRS rule.

In the past, the SEC has tried to impose ethical conduct on attorneys. SEC rule 2(e), previously 102(e), authorizes the Commission to disbar or suspend from practice before it a lawyer or other professional who violates the securities law, assists in someone else's violation, or otherwise engages in unprofessional conduct.

Through this process, the SEC previously instituted proceedings under rule 102(3) to enforce the ethical standards for the practice of Federal securities law. But it has stopped bringing these types of actions. This amendment will get the SEC back on track and make attorneys stand up and pay attention if they have evidence a corporate agent has committed a material legal violation.

In the wake of Enron, over forty professors with expertise in Federal securities and ethics law, have written to SEC Chairman Harvey Pitt asking for some form of regulation over the practice and conduct of attorneys involved in Federal securities law.

In their letter, they state that if senior managers will not rectify a violation, lawyers who are responsible for the corporation's securities compliance work, should be required to report to the board of directors.

As they point out, such a disclosure obligation is still less onerous than that imposed on accountants under section 10A of the 1934 Securities Exchange Act, which requires an auditor to report, both to the client's directors and simultaneously to the SEC, and illegal act if management fails to take remedial action.

The amendment I am supporting would not require the attorneys to report violations to the SEC, only to corporate legal counsel or the CEO, and ultimately, to the board of directors.

Some argue that the amendment will cause a breach of client/attorney privilege, which is ludicrous. The attorney owes a duty to its client which is the corporation and the shareholders. By reporting a legal violation to management and then the board of directors, no breach of the privilege occurs, because it is all internal—within the corporation and not to an outside party, such as the SEC.

This amendment also does not empower the SEC to cause attorneys to breach their attorney/client privilege. Instead, as is the case now, attorneys and clients can assert this privilege in court.

In addition, this amendment creates a duty of professional conduct and does not create a right of action by third parties. The Fourth Circuit has made such a ruling concerning the code of conduct applied by the IRS Rules.

The SEC has already found that attorneys who fail to take steps to prevent their clients from violating Federal securities law are guilty of aiding and abetting. This amendment will put attorneys on the right course. By reporting violations to the board of directors, they can avoid being found guilty of aiding and abetting their client.

Just as I am concerned about the conduct of accountants because that is my profession, I would think member attorneys would be as concerned about the conduct of the legal profession. To ignore the role attorneys played in Enron, World.Com and Global Crossing is a disservice to their profession.

I hope you will join me in ensuring that attorneys are required to conduct themselves ethically and in the best interests of their client when they see evidence of a material legal violation. They should be expressly required to report that type of activity to upper managers, and ultimately, to the board of directors who represent the shareholders.

After Enron, it is clear we need some hard and fast rules, and not just an arcane honor code rarely adhered to, so the necessary measure of client duty is placed into the hearts and minds of the legal profession. Again, I am disappointed there is a second-degree amendment. This is an important amendment and something that I thought would be cleared by both sides. We will deal with the rest of the process.

I yield the floor.

The PRESIDING OFFICER (Mr. AKAKA). The Senator from Wyoming yields the floor.

The Senator from New Jersey.

Mr. CORZINE. Mr. President, first, I am proud to have worked with Senator EDWARDS and Senator ENZI on this amendment on lawyer responsibility in corporate practice. It is an exceptional piece of additional effort in dealing with corporate fraud, corporate crime, and corporate abuse. I am very happy to have participated with him, and I particularly compliment Senator EDWARDS on bringing this important issue to the attention of the Senate and for making sure that we propose this strong amendment, to ensure corporate lawyers' ethical responsibilities.

I, too, with the Senator from Wyoming, am disappointed. We are mixing apples and oranges when we are talking about lawyer's fees. This is dealing with corporate actions of lawyers. I don't understand why we are trying to move to a completely different subject when what we are trying to deal with is corporate responsibility. Lawyers play a role in that as much as accountants and management.

Again, I thank Senator ENZI for his cooperation and leadership, not only on this effort but with regard to the core bill, which is going to make a big difference in the marketplace. People talk about weakness in the market and are fearful of what we do in Congress, but they are really fearful of what we will not do or what we might do in addressing some of the quite obvious needed reforms.

We have talked a lot in the wake of Enron and WorldCom about the responsibility of accountants and corporate managers. Rightly so, as we have seen far too much bending of the rules, breaking of the rules in pursuit of profit, pursuit of personal gain. In their wake, shareholders, employees, and frankly the whole economy, has suffered from the selfishness that we have seen demonstrated by the actions of many—the criminal actions, in some instances.

It is not insignificant that even before this week, before there was so much focus on this issue, this year there had been roughly $2 trillion worth of damage, value lost in the stock market, which is reflective of the discomfort that investors across the globe, as well as here at home, feel about where we stand.

As a former corporate leader, I tell you I am disgusted with many of the actions I have seen taken by some corporate managers when they betrayed shareholders' trust, employees' trust, and the public confidence in general. I think they have basically betrayed our whole Nation's economy. That is why I have been pleased to work on this critical legislation that Senator SARBANES has proposed regarding the accounting industry's corporate responsibility.

But I do not think that is enough. I think, as Senator EDWARDS said when he brought this to our attention, executives and accountants do not work alone. In fact, in our corporate world today—and I can verify this by my own experiences—executives and accountants work day to day with lawyers. They give them advice on almost each and every transaction. That means when executives and accountants have been engaged in wrongdoing, there have been some other folks at the scene of the crime—and generally they are lawyers.

This is not a new issue. The SEC had an unambiguous view about this more than 10, 15 years ago. More than 10 years ago Judge Stanley Sporkin, while commenting on the criminal actions of Charles Keating, noted that Keating had:

> . . . surrounded himself with literally scores of accountants and lawyers to make sure all the transactions were legal.

In a now famous refrain, Sporkin lamented:

> Where were these professionals . . . when these clearly improper transactions were being consummated? . . . Where, also, were the outside accountants and attorneys when these transactions were being effectuated?''

That sounds a little familiar in the current circumstance. The bottom line is this. Lawyers can and should play an important role in preventing and addressing corporate fraud. Our amendment seeks to ensure that. It seeks to go back to the old way: When lawyers know of illegal actions by a corporate agent, they should be required to report the violation to the corporation.

Let me be clear. The same as I feel about most accountants and most business leaders, the vast majority of lawyers discharge their duties with integrity and in an ethical manner. This is not an effort to blame corporate lawyers. But we cannot overlook the role corporate lawyers, the lowest common denominator, can play in addressing abuses and ensuring that our markets have integrity. We need to clarify that corporate lawyers have a duty to the shareholders, not just to the management that hired them.

That is why Senator EDWARDS, Senator ENZI, and I have crafted an amendment that will clarify that lawyers who know of wrongdoing by a corporation must report that wrongdoing to the client so it can be corrected. The client is more than just the person who hired them. The lawyer's client is the corporation's shareholders, not the manager. As we have seen far too often this year, when management is engaged in fraud it harms the shareholders. That is why we need to ensure that lawyers who know of illegal acts report those acts to the board of directors which represent those shareholders. Our amendment would require the SEC to establish rules in the public interest and for the protection of investors, setting forth minimum standards of professional conduct for attorneys appearing and practicing before the Commission. Those rules would include—shall include a requirement that lawyers who have evidence of a violation of law would be required to go up the ladder of corporate management and report the violation.

It is a simple principle—very much common sense. If a manager doesn't respond appropriately, including remedying any violation, the lawyer would then be required to report the violation to the board of directors which represents the shareholders.

We should recognize that in some instances where there may be evidence of a violation, it may become apparent after a more complete investigation that there is not an actual violation. But when lawyers are aware of a potential violation, they do have a duty to investigate. And if they determine there is a material violation of law—not some small violation, some insignificant rule—that violation should be remedied by the corporation. If it is not remedied, it is the duty of the lawyer, under our language, to report it to the board.

I am pleased that Senator EDWARDS and Senator ENZI and I have been able to craft an amendment that will firmly establish the ethical duty of corporate lawyers to report wrongdoing to their client, including, if necessary, to the board of directors that represents a company's shareholders.

Addressing the role of corporate lawyers is just as important a step as it is with accountants and with corporate officers. If we want to truly address this breakdown in corporate responsibility, it is a critical piece of the puzzle that cannot be overlooked. I urge my colleagues to support this sensible amendment.

Once again I say I am disappointed with the McConnell amendment. I suggest we move to table that, in light of its irrelevance with respect to the underlying matter.

I will withdraw that motion, and I suggest the absence of a quorum.

Mr. REID. Will the Senator withhold?

Mr. SARBANES. Does the Senator yield the floor?

The PRESIDING OFFICER. Does the Senator withhold suggesting the absence of a quorum?

Mr. CORZINE. Yes. I yield the floor.

The PRESIDING OFFICER. The Senator from Georgia.

AMENDMENT NO. 4206

Mr. MILLER. Mr. President, I ask unanimous consent the pending amendments be laid aside so I may offer an amendment, and that there be a time limitation of 2 minutes on my amendment, with no amendments in order to my amendment. This amendment has been agreed to by both managers.

Mr. REID. Reserving the right to object, and following the disposition of this that we will return to the Edwards amendment?

The PRESIDING OFFICER. That is the understanding of the Chair. Is there objection? Without objection, it is so ordered.

Mr. MILLER. I send my amendment to the desk.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Georgia (Mr. MILLER) proposes an amendment numbered 4206.

Mr. MILLER. I ask unanimous consent the reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To express the sense of the Senate that the chief executive officer of a corporation should sign the corporation's income tax returns)

At the end add the following new title:

TITLE VIII—CORPORATE TAX RETURNS

SEC. 801. SENSE OF THE SENATE REGARDING THE SIGNING OF CORPORATE TAX RETURNS BY CHIEF EXECUTIVE OFFICERS.

It is the sense of the Senate that the Federal income tax return of a corporation should be signed by the chief executive officer of such corporation.

Mr. MILLER. Mr. President, this amendment is only three lines long. Let me read them to the Senate:

It is the sense of the Senate that the Federal income tax return of a corporation shall be signed by the chief executive officer of such corporation.

Believe it or not, that is not in the law right now, and it should be. The average wage earner on his 1040 form has to sign it. We require it of him. That is what we should require of the CEO of a corporation, just treat them the same.

I yield the floor.

The PRESIDING OFFICER. The Senator from Maryland, Senator SARBANES.

Mr. SARBANES. I urge the adoption of the amendment.

The PRESIDING OFFICER. Is there further debate?

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

The PRESIDING OFFICER. The clerk will call the roll.

Mr. GRAMM. Mr. President, I withdraw the request. I don't have any problem. It was a confusion of which amendment.

The PRESIDING OFFICER. Without objection, the amendment is agreed to.

The amendment (No. 4206) was agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. REID. 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. DASCHLE. 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. DASCHLE. Mr. President, I announce that there will be no more rollcall votes tonight. I hope Senators will come to the floor and continue to participate in the debate. But for the interest of Senators and schedules, we will have no additional rollcall votes tonight.

I yield the floor, and 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. SARBANES. 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. SARBANES. Mr. President, while we are all waiting for further business, I will take just a moment to speak to the amendment that has been offered by the very able Senator from North Carolina. In fact, I would like to put a couple of inquiries to the Senator, if I might.

It is my understanding that this amendment, which places responsibility upon the lawyer for the corporation to report up the ladder, only involves going up within the corporate structure. He doesn't go outside of the corporate structure. So the lawyer would first go to the chief legal officer, or the chief executive officer, and if he didn't get an appropriate response, he would go to the board of directors. Is that correct?

Mr. EDWARDS. Mr. President, my response to the question is the only obligation that this amendment creates is the obligation to report to the client, which begins with the chief legal officer, and, if that is unsuccessful, then to the board of the corporation. There is no obligation to report anything outside the client—the corporation.

Mr. SARBANES. I think that is an important point. I simply asked the question in order to stress the fact that that is the way this amendment works. This has been a very carefully worked out amendment. I engaged in an exchange with the distinguished Senator from North Carolina, and the Senator from Wyoming, Mr. ENZI, the cosponsors of this amendment. I know how careful they have been in trying to craft the amendment and in bringing it here. I think they have done an absolutely first-rate job in sort of focusing the amendment, considering questions that were raised from one source or another, and adjusting it in order to meet them.

I think the amendment they have now put before us is an extremely well reasoned amendment, and it ought to command the support of the Members of this body.

I very deeply regret that Senator MCCONNELL has added an amendment to the amendment. His amendment really doesn't address this amendment. It doesn't really address the subject matter of this legislation. It is a total diversion. Of course, I presume it will complicate our ability to try to move ahead as we consider amendments. It obviously complicates the consideration of the Edwards-Enzi amendment which is now pending.

Furthermore, I understand that under this amendment it can only be enforced by the SEC through an administrative proceeding. Is that correct?

Mr. EDWARDS. The answer is yes. The only way to enforce this legal requirement is through an administrative process.

Mr. SARBANES. That was an effort, of course, to deal with the idea that somehow it might bring causes of action from outside, or somewhere else. So it is limited to the SEC. The SEC, as I understand it, had something like this in place in the past. Is that correct?

Mr. EDWARDS. The answer is yes. Years ago, the SEC had and enforced such a regulation, which they have not been doing for some time.

Mr. SARBANES. I further understand that a number of professors of securities regulations and professional ethics are, in fact, supportive of this proposal. I think at an earlier time they wrote to the SEC urging the SEC itself to put some provision such as this into place. Is that correct?

Mr. EDWARDS. The Senator is correct. There is a large group of distinguished securities lawyers and legal ethics lawyers who have written the SEC suggesting exactly what the Senator said—that it become part of the regulations and part of the law.

Mr. SARBANES. This amendment really, in effect, parallels or follows those recommendations—at least in substantial respect—as I understand it.

Mr. EDWARDS. That is correct.

Mr. SARBANES. Again, that letter which I have had the chance to review, and also the signatories to it—some 40 or so distinguished professors of securities regulations or professors of professional ethics at the law schools—is also a very carefully reasoned proposal. The one they submitted to the SEC is the one the Senator from North Carolina has tracked in his amendment.

I thank both Senator EDWARDS and Senator ENZI for their very careful

work. And I very much hope at the appropriate time we will be able to adopt this amendment and include it in this legislation. I think it makes an important contribution.

Mr. President, I yield the floor. 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. LEVIN. 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. LEVIN. Mr. President, I ask unanimous consent at this time that I be called upon to offer an amendment; that the amendment be debated tonight—it is the amendment on SEC enforcement—and that when the debate is completed tonight and when we recess until the morning, that when the morning arrives, we would then return immediately to the Edwards underlying amendment and the McConnell second-degree amendment thereto.

The reason I make this unanimous consent proposal tonight is that there are a lot of relevant amendments which are waiting in line, which are important amendments, which have a lot of support, I believe, on a bipartisan basis in this body that ought to be considered prior to cloture or else; because they may not be technically germane, they would be precluded if cloture is invoked.

I have a number of amendments on the list. I think we should move this train forward tonight, utilize the time this evening to move this process forward so as many of these amendments as possible can be considered before cloture. I make that unanimous consent proposal at this time.

The PRESIDING OFFICER. Is there objection?

The Senator from Texas.

Mr. GRAMM. Mr. President, reserving the right to object, let me say that we have a lot of people who want to offer amendments. I have on my side some 30 amendments. We had better follow the regular order. Let me say that I would intend, once we have disposed of this unanimous consent request, to ask that all further amendments be germane to the bill and that at noon tomorrow we proceed to third reading. But I object to the unanimous consent request.

The PRESIDING OFFICER. Objection is heard.

The Senator from Nevada.

Mr. REID. Mr. President, I ask unanimous consent that at 10:30 tomorrow morning, Thursday, July 11, the Senate resume consideration of S. 2673 and that the time until 12 noon be divided as follows: The first 45 minutes under the control of Senator BYRD; the remaining 45 minutes under the control of Senator MCCONNELL or his designee; that at 12 noon Senator ENZI be recognized to make a motion to table the McConnell second-degree amendment No. 4200, with no intervening amendment in order prior to disposition of the McConnell amendment.

That is not part of this agreement. For the information of Senators, we would have an hour, beginning at 9:30, for morning business for both sides, equally divided.

Mr. LEVIN. Mr. President, reserving the right to object.

Mr. GRAMM. Mr. President, I think this is a perfectly reasonable unanimous consent request, and I do not object.

Mr. LEVIN. Reserving the right to object, Mr. President, I have two questions relative to this unanimous consent request. The first question is, Does this then mean we would move to the disposition of the Edwards amendment?

Mr. REID. Mr. President, that is my hope. One of the reasons we want to dispose of the second-degree amendment—Senator ENZI, who has worked with you and others on the underlying amendment, is going to move to table. We hope we can move to the Edwards amendment.

The Senator from Texas, Mr. GRAMM, has told us he wants to study this tonight and he will give us word on it tomorrow. I think it has been debated quite sufficiently. It appears to me the Edwards amendment is reasonable. I think in the dialog he answered all the questions of the Senator from Texas. I have no problem if the Senator wants to spend the night looking it over more.

Mr. LEVIN. My second question under the reservation is this: This does not then change the order that has been previously listed for amendments under the earlier UC request; is that correct?

Mr. REID. That is correct. We have a number of amendments queued up. Senator EDWARDS has been here all day, for example. The Senator from Michigan has been here a long time today. We hope we can move through some of these tomorrow.

As the Senator knows, there is anticipation tonight that a cloture motion will be filed on this bill. The majority leader has told everyone that we have only 3 weeks remaining in this little session before the August recess. We would like to do prescription drugs. We are going to move, we hope, to the MILCON appropriations bill in the next day or so. We have homeland security we have to do. There is so much to do and a limited amount of time in which to do it.

Mr. LEVIN. Further reserving the right to object, Mr. President, I will simply add the following because there are relatively few hours between now and a vote on cloture, assuming that cloture motion is filed. I think we should fully utilize that time to consider relevant amendments. What my great fear is—which is being reinforced tonight—is that the time is going to be filled not by relevant amendments but in other ways which would preclude the consideration of relevant amendments in the event cloture is adopted. That is a major concern I have. I don't know if other people waiting in line with amendments that are relevant amendments have the same concern, but I hope and believe they do.

I hope it will be possible for relevant amendments to be considered, if not tonight, then tomorrow, and that the time be fully utilized; otherwise, it would simply preclude important relevant amendments that are waiting in line.

Mr. REID. Mr. President, the Senator also speaks for others. We have had, over the last several months, problems getting legislation up the way we used to do it here. It is difficult when we have obstacles that are brought up. It does not allow us to proceed in the normal fashion. I hope the Senator will allow the agreement to go forward.

The PRESIDING OFFICER (Ms. CANTWELL). The Senator from Texas.

Mr. GRAMM. Madam President, I am told one of my colleagues is coming down to object to this unanimous consent request. I have to 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. REID. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. REID. I renew my unanimous consent request.

The PRESIDING OFFICER. Is there objection?

Mr. GRAMM. Madam President, the reservations of the Senator from Michigan have no impact on this unanimous consent request? That is a parliamentary inquiry. The reservations expressed by the Senator Michigan have no impact on the unanimous consent request as it is written?

The PRESIDING OFFICER. That is correct.

Mr. GRAMM. I have no objection.

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

The Senator from Nevada.

Mr. REID. Madam President, I appreciate very much the work of the managers of this bill. This is very important legislation. I was advised by the chairman of the committee just a few minutes ago the stock market dropped again today almost 300 points. We need to do something to reestablish credibility and to reestablish the confidence of the American people in corporate America. This legislation goes a long way toward that end. I hope there will be cooperation tomorrow so that some of these relevant amendments can be offered.

I hope everyone understands the importance of this legislation. I am confident they do. I appreciate the ability to work this out so we can at least move forward tomorrow to the extent we do in this unanimous consent agreement.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Madam President, let me just outline, if I may, where I see we are in the process. Tonight, a cloture motion is going to be filed. Tomorrow we are going to have a series of amendments. As everybody knows, when cloture is invoked, the relevant test is germaneness, not relevance, not significance, not the feeling of a Member that their amendment is important or more important than any other Member. The test is germaneness.

Anybody who has ever been involved in a situation where we move toward cloture understands that once we are on that track, unless amendments are relatively acceptable on a broad basis to all parties involved, knowing that the amendment is sheared off at the hour of cloture, that amendment in all probability—let me state it more precisely—that amendment is not going to be adopted.

We can do this in one of two ways, and either way works perfectly with me. We can either try for the nongermane amendments—if your amendment is germane, you are solid, you can offer it now, you can offer it later, and you are going to get a vote on it. But if your amendment is not germane, I suggest we try to get our staffs together and see if something can be worked out where if part of the amendment or all of the amendment or the amendment and something else is noncontroversial, it could be adopted.

At the end of the day, we will all be happier if we do that. If we spend all of tomorrow butting heads knowing what the final outcome is going to be, the net result is we are just going to have unhappiness and no good will come out of it.

I say to anyone who has a nongermane amendment, in the end, to have that amendment adopted it is going to have to be generally supported because, obviously, any Member is going to be able to prevent it from being voted on. It is going to get sheared off at cloture.

I have a list of amendments, most of which have absolutely nothing to do with this bill. I have amendments on bankruptcy. I have amendments on the Ninth Circuit Court of Appeals. I have amendments on pensions. I have amendments on tax policy. I have numerous amendments on stock options.

I submit to all these people who want to offer amendments that what we ought to do if we are going to try to get something done is to have them have their staff sit down with staff on both sides of the aisle and say: Is there anything in here that might be generally agreed to, and if that is the case, we could move in that direction.

Finally, let me say we have in place a unanimous consent agreement about how we are going to proceed tomorrow morning, and I ask the Democratic floor leader, if I can, given that we have a unanimous consent agreement in place for the morning, can we simply have the floor open for the purpose of debate only tonight so that those of us who are going to be here all day tomorrow, as we were all day today, can go home?

Mr. REID. I say to my friend, there are some things we have to do, such as filing cloture, and if that situation of debate only is in effect, we could not do that.

Mr. GRAMM. With what now?

Mr. REID. If there is debate only, we could not file the cloture motion.

Mr. GRAMM. If you can just tell us, if we can have an agreement—the Senator can amend it. All I am saying is, if people want to stay and debate any pending amendment or talk about whatever they want to talk about, that is fine. It seems to me if we are through with all of our business except debate, we could let people who have debated enough go home.

Mr. REID. The leader has stated there will be no more rollcall votes tonight. I hope if one wants to talk about the bill, they will do that, but I do not think we need a UC to accomplish that.

Mr. GRAMM. If the Senator will yield, what about a unanimous consent request, except to file a cloture motion, that there will be debate only tonight? That way we do not have a problem of potentially someone asking unanimous consent for something.

Mr. REID. My personal feeling is I have no problem with that. I have to check with staff to make sure I am not missing anything, but I want to make sure the Senator from North Carolina is protected.

Mr. EDWARDS. Will the Senator from Texas yield, if he has the floor?

Mr. GRAMM. If I do I yield to him.

The PRESIDING OFFICER. The Senator from North Carolina.

AMENDMENT NO. 4187, AS MODIFIED

Mr. EDWARDS. Madam President, I have a modification to my amendment at the desk.

The PRESIDING OFFICER. The amendment is so modified.

The amendment, as modified, is as follows:

On page 108, line 15, insert before the end quotation marks the following:

''(c) RULES OF PROFESSIONAL RESPONSIBILITY FOR ATTORNEYS.—Not later than 180 days after the date of enactment of this section, the Commission shall establish rules, in the public interest and for the protection of investors, setting forth minimum standards of professional conduct for attorneys appearing and practicing before the Commission in any way in the representation of public companies, including a rule requiring an attorney to report evidence of a material violation of securities law or breach of fiduciary duty or similar violation by the company or any agent thereof to the chief legal counsel or the chief executive officer of the company (or the equivalent thereof) and, if the counsel or officer does not appropriately respond to the evidence (adopting, as necessary, appropriate remedial measures or sanctions with respect to the violation), requiring the attorney to report the evidence to the audit committee of the board of directors or to another committee of the board of directors comprised solely of directors not employed directly or indirectly by the company, or to the board of directors.

Mr. EDWARDS. I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

CLOTURE MOTION

Mr. REID. Madam President, I send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close the debate on Calendar No. 442, S. 2673, the Public Company Accounting Reform and Investor Protection Act of 2002:

Jon Corzine, Deborah Stabenow, Paul Wellstone, Ron Wyden, Daniel Akaka, Barbara Boxer, Charles Schumer, Byron Dorgan, Harry Reid, Paul Sarbanes, Daniel Inouye, John Edwards, Barbara Mikulski, Thomas Carper, Jack Reed, Tim Johnson.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. Madam President, before the Senator from Texas departs, I wish to add an observation to the comments he made before about how to proceed.

There are a number of amendments. The definition of germaneness, once cloture has been invoked, is very narrow. There are amendments that Members have which in the normal terminology would be regarded as germane and are certainly relevant. It seems to me an effort should be made to address those amendments as well as ones that are perceived to be germane in the very narrow sense.

There is another category of amendments that I am not very sympathetic to, and those are ones that have really nothing to do with this bill. The second-degree amendment offered by the Senator from Kentucky that is now pending, in my judgment, is an example of that. We probably ought to move very quickly to table those kinds of amendments when they come up so we have an opportunity for colleagues who have amendments that are really relevant to this legislation to bring them up and to have them considered.

Mr. GRAMM. Will the Senator yield?

Mr. SARBANES. Yes.

Mr. GRAMM. I think we have a fairly broad consensus that is the direction in which we should go. The fact that we are getting ready to have cloture should not prevent us from adopting amendments where there is support and where there is a collective judgment that the amendment is relevant. The plain truth is that anyone knowing that cloture was coming could have held up the President's amendment which added criminal sanctions. Any Member of the Senate could have prevented that from being voted on knowing that it was nongermane, but nobody did that because there was a general base of support for it.

All I was saying was that every Member of the Senate knows the germaneness rule and everybody knows that, come whenever we invoke cloture, any amendment that is nongermane is going to fall. Then what is going to happen is, unless there is some consensus for the amendment, it is simply going to be delayed until it is cut off.

If what the Senator is saying is that if an amendment is relevant, if it would improve the bill, if it is not highly controversial, we ought to take it, I agree with that. Looking down my amendment list, there are not a lot of such amendments, but the ones that are there, if people want to bring them up, I am not going to oppose an amendment simply because it is not germane.

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

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

Mr. REID. Madam President, I ask unanimous consent that the previously agreed to Daschle for Biden amendment, No. 4186, as modified, be inserted in the appropriate place in the bill.

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

MORNING BUSINESS

Mr. BINGAMAN. Madam President, I ask unanimous consent that the Senate now proceed to a period for morning business, with Senators permitted to speak for up to 5 minutes each.

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

The Senator from New Mexico.

HONORING THE LIFE OF JOHN WIRTH

Mr. BINGAMAN. Madam President, I rise to give a few comments about a good friend of mine, John Wirth. On June 20, 2 weeks ago, the life of John Wirth, a great American and a citizen of my State of New Mexico, ended way too soon. His death brings deep sadness to his family, to his friends, and indeed to all of us who knew him and knew his important life's work.

John was an internationally acclaimed scholar in the history of Latin America. He taught at Stanford University for many years. His vision was for a more integrated world and for a Western Hemisphere in which countries work together for the common good of all. Many of his efforts were personal, and many of his efforts he pursued through the good works of the North American Institute.

Several weeks ago, I heard former President Clinton describe the current circumstances that we confront in the world as a struggle between the forces of integration and harmony on the one side and the forces of disintegration and chaos on the other. Throughout his entire life, John Wirth was a leader in that struggle for world integration and harmony. He sought to understand the world in his travels and in his studies. He sought to explain it through his teaching and through his writing. He applied his very fine mind and good heart to every situation, every problem, and the result was one in which everyone could have confidence because of the judgment and thought he used.

His vision, his commitment, his strengthen of character, and bedrock decency as a human being served his mission well. The world and all of us who knew him are poorer because of his death, but certainly richer because of his life. Our sympathy goes out to his wife Nancy, to their children, and to all of the Wirth family.

I ask unanimous consent that immediately following my remarks, the remarks of former Senator Tim Wirth, which were delivered at his brother's memorial service in Santa Fe, be printed in the RECORD.

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

JOHN DAVIS WIRTH—REMEMBRANCES OF MY BROTHER

(By Tim Wirth)

Thank you for being here, for coming this morning to help us—John's family—and to help each other—John's friends and colleagues and neighbors—his extended family—as we try to soften the shock and the sorrow of his death.

In recent years it has become customary to speak of funeral services as celebrations of life.

And there was much in John's life to celebrate, much of his life that we will hold and cherish in our lives for a very long time to come.

But this morning I grieve not just because the was my older, much-loved brother, but because he was an exceptional man, a perceptive scholar and teacher and thinker, a visionary, quietly passionate, civic activist, and a devoted husband, proud father, and loving grandfather.

John saw himself and all of us as citizens not just of the Southwest, not just of the United States, but of a diverse, unique community as big as a continent—as citizens of North America where he saw a future of regional collaboration, a model for the world.

He was working toward that future when he died. I think he had a very big book in mind, a capstone of an extraordinarily influential career.

I grieve that he did not live to see the next stages in the process to which he had dedicated so much imagination and energy.

I grieve for a life cut off far too early.

In what was supposedly the beginning of retirement, he was actually entering what were becoming his most productive and creative professional years.

We cannot know what he have lost. We can be sure our loss is beyond measuring.

I grieve for John's three sons, Peter the community leader; Timothy the conservationist; and Nicholas like his father and grandfather, also a teacher of history. Each in his own way reflects his father's deep public service commitment. He was so proud of all of you, the choices you have made in your lives, the women you were fortunate to marry, the men you have become.

Most of all, I grieve for his grandchildren—for Alex and Elena and Charlotte and Zoe and for their brothers and sisters who have not yet entered the world that John has left. He had so much to give you—his love, his steady hand, his example.

He loved the times he did have to share with you—as he had loved earlier times with Peter, Tim and Nicholas. He knew how to share the many joys he took from life, and the many gifts he brought to living.

From your grandfather you already have a wonderful, special inheritance. Part of it is the joy he took in study and in the quest for excellence.

Your grandfather valued hard work and discipline, and he was tough on himself, because being tough brought out the best in him—his four, first-rate books of Brazilian history, and the eight other volumes he coauthored or edited.

His focus, energy and discipline earned him many proud accomplishments, including being named Gildred Professor of Latin American studies at Stanford, and winning the prestigious Bancroft prize for excellence in history. Those qualities—focus, hard work, and discipline—will bring out the best in you when you take his example as your guide.

Remember, too, the joy he took in fine writing—his own and others'; the joy he gained from music; his utter delight in the first run of a new ski season; and the days he spent matching wits with the wily trout.

I hope you will share and carry forward his passion for nature and the outdoors, which will translate for you, as it did for him, into care for the beauty of our planet and for the danger that face our fragile environment.

Of all the gifts he had and all the gifts he would have wanted to share with you as you grow up with his memory but without his presence, his enormous curiosity is the highest of his legacies.

John always had to know why things worked, and how they connected.

His curiosity was not idle. It drove him, all through life, to look deeply into any question that animated him and to pry out the reasons behind history and to sort out the connections between past and future. And while it drove him, John's curiosity often drove his family crazy—his stubbornness, sometimes misplaced enthusiasms—all curious, too!

John had discovered himself as a historian when he was an undergraduate at Harvard, and then from teaching history at Putney. He originally planned to make Asian studies his specialty, and he decided to come back to the west—to Stanford—to become a scholar of the far east.

However, the spring vacation of his last year in Vermont (before his first class in Palo Alto), he and Nancy took a vacation to Brazil, to stay with some of Nancy's family. This proved to be a voyage of discovery, and it changed the course of his life.

John became a modern explorer, not a conquistador hunting for El Dorado, but an investigator intrigued by a vibrant, complex culture and a land and people as full of possibility as his own country.

His scholarship evolved, from Brazilian history, to comparative studies within Brazil to regional economic studies in South America to trying to understand why some countries develop, and others don't. As Susan Herter has told us, he ended up studying North America—Mexico, Canada, and the U.S.—and became the most distinguished continental scholar.

His last book analyzed transborder environmental problems, especially air pollution. In showing that cooperation could work, John used one central story—how the U.S. and Mexico had worked to clean up two copper smelters on each side of the Rio Grande.

He took pleasure in the irony that, 60 years earlier, our grandfather had managed the huge open pit copper mine in Morenci, Arizona, that had fed those two same smelters.

Beyond love and scholarship and his wide-ranging, enthusiastic curiosity, John was driven all his life by a gnawing desire to reconnect with the life that had been shattered for him during a short six months in 1943 when he was only six years old.

In that period, illness took our father, the Manhattan project took our home in Los Alamos, and, when we had to move away, the army took John's beloved collie, Tor, to serve in the war effort.

Separately, those were terrible losses for a child to suffer. They drove him and throughout his life as he has worked to try to understand, to put the pieces back together.

Only two days ago I found a short piece that John had written about the weight of those early years—one including even the loss of his birthplace, Dawson, New Mexico (in 1936, when John was born, Dawson was a vibrant coal mining community, now it is a ghost town.)

Writing about his childhood, he said, ''Thus, by age 8, I had already developed a keen sense of life's contingencies. Displaced by the war, single parented, and with a birth certificate from nowhere, I felt the pull and the need for historical explanation.''

John's ''pull and need'' were scholarly.

But his curiosity fed a steadily expanding drive to apply his knowledge, and to stimulate inquiry by others, beyond the lecture hall, beyond the campus and into the messy realities of public policy.

His curiosity led him to see, for instance, the connections between environmental history, which he taught with his heart as well as his intellect, and the immediate pressures on the environment of the Southwest—which he worked to alleviate.

Curiosity also fired his perception of our continent as a single region—well before most policymakers even thought of it as a single market.

His thirst to make sense of history fed his skill as a teacher and his vision as a citizen.

If you, as his grandchildren, take some measure of his curiosity out the door with you every day, your lives will surely have the richness and satisfaction that his had.

His last, great gift to you is actually one he inherited, lost and regained.

It is his sense of this place to which he so deeply belonged, to the Southwest, to New Mexico, to Santa Fe.

His mind traveled far and wide, but his heart was always here. Born in New Mexico, John spent much of his childhood in Colorado.

For education he went east. He started his school years in New England as a scholarship student at Putney School to which he returned as a teacher, then a trustee, father of three Putney students, and then chairman of the board. The help he got from Putney, and the help he in turn gave to make it an even better school, became a major part of his life.

But one other school, a school that no longer exists, was probably even more important to him. It was called the Los Alamos Ranch School. Our father, Cecil Wirth, taught there.

As Bill Carson has reminded us, John's earliest memories were of that oasis on the edge of the beautiful New Mexico desert. His last book, which will be published this fall by the University of New Mexico Press, is a history of this school.

When some day you read it, you will find your grandfather in its pages. When his childhood ended, your grandfather was younger than Alex is today. Loss upon loss sent him out to find why the world worked the way it did and how to fit it all together.

In that world, in fact in this church, 42 years ago last week, he married your grandmother. She gave him a wonderful, warm, sustaining love that helped him search, filled so many vacuums, and was his partner in every way. Nancy molded and softened the man whose death we mourn today.

So, as we grieve, we thank John too for his strong will, exemplary focus and vision, for his energy and legendary enthusiasms, and for his optimism.

He gave us much and left his own legacy, broad and deep.

Thank You.

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

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

THE NEED TO ENACT ACCOUNTING AND CORPORATE REFORMS

Mr. LEVIN. Madam President, this week we will hopefully act with strength and unity to help bring confidence back to the investing public. The last 18 months have shaken the foundation of the public's belief in the accuracy of the financial statements of our major U.S. corporations, beginning with the precipitous fall of Enron last year. The Public Company Accounting Reform and Investor Protection Act sponsored by Senator SARBANES and reported last month by the Banking Committee, will make significant headway in restoring the needed confidence in our financial markets, and I strongly support it. Senator SARBANES and the supporters of this bill on the Banking Committee have shown vision and leadership in tackling the tough issues of corporate and auditor misconduct, and the Congress needs to enact this legislation as quickly as possible.

On Monday, July 8, in my role as chairman of the Permanent Subcommittee on Investigations, I released an official Subcommittee report on the role of the Board of Directors in Enron's collapse. This bipartisan report found that much of what was wrong with Enron—from its use of high risk accounting, extensive undisclosed off-the-books activity, conflict of interest transactions and excessive executive compensation—was not hidden from the company's directors but was known and permitted to happen. The report also found that Enron board members refused to admit any missteps, mistakes, or responsibility for the company's demise. The refusal of the Board to accept any share of blame for Enron's fall is emblematic of a broader failure in Corporate America to acknowledge the ongoing, widespread problems with misleading accounting, weak corporate governance, conflicts of interest, and excessive executive compensation. Corporate misconduct is not only fueling a loss in investors confidence, but also threatens to derail the recovery of the American economy.

The plain truth is that the system of checks and balances in the marketplace designed to prevent, expose, and punish corporate misconduct is broken and needs to be repaired. Action is critically needed on a number of fronts to restore these checks and balances.

American business success is a vital part of the American dream. That dream is that any person in this country who works hard, saves, and invests can be a financial success. If that person sets up a company, that company's success can be magnified through our capitalist system which allows other investors to buy company stock, invest in the company's future, and share in the company's financial rewards.

The American stock market is part of that American dream. In recent years it has been the biggest and most successful stock market in the world, an engine of growth and prosperity. It has not only brought capital to a company so they can set up new businesses and employ more people, it has brought financial rewards to individual investors who put their money in the market.

Over the years, the Government has developed checks and balances on the marketplace to put cops on the beat to try to make sure that people who are using other investors' money play by the rules. That is why we have the Securities and Exchange Commission, the Commodity Futures Trading Commission, and banking regulators. That is why we have rules requiring publicly traded companies to issue financial statements and why we have accounting standards to make those financial statements understandable and honest. That is why we require companies to submit their books to auditors and why auditors certify whether the financial statements fairly present the company's financial activity.

Today we are in the middle of another ugly episode. In the aftermath of the go-go 1990s where American business grew at breakneck strength, the famed high-tech bubble inflated stock prices and the stock market got tagged with the strange new phrase ''irrational exuberance.'' Company after company, especially in the high-tech sector, announced profits that increased by huge percentages year after year. Mergers and acquisitions proliferated, and corporate fees went through the roof. Executive pay skyrocketed. The highest paid executives made as much as $700 million in a single year. By 2000, average CEO pay at the top 350 publicly traded companies topped $13 million per executive CEO, while the workplace pay gap deepened. In 1989, CEO pay was 100 times the average worker pay. By the year 2000, it was 500 times.

Some pointed to this alleged prosperity during the 1990s as a justification for deregulating business, weakening regulators, and making it harder

to seek corporate insiders and advisers. But now we are learning that some portion of the success and profits claimed by the companies during the 1990s—we still don't know how much—were based on corporate misconduct.

Lies about income and profits, hidden debt, improper insider trading, tax evasion, conflicts of interest—the list of recent corporate malfeasance is an alphabet of woe.

Adelphia Communications. This is a publicly traded company, but the company founders, the Rigas family, are accused of using the company treasury as if it were the family piggy bank. The allegation is that the family borrowed from the company over $2 billion—yes, billion—and has yet to pay it back. The company recently declared bankruptcy under Chapter 11.

Dynegy. This high tech energy firm is under SEC investigation for possibly inflated earnings and hidden debt. The questions include how it valued its energy derivatives, whether it booked imaginary income from capacity swaps with other companies, and whether it manipulated the California energy market. Senior executives, including CEO Chuck Watson, have recently been forced out.

Enron. This high tech company epitomizes much of the corporate misconduct hurting American business today, from deceptive financial statements to excessive executive pay. Its executives, directors, auditors and lawyers all failed to prevent the abuses, and many profited from them.

Global Crossing. This is another high tech corporate failure with outrageous facts. Less than 5 years old, Global Crossing was founded in 1997 by Chairman of the Board Gary Winnick. In 1998, the company went public, touting its plans to establish a worldwide fiber optic network. Global Crossing gave Mr. Winnick millions of dollars in pay, plus millions more in stock and stock options. In the 4 years the company traded on the stock market. Mr. Winnick cashed in company stock for more than $735 million. Other company insiders sold almost $4 billion in company stock. Then questions began to arise about inflated earnings, related party transactions, insider dealing, and board of director conflicts. In January 2002, the company suddenly declared bankruptcy. The company's shareholders and creditors have lost almost everything, while corporate insiders have so far walked away with their billions intact.

Halliburton. The question here is whether this construction company improperly booked income from contract cost overruns on construction jobs, before the company actually received the income. The company is under SEC investigation.

IBM. This all-American company, once a model of American know-how and can-do, has recently acknowledged misreporting about $6 billion in revenue and restated its earnings by more than $2 billion. Another high tech disaster for investors and American business.

ImClone. ImClone's CEO, Samuel Waksal, has been indicted for insider trading. The company produced a new drug whose effectiveness is still in question and whose developer, Dr. John Mendelsohn, was not only an ImClone board member but also the President of M.D. Andersen Cancer Center in Texas. Dr. Mendelsohn arranged for the Center to conduct tests on the drug without telling patients that the Center's President had a direct economic interest in the drug's success. Dr. Mendelsohn was also a board member at Enron.

Kmart. This once successful company, headquartered in my home state of Michigan, is now bankrupt and under scrutiny by the SEC for possible accounting fraud. The pain of the employees who lost their jobs and the investors who lost their savings is ongoing, not only in Michigan but across the country.

Merrill Lynch. Once a highly respected investment advisor, this company has become a poster child for financial advisors who mislead their investors, telling them to buy the stock of companies the advisers privately think are losers. Merrill Lynch recently paid $100 million and agreed to change how its financial analysts and investment bankers operate to settle a suit filed by New York Attorney General Elliot Spitzer.

Qwest Communications. This is another high tech company under SEC investigation. Questions include whether it inflated revenues for 2000 and 2001 due to capacity swaps and equipment sales. Qwest's CEO Joe Nacchio, made $232 million in stock options in 3 years before the stock price dropped, leaving investors high and dry. Its Chairman Philip Anschutz made $1.9 billion.

Rite Aid. Last month, three former top executives of Rite Aid Corporation, a nationwide drugstore chain, were indicted for an illegal accounting scheme that briefly—until WorldCom—qualified as the largest corporate earnings restatement in U.S. business history. The restatement involved $1.6 billion. The indictment alleges that the company used brazen accounting gimmicks to overstate its earnings during the late 1990s, and when investigators came after them, made false statements and obstructed justice.

Stanley Works. This company is a leading example of U.S. corporations that have pretended to move their headquarters to Bermuda to avoid paying U.S. taxes. It joins a growing number of companies that want to go on enjoying US banks, US laws, and US workers, but do not want to pay their fair share of the costs that make this country work from the costs of public education, to police and the courts, to environmental protection laws. To me, these companies are not just minimizing their taxes, they are demeaning their citizenship. They are taking advantage of this country by enjoying its fruits without giving anything back. No company ought to be allowed to get away with this fiction and throw their tax burden on the backs of other US taxpayers.

Tyco International. Last month, the CEO of Tyco, Dennis Kozlowski, was indicted in New York for failing to pay sales tax due on millions of dollars of artwork. The allegation is that Mr. Kozlowski shipped empty boxes to New Hampshire in a scam to show that $13 million worth of artwork was sent out of state and exempt from sales tax when, in fact, the artwork never left New York. This is a millionaire, many times over, who could have easily afforded the tax bill but engaged in a sham to avoid paying it. The question is whether he ran his company the same way he ran his own affairs.

Tyco is one of those companies that has allegedly moved its headquarters to Bermuda. It has numerous offshore subsidiaries, including more than 150 in Barbados, the Cayman Islands and Jersey. The company's U.S. tax payments have apparently dropped dramatically. Allegations of corporate misconduct by insiders have also emerged. There was a $20 million payment made to one of the company's directors and another $35 million in compensation and loans paid to the company's former legal counsel. That's $55 million paid to two corporate insiders, allegedly without the knowledge of the Board of Directors. Added to that is an ongoing SEC investigation allegedly examining whether a Tyco subsidiary paid bribes to win a contract in Venezuela.

WorldCom. WorldCom is the latest in this list of corporate embarrassments. It built a glowing earnings record through the acquisition of high tech companies like MCI and UUNet. It became a favorite investment for pension companies, mutual funds and average investors. Then we learn that the longtime CEO Bernard Ebbers borrowed over $366 million in company funds and has yet to pay it back. After he's forced out and a new CEO takes over, we learn that the company booked ordinary expenses as if they were capital investments in order to string out the expenses over several years and make the current bottom line look great. The result was $3.8 billion that had been conveniently left off the books—more than enough to wipe out the company's entire earnings for last year; more than enough for 17,000 workers to lose their jobs; more than enough to wipe out billions in investments across the country. Just one example in Michigan is the Municipal Employee's Retirement System which lost $116 million that supported workers' pensions. At the same time, we're told that Mr. Ebbers has a corporate pension that will pay him over $1 million per year for life.

Xerox. This all-American company has already paid $10 million to settle an SEC complaint that, for four years, the company used fraudulent accounting to improve its financial results. As

part of the settlement, Xerox agreed to restate its earnings after allegedly recording over $3 billion in phony revenues between 1997 and 2000.

This list is painful in part because it includes some icons of American business, symbols of what was right about the American dream. Now they symbolize corporate misconduct damaging to the entire country. The S&P index has plunged. The Nasdaq has been down 20% and even 30%. Mutual funds, the equity of choice for average investors, have dropped in value by more than 10%. The average daily trading volume at Charles Schwab & Co.—a measure of average investor activity—is down 54% from the height of the bull market, according to Fortune Magazine. Investor confidence in the U.S. stock market has dramatically declined. Foreign investment is fleeing.

There are many explanations for the corporate misconduct now tainting American business. One key factor is the terrible performance of too many in the accounting profession.

Auditors play an essential role in the checks and balances on the corporate marketplace. Under current law, a publicly traded company is not allowed to participate in the stock market unless its financial statements have been audited and found by an independent public accounting firm to be fair and honest. Auditors are supposed to be the first line of defense against companies cheating on their books.

The Supreme Court put it this way in United States v. Arthur Young, 465 U.S. 805, 1984, a case that contrasts the role of auditors with the role of lawyers. The Court noted that a lawyer is supposed to be a client's confidential advisor, but the:

> . . . independent certified public accountant performs a different role. By certifying the public reports that collectively depict a corporation's financial status, the independent auditor assumes a public responsibility transcending any employment relationship with the client . . . [and] owes ultimate allegiance to the corporation's creditors and stockholders, as well as to the investing public. . . . This 'public watchdog' function demands that the accountant maintain total independence from the client at all times and requires complete fidelity to the public trust.

But that's not what has happened recently.

In Adelphia, the auditors, Deloitte Touche, allegedly missed the fact that the Rigas family borrowed company funds totaling $2 billion.

At WorldCom, Andersen allegedly never knew that $3.8 billion in expenses had been incorrectly accounted for as capital investments.

At Xerox, KPMG allegedly missed errors involving $6 billion in revenue and $2 billion in earnings.

These are not marginal amounts; they involve billions. How did the auditors miss the accounting errors and dishonest financial reports? Or are these cases like Enron, where the auditor didn't miss the problems—they knew of them, had misgivings about the accounting, but allowed questionable transactions and financial statements to go forward anyway?

And there are many more cases than the high profile scandals I just described. In the last few years, there has been a surge in corporate restatements—financial filings in which a publicly traded company admits that a prior financial statement was inaccurate and corrects the earlier information. From 1990 through 1997, publicly traded companies averaged 49 of these restatements per year. In 1999 and 2000, that number tripled—publicly traded companies filed about 150 each year.

These restatements go beyond the list of companies I started with, reaching much deeper into corporate America. In addition to those already reported in the media over the last few years, I asked the Congressional Research Service to look at the most recent corporate restatements, those filed since January of this year. On June 17th, CRS issued a report listing over 100 completed and expected restatements in the first six months of 2002, and predicted that the total number of restatements in 2002 may exceed 200. A smattering of these restatements, another alphabet of corporate woe, include the following.

American Physicians Service Group. This health services company restated its 2000 and 2001 earnings due to a revaluation of a private stock investment.

CMS Energy Corporation. This energy company, which has operations in Michigan, has restated its 2000 and 2001 financial statements to include $4.4 billion in revenues attributable to ''wash trades'' with other companies involving energy commodities.

Dollar General Corporation. This company has restated its financial results for three years, 1998 through 2000.

Hanover Compression. This company has restated its earnings for seven quarters in a row, ending September 2001.

Microsoft. Following an SEC investigation, the flagship American company agreed to restate its earnings for 1995 through 1998, when it used accounting devices to ''smooth'' its reported earnings.

PNC Financial services. This financial services company has restated its financial results for 2001 after questionable accounting under investigation by the Federal Reserve and SEC involving the sale of over $700 million in problem loans and other non-performing assets to three companies it set up with the insurance conglomerate, American International Group.

Pacific Gas & Electric. This energy company has announced that it will restate its earnings back to 1999 to account for off-the-books ''synthetic leases'' involving about $1 billion in financing for several power plants.

Peregrine Systems. This company announced it would restate earnings for 2000, 2001, and 2002, and that an SEC investigation was in progress.

Stillwater Mining Co. This company announced that the SEC had criticized its accounting practices and a restatement of earnings would be issued.

There are many more examples. What is happening that more and more financial results have to be restated, erasing more and more questions about the reliability of the original financial reports? Why this surge in corporate restatements?

Part of the answer is that too many accounting firms apparently no longer value in their watchdog role. Today, they celebrate instead the earnings they receive as tax advisers and business consultants.

During the 1990s, all the major accounting firms dramatically increased the non-audit services they provided to their audit clients. By 1999, 50% of firm revenues at the big five accounting firms came from consulting, while only 34% came from auditing. A few years later, the data indicates that almost 75 percent of the fees earned by the big five accounting firms came from non-audit services. Specific company proxy statements show that many publicly traded companies now pay millions more for consulting than they do for auditing, including such companies as Raytheon, Apple Computer, Nike, International Paper, At&T, Honeywell and Coca-Cola. A January 2002 Harvard Business School publication raising questions about auditor independence cited anecdotal evidence that accounting firms were using their positions as auditors to obtain consulting work, including by ''lowballing'' audit fees if a company simultaneous agreed to a consulting contract. The work done by the Permanent Subcommittee on Investigations, which I chair, includes evidence that accounting firms are shopping around to publicly traded companies, including their audit clients, complex accounting arrangements that they say will improve a company's financial results and pending complex tax strategies that will lower its tax bills.

The role of Arthur Andersen at Enron illustrate the profession's movement from auditor to moneymaker, Andersen was Enron's outside auditor from the company's inception in 1985. As Enron grew, Andersen's role at the company grew, with more and more of Andersen's time spent on financial services other than auditing.

Andersen began to offer Enron business and tax consulting services which included assistance in designing special purpose entities, offshore affiliates, and complex structured finance transactions. For example, Andersen was paid about $5.7 million to help Enron design the LJM and Chewco partnerships and engage in a series of purported asset sales to these entities. Andersen was paid more than $1.3 million to help Enron set up the Raptors, a series of four complex transactions that were an improper attempt by Enron to use the value of its own stock to offset losses in its investment portfolio. Andersen also helped Enron engage in

ever more exotic and complex transactions, such as prepaid forward contracts, swaps, and merchant asset sales. For two years, Andersen even acted an Enron's internal auditor while also serving an Enron's outside auditor.

By 1999, Andersen was earning more for its non-audit services than for its audit services at Enron. By then, Andersen had set up its own offices at the company site to enable it to work with Enron employees on a daily basis. A number of Andersen employees switched to Enron's payroll. Enron became one of Andersen's largest clients, In 2000, Andersen was paid $1 million per week for the many services it was providing Enron. Andersen partners handling the Enron account earned millions in bonuses and partnership income.

Common sense tells us that as Andersen's joint efforts with Enron management increased, it became tougher and tougher for Andersen auditors to challenge Enron transactions—after all, these transactions had been set up with Andersen's assistance at the cost of millions of dollars. How could Andersen auditors say that Andersen consultants were wrong? And in many cases the same Andersen employee served as both consultant and auditor, essentially auditing his or her own work. We now know that internal Andersen documents demonstrate serious misgivings up and down the Andersen chain of command with respect to Enron's transactions or accounting. To the contrary, one of the few Andersen senior partners to raise gentle objections to some Enron transactions was, at Enron's request, removed from the Enron account. In the end, Andersen approved questionable transactions and financial statements that made Enron's financial condition appear better than it was.

Andersen once had a proud tradition that stressed its commitment to the public trust to ensure accurate financial reporting and honest accounting. But that tradition gave way in the Enron case. And it give way in other recent cases of corporate misconduct as well, from Sunbeam to Waste Management to the Baptist Foundation of America.

Worse, Andersen was not alone. Media reports are filled with tales of auditors going along with questionable transactions and financial reporting. PricewaterhouseCoopers and Microstrategy. Ernst & Young and PNC Financial. Deloitte Touche and Adelphia. KPMG and Xerox.

The conflicts of interest inherent in auditors performing consulting services for their audit clients have been building for years and were not lost on those concerned about accurate financial reporting by U.S. companies. In 2000, SEC Chairman Arthur Levitt waged a highly visible campaign to rein in auditor conflicts of interest and restore auditor independence. In July 2000, under his leadership, the SEC proposed regulations to stop auditors from providing certain non-audit services to their audit clients. The rules proposed four principles to determine whether, in fact and in appearance, an accountant was independent of its audit client. The proposed regulations stated that an accountant would not be considered independent if the accountant: (1) had a mutual or conflicting interest with the audit client; (2) audited the accountant's own work; (3) functioned as an employee of the audit client; or (4) acted as an advocate for the audit client. Using these four principles, the regulations proposed a ban on audit firms performing certain non-audit services for their audit clients.

The reaction of the accounting profession was to fight the proposal tooth and nail. The proposed regulations were also pummeled by the corporate community, which lost sight of how important reliable financial statements and reliable auditors are to the viability of American business and investment.

In the end, the proposed Levitt regulations were gutted. Instead of eliminating auditor conflicts, a compromise emerged that simply increased disclosure of the scope of the conflicts and the extent to which auditors were auditing their own work. That was the wrong result, which I hope the Senate will remedy through enactment of the Sarbanes bill.

What happened to the board?

In U.S. corporations, Boards of Directors are at the top of a company's governing structure. According to the Business Roundtable, the Board's ''paramount duty'' is to safeguard the interests of a company's shareholders. Persons who serve on corporate boards are required by state law to serve as fiduciaries to the shareholders and employees of the corporation for which they serve. As the Fifth Circuit said in 1984:

> Three broad duties stem from the fiduciary status of corporate directors: namely, the duties of obedience, loyalty and due care. The duty of obedience requires a director to avoid committing . . . acts beyond the scope of the powers of a corporation as defined by its charter or the laws of the state of incorporation. . . . The duty of loyalty dictates that a director must not allow his personal interest to prevail over the interests of the corporation. . . . [T]he duty of care requires a director to be diligent and prudent in managing the corporation's affairs.

One of the most important duties of the Board—along with corporate officers and company auditors—is to make sure that the financial statements are in fair representation of the company's financial condition. It requires more than technical compliance; it requires, as the Second Circuit Court of Appeals said in 1969, that the Board ensure that the financial statement ''as a whole fairly present[s] the financial position'' of the company.

The key committee of a board in carrying out that function is the Audit Committee, and a Blue Ribbon Commission in 2000 issued a report on what Audit Committees should do to meet their obligation to the shareholders. Among the responsibilities the Audit Committee should meet are: ensuring that the auditor is independent and objective; assessing the quality, not just the acceptability, of an auditor's work; discussing with the auditor significant auditing issues; and making sure that the financial statement are ''in conformity with generally accepted accounting principles.''

As I mentioned at the beginning of this statement, the Permanent Subcommittee on Investigations, which I chair, looked in depth at the actions of the Board of Directors on the Enron Corporation in light of its sudden collapse and bankruptcy. The Subcommittee on a bipartisan basis found that the Enron Board failed to safeguard Enron shareholders and contributed to Enron's collapse. If failed, we found, because the Board allowed Enron to engage in high risk accounting, inappropriate conflict of interest transactions, extensive undisclosed off-the-books activities, and excessive executive compensation. Based on review of the hundreds of thousands of Enron-related documents by the PSI staff and dozens of interviews, the Subcommittee concluded that the Board knew about numerous questionable practices by Enron management over several years, but it chose to ignore these red flags to the detriment of Enron shareholders, employees, and business associates. In short, the Enron Board failed to meet its fiduciary responsibility to the shareholders and employees of Enron.

When pressed to explain their conduct at a PSI hearing, the Board accepted no responsibility for Enron's failure. The Board members claimed they didn't know what was going on in the company—that management didn't tell them, and that the auditor, Arthur Andersen, told them everything was OK. The Subcommittee didn't accept that answer, because a review of the documents, the Board meetings, the Audit and Finance Committee meetings, and interviews with the Board members revealed that the Board Members did know what was happening at Enron and went along with it.

The Board failed with respect to the Enron Corporation, and my guess is that the boards of the other corporations now under investigation for investor fraud and auditing misconduct will fare little better. Although the performance of corporate boards in American corporations must be addressed by the corporations themselves, Congress must also do everything it can to ensure that this important watchdog of corporate governance operates properly in each U.S. company.

What happened to other corporate players?

The auditors and the Boards of Directors are not the only ones with oversight responsibility for corporate conduct who have let down the investing

public. Top-name law firms wrote legal opinions that allowed some of the worst deceptions to go forward. Financial analysts who depend upon large corporations for investment banking business and at the same time promote the stock of those corporations to their clients, operate with clear conflicts of interest. They may know inside information about the financial condition of the companies with which they do business, but keep that information from the investors to whom they are promoting the company stock.

What needs to be done now?

The Sarbanes bill, with additional amendments, will address the duties and failings of their corporate players. After 10 days of hearings, the Banking Committee has reported to the Senate floor a bill that significantly addresses not only the audition failures, but failures of corporate governance and conflicts with financial analysts. I understand there may be an amendment to hold the legal profession accountable as well.

We have got to take action on this legislation now, this Congress. We need to restore the checks and balances on the marketplace, and we need to give our cops on the beat the tools and resources to crack down on corporate misconduct.

We need to change the laws to make it possible to punish corporate and auditor misconduct swiftly and with appropriate penalties. We need to ensure that crime does not pay for corporate executives seeking to profit from corporate misconduct. We need to shake up the auditing industry and remind them that their profession calls for them to be watchdogs, not lapdogs for their clients. We need to give SEC administrative enforcement powers and more funds for investigations and civil enforcement actions. We need to increase investor protections to restore investor confidence.

The Sarbanes bill takes many of the actions needed, and I want to commend the hard work of not only Senator SARBANES who chairs the Banking Committee, but also the many other Senators on that Committee who contributed to this much needed bill. It offers strong medicine, and it is what this country needs.

On corporate misconduct, the bill presents a number of new provisions to deter and punish wrongdoing. For the first time, CEOs and CFOs would be required to certify that company financial statements fairly present the company's financial condition. If a misleading financial statement later resulted in a restatement, the CEO and CFO would have to forfeit and return to the company coffer any bonus, stock or stock option compensation received in the 12 months following the misleading financial report. The bill would also make it an unlawful act for any company officer or director to attempt to mislead or coerce an auditor. It would also require auditors to discuss specific accounting issues with the company's audit committee, which will not only increase the understanding of the company's board of directors, but also prevent directors from later claiming they were not informed about the company's accounting practices. The bill would also enable the SEC to remove unfit officers or directors from office and to bar them from holding any future position at a publicly traded corporation. These are powerful new tools to help prevent and punish corporate misconduct.

The Sarbanes bill takes on another great issue of importance that I've been working on for years, strengthening the independence of the Financial Accounting Standards Board or FASB, which has the task of issuing generally accepted accounting principles or GAAP. Among other important measures, the bill grants statutory recognition to FASB and sets out its obligation to act in the public interest to ensure the accuracy and effectiveness of financial reporting; states that the trustees who select FASB's members must represent investors and the public, not just the accounting industry or corporate interests; and streamlines FASB's operations by requiring it to act by majority vote instead of through a supermajority.

Most important of all, the bill sets up a system that provides FASB with an independent, stable source of funding through fees assessed on publicly traded companies. Once this new system is set up, it will no longer be the case, as it has been for years, that FASB will have to go hat in hand for funds from the very companies and accounting firms that want to affect its decisionmaking. I have no doubt that this conflict of interest has contributed to some of the distortions and weaknesses in current accounting standards. I proposed a similar change in FASB's funding status in my Shareholder Bill of Rights Act, and I appreciate the Committee's including the provision for my bill making it clear that FASB's funding cannot be affected by the congressional appropriations process and the political pressures that can be exerted through it. The point of the bill is to set up an independent, stable source of funding that is insulated from political pressure and funding threats so that FASB can do its work free of such pressures and threats. Once the new funding system is in place, I urge FASB to begin to reassess U.S. accounting standards and to begin to clear up some of the problems that have allowed so many companies to engage in dishonest accounting while claiming to be in compliance with GAAP.

On auditor conflicts of interest, the bill takes concrete action to stop auditors from providing non-audit services to their audit clients. For the first time, the bill specifically prohibits auditors from providing 8 types of non-audit services to their audit clients. The 8 prohibited services are bookeeping services; financial information systems design; appraisal and valuation services and fairness opinions; actuarial service; internal auditing services; management functions and human resource services; broker-dealer, investment adviser of investment banking service; and non-audit legal or expert services. The bill also enables a newly established Public Company Accounting Oversight Board to specify other prohibited services. Any other non-audit service can be provided by an auditor to its audit client only if the client's audit committee specifically authorizes the auditor to undertake the service. While I would have preferred an even stronger provision barring auditors from providing any non-audit services to an audit client, this bill makes a meaningful change in law that would help put an end to auditor conflicts of interest.

Additional work is needed. For example, many of the key terms in the 8 prohibited non-audit services were left undefined after the Banking Committee, as part of the negotiations over the bill, dropped a requirement for the SEC to promulgate the July 2000 Levitt regulations which would have defined many of the terms. If enacted into law, the new Board and the SEC would need to place a priority on further defining the key terms in the 8 prohibited services. That task would be a key test of their willingness to use the bill's authority to eliminate auditor conflicts of interest and restore auditor independence.

Let me give you an example. The bill currently prohibits auditors from providing their audit clients with ''investment banking services'' but does not define this term. Based upon the work of the Permanent Subcommittee on Investigations into the Enron scandal, I believe it is crucial for that term to include prohibiting auditors from working with their audit clients to design special purpose entities and structured finance arrangements, as investment bankers do, and then audit the structures they helped to create. In the case of Enron, Andersen was paid about $7 million to help Enron design the LJM, Chewco and Raptor structures, which Andersen then audited and approved. That never should happen. Auditors should not be auditing their own work. To make sure that this conduct is stopped, the SEC and Board would have to prohibit it either by further defining the term ''investment banking services'' or by specifying another prohibited service. The public companies' audit committees could also accomplish this goal by prohibiting the company's auditor from designing these structures and then auditing its own work.

In addition to defining the key terms in the 8 prohibited services, additional work is needed to clarify how auditors and companies are supposed to treat the issue of ''tax services.'' The bill states explicitly that an auditor may provide ''tax services'' to an audit client if the specific tax services are cleared beforehand by the company's audit committee. There are several

problems with this approach. First, like investment banking services, one danger is that an auditor will end up auditing its own work, which means that a critical check and balance on possible company misconduct will be circumvented. No auditor should assist a company in designing a tax strategy to lower the company's tax bill and then also serve as the auditor approving the accounting for that tax strategy. Two different parties must be involved—one to design the strategy and one to audit it for improper accounting and possible illegal tax evasion. A second problem involves the fees paid for various types of tax services. In the July 2000 regulations proposed by the SEC under former Chairman Levitt, concerns were raised about allowing an auditor to provide an audit client with written opinions related to a tax shelter or other tax strategy to lower the client's tax bill. Providing these opinions, especially for complex or questionable tax strategies, can lead to lucrative fees for an accounting firm and, in so doing, raise the same conflict of interest concerns that have so damaged auditor independence.

These and other non-audit service issues needed to be examined by the Board and the SEC, not only to develop definitions for key terms, but also to determine whether additional non-auditing services should be added to the list of 8 prohibited services now specified in the Senate bill. Audit committees must also confront these issues and take the steps necessary to prohibit the company's auditor from engaging in non-auditing services that raise conflict of interest concerns or lead to an auditor's auditing its own work for the company.

On auditor misconduct and oversight of accounting firms, the Sarbanes bill offers fundamental change that is sorely needed. The new Public Company Accounting Oversight Board that the bill would establish is designed to be free of domination by either accounting or corporate interests and would enjoy an independent and stable source of funding. This Board would have several duties including issuing auditing, auditor independence, and auditor ethical standards; inspecting and reporting on the internal controls and operations of registered public accounting firms; and conducting disciplinary proceedings regarding accountants suspected of wrongdoing.

With respect to investigating possible auditor misconduct, the Board will have the authority to subpoena documents, take sworn testimony, and impose meaningful sanctions on individual accountants and accounting firms found to have engaged in wrongdoing. The sanctions include revoking the registration that a firm needs to audit public companies, barring a person from participating in a public company audit, imposing a civil fine on an individual or firm, and issuing a censure. The Board must also disclose its disciplinary proceedings to the public so that we will know what misconduct was involved and what sanction was imposed.

This provision represents significant improvement over existing disciplinary proceedings which are dominated by the accounting industry, secretive, time-consuming, and ineffective. It also has at least two weaknesses. First, although the bill requires the Board to issue a public report on any disciplinary proceeding that results in a sanction on an auditor, the bill is silent on public disclosure of disciplinary proceedings that do not result in a sanction. The bill apparently leaves it to the discretion of the Board on whether to disclose these disciplinary proceedings, but a better approach might have been to direct the Board to disclose such proceedings when doing so would be in the public interest. A second, more serious weakness is that the provision imposes an automatic, unlimited stay on any auditor sanction imposed by the Board if the sanction is appealed to the SEC. Until the SEC lifts the stay, the Board is prohibited from disclosing to the public the name of the auditor, the sanction imposed, or the reasons for the disciplinary action. These provisions are out of line with broker-dealer disciplinary proceedings and only serve to prolong criticisms of auditor disciplinary practices as overly secretive and slow moving.

On the issue of auditing, auditor independence, and auditor ethical standards, I fully support making the Board the final arbiter of these standards. The standard-setting process has for too long been under the direct control of the accounting industry, and one of the most important changes the bill makes is to put an end to this arrangement. Of course, the accounting industry is not and should not be excluded from the Board's standard-setting process; the bill requires the Board to engage in an ongoing dialog with the accounting, corporate and investor communities to take advantage of their expertise. The bill explicitly requires the Board to ''cooperate'' with any designated professional group of accountants or any advisory board convened by the Board to assist its deliberations. The bill also states that the Board must ''respond in a timely fashion'' to any request for a change in the standards if the request is made by a designated professional group or advisory committee. It is important to note, however, that the bill does not grant any preferential status to these groups compared to other participants in the standard-setting process, and participants such as the SEC, state accounting boards, other federal and state agencies and standard-setting bodies, and investors are entitled to receive equal consideration from the Board in its standard-setting deliberations.

On the issue of accounting oversight, the Sarbanes bill again offers vast improvement over the status quo. The newly created Board offers oversight authority that will be more independent, more systematic and more public than the existing system. And, again, one comment. With respect to the inspection reports that the Board is supposed to disclose to the public regarding a registered public accounting firm's operations, the bill states that the Board must develop a procedure to allow the registered public accounting firm that is the subject of the inspection an opportunity to comment on the draft report before it is finalized. I support this process. However, it is also my understanding after consulting with the Committee, that the bill is not intended to require the Board to submit the actual text of its draft report to the subject firm prior to making it public, but rather to inform and discuss the key points with the firm and provide the firm with a meaningful opportunity to comment on the Board's analysis, commit to specific steps to cure any defects in the firm's quality control systems, and commit to other reforms.

Finally, on the issue of increased resources, the Sarbanes bill takes long needed steps to beef up the SEC's enforcement staff through authority to hire new accountants, lawyers, investigators and support personnel. It also increases the SEC's budgetary authority. Once this is enacted into law, it will be up to the Bush Administration and the Appropriations Committees to give the SEC what it needs to respond to the current wave of corporate scandals and help restore investor confidence.

There are many other provisions in the bill that I could comment on, but I will stop here. The bottom line is that the Sarbanes bill is a strong bill. It provides new tools and resources to go after corporate misconduct. It offers fundamental change in the way we oversee the accounting industry and punish auditor wrongdoing. It tackles auditor conflicts of interest by setting up, for the first time, prohibitions on the non-auditing services that an auditor can provide to an audit client. It provides new ways to hold corporate insiders accountable, so the next time a public company erupts in scandal, the senior officers and directors can't claim that they were out of the loop and not responsible.

As strong as it is, the Sarbanes bill would benefit from a number of strengthening measures. This includes the amendment by Senator LEAHY to strengthen criminal penalties for corporate misconduct and to protect corporate whistleblowers, which I am cosponsoring, and an amendment by Senator EDWARDS to require legal counsel to play a more active role in deterring corporate misconduct.

I intend to offer several amendments myself.

Administrative penalties: Senators BILL NELSON, TOM HARKIN, and I will offer an amendment to give new authority to the SEC to impose administrative penalties for corporate wrongdoing. The amendments would allow

the SEC to impose civil monetary penalties on persons who violate the securities laws such as companies, officers, directors, auditors, and lawyers and to bar unfit officers and directors of publicly traded corporations without having to go to court to do so. The amendment would also allow the SEC to subpoena financial records as part of an official SEC investigation without notifying the subject of the records request. This amendment would also increase the maximum civil fines the SEC can impose on securities laws violators under current law and the new authority provided by this amendments. Today's fines of $6,500 to $600,000 per violation would increase to $100,000 to $10 million.

Auditor certification. A second amendment I intend to offer would require that auditors of publicly traded corporation provide a written opinion on whether a client company's financial statements fairly present the financial condition of the company. The Sarbanes bill has a similar provision with respect to CEOs and CFOs. Many think this is already required of auditors of publicly traded companies, but there is no provision in current law that imposes such a requirement; there is only guidance pursuant to SEC regulation.

Auditors communication with board of directors: My third amendment would require that an auditor of a publicly traded corporation discuss with the Audit Committee on the Board of Directors the ''quality, acceptability, clarity, and aggressiveness'' of the company's financial statements and accounting principles. This amendment will eliminate any excuse that the Board of Directors of a company didn't know what the company was doing.

There were many investors and commentators in the 1990's who expressed their awe of the astronomical growth in the stock market by saying it was too good to be true. Well, they were right. It was too good to be true, and now we know that. This bill, particularly with some strengthening amendments will bring credibility and accuracy back to the financial statements of our publicly traded corporations. It will bring reality into the marketplace and make the deceptive practices of the 1990's the true exception rather than the rule.

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. NELSON of Florida. Madam President, I ask unanimous consent the order for the quorum call be rescinded.

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

DELAYING ACTION ON S. 2673

Mr. NELSON of Florida. Madam President, it is my understanding that what has happened here is that our friend and colleague, the senior Senator from Michigan, has asked for unanimous consent, earlier, and it was denied by the senior Senator from Texas, in order to proceed with the offering of an amendment that would considerably strengthen the underlying bill that we have under consideration.

It is with a heavy heart that I saw the parliamentary tactics—clearly within any Senator's opportunity to utilize—to delay a piece of legislation that would address the issue before us that is resonating in the hearts of every American, that being the subject of corporate greed.

Indeed, what we have seen is that which is obviously resonating because I am told the stock market has gone down almost 300 points today, down to a range of about 8,800. You would think folks would realize that the stock market is a reflection of the confidence of the American people, not only in the economy but in a lot of the engines that drive the economy.

Most of the great corporate structures are very solid financially as well as ethically, but having seen some of the lapses in ethical judgment have led to some of the exposes that we have seen over the course of the last months, I am rather surprised to see these parliamentary delaying tactics by folks from the other side of the aisle when in fact what the American people would like to know is that their Representatives in the U.S. Congress are responding with very tough laws enacted to address the problems of corporate greed.

We can talk about the Enrons. We can talk about the WorldComs. We can talk about whatever. Lord knows what is going to be next. But that is why Senator LEVIN and I will be coming to the floor after being denied, tonight, the opportunity to offer an amendment that will strengthen the underlying bill. We will come to offer reforms aimed at preventing corporate fraud and punishing its perpetrators.

The senior Senator from Michigan, as the Chairman of the Armed Services Committee, lends an expertise to this body in matters of defense. He has a perspective that, to keep America strong from a military standpoint, we have to be economically strong and we have to be morally strong. So that is getting right to the heart of what we are doing, trying to enact a law preventing the perpetrating of corporate fraud or then seeing that the perpetrators are punished.

There were at WorldCom 17,000 workers who received pink slips. While it was realizing $1.1 billion in losses in the retirement funds of those employees, and while those 17,000 employees were getting those pink slips, the corporate executives were attending a retreat in Hawaii. One of them was putting the finishing touches on a new $15 million mansion. I am not absolutely sure, but I think that person is one and the same person whose $15 million mansion is in my State.

Then late last year, Global Crossing laid off 1,200 people, giving them no severance package, while the CEO there walked away with hundreds of millions of dollars. Is there something wrong with this picture? Yes, there is. And the American people are feeling it. Part of that is what we are seeing resonating in the plunge of America's stock markets.

So last summer, while Enron executives were selling their shares for hundreds of millions of dollars and protecting their portfolios, their employees and their retirees lost more than $1.2 billion in retirement savings.

Sadly, that includes Janice Farmer, a former Enron employee who is now a retiree. She lives in Orlando. Janice Farmer lost her whole savings—$700,000—in her retirement plan with Enron.

Then, if you will recall, the pension fund of the State of Florida lost $335 million—more losses than any other State—from Enron stock purchases.

When we had a hearing in the Commerce Committee with the managers of Florida's pension fund, which covers all of our public employees in Florida, the testimony came out that the money managers of that fund were buying Enron shares based on the management's and the company's assertions that everything was OK. But it wasn't. The stock was dropping like a rock, but, oh, by the way, not before company executives had unloaded their shares.

In the last 18 months alone, we have seen corporate abuses of monumental proportions. People have had it. Their representatives in Congress, I hope, have had it. I can tell you I have had it. So has my colleague, Senator LEVIN. Eventually, after we have to go through all the parliamentary rankling, we will be allowed to offer our amendment.

We must act now to protect taxpayers and employees and investors. We must prevent huge losses for public institutional investors.

Now we are looking sadly as thousands of layoffs, earnings and restatements by more than 300 companies with billions of dollars lost by ordinary people. The victims are the ones demanding the reforms that we are talking about today. Unfortunately, because of the objections rendered by that side of the aisle, we are not able to take that up today.

Those victims and the American people who believe in a strong economy want us to act strongly and swiftly to punish such corporate abuse and to prevent corporate abuse. That is why Senator LEVIN and I want to introduce stronger enforcement measures.

We have a package of three amendments. They complement the Sarbanes bill by streamlining and strengthening procedures to punish corporate and auditor misconduct.

There is a glaring shortcoming of our current statutes. The Securities and Exchange Commission is essentially powerless today, even after conducting an investigation and even after finding

wrongdoing. What the SEC needs is more enforcement authority.

The amendments that Senator LEVIN and I are offering will strengthen civil penalties and provide for more enforcement authority over corporate misconduct. And it will do it in several ways.

First, these amendments will grant the SEC administrative authority to ban unfit officers and directors from publicly traded corporations. And the SEC will be able to do so without having to go through the lengthy court proceedings in advance that makes it so difficult under the present law to get anything done. Their decisions, however, will be subject to judicial review so that we have the checks and balances.

Yesterday, the President gave a speech on Wall Street. He echoed the idea that unscrupulous officers and directors should not be able to serve in that capacity again. But he offered nothing to enforce that principle.

I hope the President will realize that he was a day late and a dollar short—that his proposal did not have the strength and the backbone behind it. What we offer here will allow the SEC to have the authority to remove crooked executives.

This amendment also will increase the maximum civil fines that the SEC can impose on violators of securities laws and increase those by manyfold. Future fines against crooked executives would range from $100,000 up to $2 million. Right now some of the fines are only $6,500. When you are dealing with white-collar crime, you have to hit the criminals where it hurts—in the pocketbook.

Our amendment also broadens the authority of the SEC to impose fines on companies, officers, directors, auditors, and lawyers. Currently, the Commission can only impose fines on narrow categories of regulated individuals, such as brokers and dealers. But this amendment would allow the SEC to cast the net wider and go after a broad range of bad actors who engage in fraudulent conduct.

Earlier this year, Senator CARNAHAN and I introduced legislation advocating that the SEC take a tough enforcement approach, including criminal prosecutions whenever necessary. We also sought to end the cozy relationships among company executives, auditors, and directors, money managers, analysts, lawyers, and others who create this incestuous kind of relationship that does nothing but undermine the confidence of the American people in the corporate structure of this country.

Senator LEVIN and I are glad to see that a consensus is coming to embrace this approach, and if the other side of the aisle will ever let us bring this to a vote, it will be widely accepted in this body.

The recent Enrons, WorldComs, and other financial tragedies have demonstrated that white-collar crimes can be incredibly damaging—robbing hard-working Americans of their jobs, their savings, and their retirements.

There is simply no justification for handling corporate wrongdoers with kid gloves. Earlier today Senator LEAHY pointed out that if you defraud the public you must go to jail.

I came over here hoping that I could give a speech to support Senator LEVIN before we adopted this amendment. But I guess it is going to be Friday, or if they drag us on, I guess it will be Monday, or Tuesday. But we will pass this amendment, and we will pass this bill. It is a reflection of the will of the American people to keep our country strong and to keep our country free.

I yield the floor.

LOCAL LAW ENFORCEMENT ACT OF 2001

Mr. SMITH of Oregon. Madam President, I rise today to speak about hate crimes legislation I introduced with Senator KENNEDY in March of last year. The Local Law Enforcement Act of 2001 would add new categories to current hate crimes legislation sending a signal that violence of any kind is unacceptable in our society.

I would like to describe a terrible crime that occurred July 7, 2002 in St. Petersburg, FL. Sonny Gonzales and his friends were walking to their limousine after a gay pride party when an angry man approached them in a parking garage. ''The first thing out of his mouth was, '''faggots,'' said Gonzales. The man taunted the group, screamed obscenities, and then punched Gonzales and his friends. Gonzales suffered a head laceration. His partner, Stephen Hair, 25, suffered a skull fracture, a cracked sinus, and a broken tooth trying to defend him. Authorities arrested Devin Scott Angus, 20, in the attack. He was charged with aggravated battery with great bodily harm and battery evidencing prejudice.

I believe that government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act of 2001 is now a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

LOW MEDICARE REIMBURSEMENTS

Mr. SPECTER. Madam President, I submit for the CONGRESSIONAL RECORD several additional supporting documents regarding Medicare Metropolitan Statistical Areas referenced in my statement on Monday, July 8, 2002.

I therefore ask unanimous consent that the additional documents be printed in today's RECORD.

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

BERWICK HOSPITAL CENTER,
Berwick, PA, July 3, 2002.

Senator ARLEN SPECTER,
Scranton District Office,
Scranton, PA.

DEAR SENATOR SPECTER: I am writing to reiterate our support for the proposed increase in Medicare Reimbursement Rates for hospitals in Northeastern Pennsylvania. The proposed increase would mean an additional $800,000 in increased annual reimbursement to Berwick Hospital Center.

This increase, if granted, would go directly for training and recruiting health care personnel who are in critically short supply in our area. The hospital currently has 19 registered nurse and 6 licensed practical nurse vacancies. In addition, there are 10 vacancies in the support departments, such as laboratory and radiology. A significant factor in these vacancies is the higher wages and benefits that are paid in the Philadelphia and New York metropolitan areas that are within a 2.5 hour drive from our hospital. Our hospital cannot afford to match these urban wages due to the disparity in our Medicare Reimbursement levels.

As such, the proposed increase in Medicare Reimbursement is critical to stop the outmigration of skilled health care workers from our area. Since the average age of nurses in our state is now approaching 45, in the next decade when the Baby Boomer generation reaches retirement age, there will be no nurses and other support personnel to take care of their medical needs in our community. A concerned effort to improve educational opportunities for high school graduates, as well as improved wages for existing workers is needed.

Finally, I would urge the Congress to take immediate action on this issue. It will take years to reverse the current trend, through support of new educational programs, and other programs to retain the existing workforce. Postponing a decision will make the current crisis worsen to the point where the health care delivery system in our community will not function.

MARIAN COMMUNITY HOSPITAL,
Carbondale, PA, July 8, 2002.

Hon. ARLEN SPECTER,
U.S. Senate, Hart Senate Office Building,
Washington, DC.

DEAR SENATOR SPECTER: On behalf of Marian Community Hospital, its Board of Directors, and the greater Carbondale area community, which we serve, we thank you for the efforts that you, Representative Sherwood and your respective staffs have committed to addressing the disparity caused by the Medicare wage index.

We know that you are keenly aware of the challenges facing the hospitals in our region but we would like to share with you the following points that were communicated to our Board of Directors through our current operating budget:

Over half of the Hospital's healthcare service and activities are provided to patients who are poor and elderly. The reimbursement received from the federal government for services provided to these patients under the Medicaid and Medicare programs are not sufficient to cover the cost of care (approximately 55% of the hospital's costs is for salaries and fringe benefits).

For the fourth year in a row, revenues from operations have not been or expect to be adequate to cover the cost of providing care and, accordingly, savings intended for building and equipment replacement were used to cover the unreimbursed costs (Pennsylvania Cost Containment Council indicates these losses are consistent for those hospitals residing in Northeastern Pennsylvania).

The Hospital has been faced with a health professional shortage requiring the payment for caregiver services through overtime and use of temporary agencies at a level much greater than anticipated. (Even when staff becomes available, we have been forced to pay higher hourly rates to attract health professionals to the Carbondale area.)

This past spring, the Hospital's provider of professional and general liability insurance (PHICO) become insolvent requiring the use of expensive alternatives and financial resources that were not planned until a solution could be formulated with other Pennsylvania hospitals in a like situation.

Capital expenditures and replacement of medical equipment in the current fiscal year will need to be reprioritized until relief from unreimbursed costs can be resolved.

Thank you again for your interest in our Hospital and in the Northeast region of Pennsylvania. We are prepared to participate in any way in hearings with your Committee to resolve this crises.

Respectfully yours,

THOMAS L. HERON,
Chief Financial Officer.

TYLER MEMORIAL HOSPITAL,
Tunkhannock, PA, July 8, 2002.

Below please find a history of our hospital's reimbursement rate under Medicare's prospective payment system:

	Labor component	Wage index	Adjusted labor	Non-labor component	Actual base rate	Increase (percent)	Consumer price index (percent)
1998	$2,732.26	0.8539	$2,333.08	$1,110.58	$3,443.66		
1999	2,739.36	0.8683	2,378.59	1,113.47	3,492.06	1.41	1.70
2000	2,764.70	0.8524	2,356.63	1,123.76	3,480.39	−0.33	1.60
2001	2,818.85	0.8578	2,418.01	1,145.78	3,563.79	2.40	2.70
2002	2,908.65	0.8683	2,525.58	1,182.27	3,707.85	4.04	3.40

As you can see, in three of the last four years, our increase in payment has fallen short of the increase in the consumer price index. In 2000, our base payment rate actually decreased because of a reduction in the wage index.

With increases in our payments that do not surpass the rising cost of healthcare, the hospital is put in a position where, in order to staff the lone hospital within a 45-mile radius, it must tap into its own cash reserves that were earmarked for improved capital equipment.

It's imperative that the wage index be increased to allow the patients that we serve get the equipment and the care that they deserve. Without that increase, it's only a matter of time before the hospital's own cash reserves are depleted.

In negotiating with an HMO, the hospital can bargain to receive higher payments; with federal or state insurance, the hospital has to take what is offered. Congress should do its best to make sure that the payment it offers is a fair one.

TRIBUTE TO WILLIAM B. RUGER, SR.

Mr. GREGG. Mr. President, one of New Hampshire's leading citizens, William B. Ruger, Sr., Chairman Emeritus of Sturm, Ruger & Company died peacefully at home on Saturday, July 6, 2002.

I have had the pleasure of knowing Bill Ruger for several decades. He was one of America's great gun designers and a true American entrepreneur.

Not only was Bill a giant in the firearm industry, his other interests were noted nationally as well. His philanthropy was especially evident through charities in communities throughout New Hampshire, as well as the Buffalo Bill Historical Center in Cody, WY where he served as a member of the Board of Trustees for over 15 years. Also, his Western Art Collection is thought to be one of the finest in the country.

In 1999 he was honored by the Camp Fire Club of America, one of the most prestigious hunting and conservation organizations in the country. In awarding Bill their Medal of Honor, they appropriately said, ''he embodies a natural sense of justice and a passion for exploration, not only in the traditional sense, but in a business sense as well. Through the various and substantial endowments he has created, he has established a way to train and educate the youth of our country in the importance of personal responsibility, conservation, and truth.''

New Hampshire, and especially the community of Croydon, has lost a great citizen, and he will be sorely missed.

ADDITIONAL STATEMENTS

TRIBUTE TO NANCY LÓPEZ

● Mr. DOMENICI. Madam, President, I rise today to pay tribute to one of New Mexico's favorite daughters, Nancy López, who over the Fourth of July holiday concluded her full-time career on the Ladies Professional Golf Association tour.

Nancy has a remarkable history not only as a player, but as an inspirational role model, who overcame hardships like racial and gender bias, to reach remarkable heights as a golfer. She did so with an inner strength, natural talent and the sustaining guidance of her loving parents, Marina and Domingo. They scrimped and saved to help Nancy reach her potential, which culminated at the pinnacle of the professional golfing world.

Her father's love for golf helped Nancy tap her natural talent for the sport at the young age of 8. She soon excelled, winning the New Mexico Women's Amateur title at 12, followed by twice winning the USGA Junior Girls Championship.

Nancy successfully petitioned the New Mexico Activities Association to be allowed to play on the boy's team at the Robert H. Goddard High School in Roswell. She honed her talents as a player at Tulsa University and turned pro in 1977.

From the little girl who first swung a club with her father on Roswell's public course, Nancy embarked on a 25-year career that brought greater public attention to the LPGA. In her first full year as a professional, she won nine tournaments and grabbed another eight titles in 1979. In all, Nancy has won 48 titles on the LPGA Tour and has rightfully been identified as the key figure who helped popularize women's golf.

In 1987, she was inducted into the LPGA Hall of Fame, and in 1992, I was privileged to personally congratulate her as she received the prestigious Flo Hyman Award from the Women's Sports Foundation for ''exemplifying dignity, spirit and commitment to excellence.''

I think it is only fitting that a school in her old stomping grounds has been renamed, through the efforts of the Roswell Hispano Chamber of Commerce, the Nancy López Elementary School. This tribute serves as one reminder of the enduring pride the people of Roswell and New Mexico have for Nancy. As she makes the transition from the LPGA tour to devote more time to her family and charitable endeavors, I believe it is proper to honor and congratulate Nancy López.

I fully expect Nancy will continue to serve as a model for Hispanic youth, female athletes, and parents striving to provide a nurturing and loving environment for their children.●

U.C. DAVIS CANCER CENTER NATIONAL CANCER INSTITUTE DESIGNATION

● Mrs. BOXER. Madam President, I am pleased to note that the University of California, Davis Cancer Center has achieved National Cancer Institute, NCI, designation. With this designation, the UC Davis Cancer Center becomes one of only nine centers in California.

The NCI designation is most prestigious, awarded to cancer institutions that have significantly contributed innovative cancer research to the scientific community. Furthermore, this notable distinction provides ongoing Federal support for research in the fight against this disease

The center is a collaboration of over 200 scientists, working at the UC Davis Medical Center in Sacramento, the main UC campus in Davis, and the Lawrence Livermore National Laboratory.

The partnership with Lawrence Livermore, the first of its kind in the Nation, was a major factor in winning the NCI designation. Physicians and scientists work together to use technology developed for the defense industry and other non-medical uses to advance cancer diagnosis and treatment.

In addition to hundreds of cancer studies underway at the cancer center,

joint research collaborations with Lawrence Livermore include such innovative projects as photonic probes testing, which is used to instantly detect cancer and save patients from unnecessary biopsies.

The center serves a population of five million people throughout Northern and Central California, Nevada, Arizona and Oregon and cares for about 3,000 newly diagnosed cancer patients each year.

I commend the UC Davis Cancer Center on this impressive achievement, and I extend my confidence that the center will make meaningful contributions to our search for a cure for this devastating disease.●

PEACHES FROM SOUTH CAROLINA FARMERS

● Mr. HOLLINGS. Madam President, today, peaches from my home State have been delivered to offices throughout the Senate and the U.S. Capitol. Those of us here in Washington can cool off from the summer heat with fresh, juicy peaches, thanks to South Carolina's peach farmers.

For a tiny State, South Carolina is second, only to California, in peach production. This year we planted 16,000 acres, and expect to harvest 160 to 180 million pounds—twice what we harvested last year when cold weather devastated the crop. Because of hot, dry weather this past month, the peaches are slightly smaller, but the small size usually results in a sweeter peach for the consumer. So with all due respect to my colleagues from Georgia, South Carolina is known as the ''Tastier Peach State'' for good reason.

Earlier this spring, in a bipartisan fashion, this Congress passed a generous farm bill that when times are tough, will help the people who feed us. I voted for it. I did so because farmers are dedicated people who need support they can depend on. I hope as Senators and their staffs feast on these peaches, they think about the farmers who get up early every morning and labor all summer in the heat and humidity to bring us this delicious, nutritious, and satisfying harvest. We are so fortunate to have in this country safe, plentiful, and affordable fresh fruit and vegetables—but this Congress can never take that for granted.

I thank the South Carolina Peach Council, and especially David Winkles and the South Carolina Farm Bureau, for giving the U.S. Senate a taste of South Carolina. And I remind the rest of America to ask for South Carolina peaches at their groceries.●

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Ms. Evans, 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 a withdrawal and sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGE FROM THE HOUSE

ENROLLED BILL SIGNED

At 3:34 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the Speaker has signed the following enrolled bill:

S. 2594. An act to authorize the Secretary of the Treasury to purchase silver on the open market when the silver stockpile is depleted, to be used to mint coins.

The enrolled bill was signed subsequently by the President pro tempore (Mr. BYRD).

MEASURES READ THE FIRST TIME

The following bill was read the first time:

H.R. 4954. An act to amend title XVIII of the Social Security Act to provide for a voluntary program for prescription drug coverage under the Medicare Program, to modernize and reform payments and the regulatory structure of the Medicare Program, and for other purposes.

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–7718. A communication from the Chief of the Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Hedging Transactions'' (RIN1545–AY02) received on June 26, 2002; to the Committee on Finance.

EC–7719. A communication from the Chief of the Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Modification of Rev. Proc. 97–27 and Rev. Proc. 2002–9'' (Rev. Proc. 2002–19) received on June 26, 2002; to the Committee on Finance.

EC–7720. A communication from the Chief of the Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Rockpile Viticultural Area'' (2000R–436P) received on June 26, 2002; to the Committee on Finance.

EC–7721. A communication from the Chief of the Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Delegation of Authority'' (RIN1512–AC59) received on June 26, 2002; to the Committee on Finance.

EC–7722. A communication from the President of the United States, transmitting, pursuant to law, a report concerning emigration laws and policies of Armenia, Azerbaijan, Kazakhstan, Moldova, The Russian Federation, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan; to the Committee on Finance.

EC–7723. A communication from the Chief of the Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Waiver of 60-Month Bar on Reconsolidation After Disaffiliation'' (Rev. Proc. 2002–32, 2002–20) received on July 3, 2002; to the Committee on Finance.

EC–7724. A communication from the Chief of the Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Bureau of Labor Statistics Price Indexes for Department Stores—February 2002'' (Rev. Rul. 2002–29) received on July 3, 2002; to the Committee on Finance.

EC–7725. A communication from the Chief of the Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Weighted Average Interest Rate Update Notice'' (Notice 2002–32) received on July 3, 2002; to the Committee on Finance.

EC–7726. A communication from the Chief of the Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Information Reporting for Payments of Interest on Qualified Education Loans; Magnetic Media Filing Requirements for Information Returns'' (RIN1545–AW67; TD8992) received on July 3, 2002; to the Committee on Finance.

EC–7727. A communication from the Chief of the Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Equity Options with Flexible Terms'' (RIN1545–AX66; TD8990) received on June 3, 2002; to the Committee on Finance.

EC–7728. A communication from the Chief of the Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Guidance Necessary to Facilitate Electronic Tax Administration'' (RIN1545–AY04; REG–107184–00) received on June 3, 2002; to the Committee on Finance.

EC–7729. A communication from the Chief of the Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Tax and Revenue Anticipation Notes'' (Rev. Proc. 2002–31) received on June 3, 2002; to the Committee on Finance.

EC–7730. A communication from the Chief of the Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Rev. Proc. 2002–33; Additional First Year Depreciation'' (RP–114523–02) received on June 3, 2002; to the Committee on Finance.

EC–7731. A communication from the Chief of the Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Appeals Settlement Guidelines: Gaming—Class Life of Floating Gaming Facilities'' (UIL 168.20–07) received on June 3, 2002; to the Committee on Finance.

EC–7732. A communication from the Chief of the Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Designation by Common Parent of a New Agent for the Consolidated Group'' (Rev. Proc. 2002–43, 2002–28) received on June 3, 2002; to the Committee on Finance.

EC–7733. A communication from the Chief of the Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Revenue Ruling on Accelerated Deductions'' (Rev. Rul. 2002–46) received on June 3, 2002; to the Committee on Finance.

EC–7734. A communication from the Chief of the Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule

entitled ''Agent for Consolidated Group'' (RIN1545–AX56; TD9002) received on June 3, 2002; to the Committee on Finance.

EC–7735. A communication from the Chief of the Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Stranded Costs—Safe Harbor for Recovery of Stranded Costs by Electrical Utility Companies'' (Rev. Proc. 2002–49) received on June 3, 2002; to the Committee on Finance.

EC–7736. A communication from the Chief of the Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''1099B—Safe Harbor'' (Rev. Proc. 2002–50) received on June 3, 2002; to the Committee on Finance.

EC–7737. A communication from the Chief of the Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Notice on Accelerated Deductions'' (Notice 2002–48) received on June 3, 2002; to the Committee on Finance.

EC–7738. A communication from the Chief of the Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Bureau of Labor Statistics Price Indexes for Department Stores—May 2002'' (Rev. Rul. 2002–47) received on June 3, 2002; to the Committee on Finance.

EC–7739. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, the report of the Office of the Inspector General for the period October 1, 2001 through March 31, 2002; to the Committee on Governmental Affairs.

EC–7740. A communication from the Administrator of the Agency for International Development, transmitting, pursuant to law, the Agency's Annual Performance Report; to the Committee on Governmental Affairs.

EC–7741. A communication from the Assistant Secretary for Administration and Management, Department of Labor, transmitting, pursuant to law, the Departments Commercial Activities Inventory for Fiscal Year 2001; to the Committee on Governmental Affairs.

EC–7742. A communication from the Deputy Archivist of the United States, National Archives and Records Administration, transmitting, pursuant to law, the report of a rule entitled ''NARA Facilities; Address and Hours'' (RIN3095–AB08) received on June 27, 2002; to the Committee on Governmental Affairs.

EC–7743. A communication from the Deputy Archivist of the United States, National Archives and Records Administration, transmitting, pursuant to law, the report of a rule entitled ''NARA Regulations; Technical Amendments'' (RIN3095–AB15) received on June 27, 2002; to the Committee on Governmental Affairs.

EC–7744. A communication from the Director, Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, the Office of Management and Budget's Fiscal Year 2002 Inventory of Commercial Activities; to the Committee on Governmental Affairs.

EC–7745. A communication from the Deputy Archivist of the United States, National Archives and Records Administration, transmitting, pursuant to law, the report of a rule entitled ''National Historical Publications and Records Commission Grant Regulations'' (RIN3095–AA93) received on June 27, 2002; to the Committee on Governmental Affairs.

EC–7746. A communication from the Chairman, Postal Rate Commission, transmitting, pursuant to law, the annual Postal Rate Commission Report on International Mail Costs, Revenues, and Volumes for Fiscal Year 2001; to the Committee on Governmental Affairs.

EC–7747. A communication from the Chief Judge, Superior Court of the District of Columbia, transmitting, pursuant to law, the Supplement to the Family Court Transition Plan; to the Committee on Governmental Affairs.

EC–7748. A communication from the Chief of the Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Weighted Average Interest Rate Update Notice'' (Notice 2002–49) received on July 3, 2002; to the Committee on Finance.

EC–7749. A communication from the Principal Deputy Associate Administrator of the Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Implementation Plans: South Carolina: Nitrogen Oxides Budget and Allowance Trading Program'' (FRL7238–6) received on June 26, 2002; to the Committee on Environment and Public Works.

EC–7750. A communication from the Principal Deputy Associate Administrator of the Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Air Quality Implementation Plans; Michigan'' (FRL7226–6) received on June 26, 2002; to the Committee on Environment and Public Works.

EC–7751. A communication from the Principal Deputy Associate Administrator of the Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Air Quality Implementation Plans; State of Utah; Salt Lake County—Trading of Emission Budgets for PM10 Transportation Conformity'' (FRL7238–5) received on June 26, 2002; to the Committee on Environment and Public Works.

EC–7752. A communication from the Principal Deputy Associate Administrator of the Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Idaho: Final Authorization of State Hazardous Waste Management Program Revision'' (FRL7239–7) received on June 26, 2002; to the Committee on Environment and Public Works.

EC–7753. A communication from the Principal Deputy Associate Administrator of the Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''OMB Approvals Under the Paperwork Reduction Act; Technical Amendment'' (FRL7237–5) received on June 26, 2002; to the Committee on Environment and Public Works.

EC–7754. A communication from the Principal Deputy Associate Administrator of the Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Revisions to the California State Implementation Plan; Bay Area Air Quality Management District; South Coast Air Quality Management District'' (FRL7232–6) received on June 26, 2002; to the Committee on Environment and Public Works.

EC–7755. A communication from the Assistant Secretary for Fish and Wildlife and Parks, Fish and Wildlife Service, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled ''Endangered and Threatened Wildlife and Plants; Critical Habitat Designation for the Carolina Heelsplitter'' (RIN1018–AH31) received on June 27, 2002; to the Committee on Environment and Public Works.

EC–7756. A communication from the Director, Fish and Wildlife Service, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled ''Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Ambrosia pumila (San Diego Ambrosia) from Southern California'' (RIN1018–AF86) received on June 27, 2002; to the Committee on Environment and Public Works.

EC–7757. A communication from the Director, Fish and Wildlife Service, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled ''Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the Southern California District Vertebrate Population Segment of the Mountain Yellow-legged Frog (Rana muscosa) received on June 27, 2002; to the Committee on Environment and Public Works.

EC–7758. A communication from the Principal Deputy Associate Administrator of the Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Supplemental Allocation of Fiscal Year 2002 Operator Training Grants for Wastewater Security'' received on July 3, 2002; to the Committee on Environment and Public Works.

EC–7759. A communication from the Principal Deputy Associate Administrator of the Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Revisions to the California State Implementation Plan, Imperial County Air Pollution Control District'' (FRL7234–5) received on July 3, 2002; to the Committee on Environment and Public Works.

EC–7760. A communication from the Principal Deputy Associate Administrator of the Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Revisions to the California State Implementation Plan, Santa Barbara County Air Pollution Control District, El Dorado County Air Pollution Control District'' (FRL7220–8) received on July 3, 2002; to the Committee on Environment and Public Works.

EC–7761. A communication from the Principal Deputy Associate Administrator of the Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Oil Pollution Prevention and Response: Non-Transportation-Related Onshore and Offshore Facilities'' (FRL7241–5) received on July 3, 2002; to the Committee on Environment and Public Works.

EC–7762. A communication from the Principal Deputy Associate Administrator of the Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Allocation of Fiscal Year 2002 Youth and the Environment Training and Employment Program Funds'' received on July 3, 2002; to the Committee on Environment and Public Works.

EC–7763. A communication from the Principal Deputy Associate Administrator of the Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Determination of Attainment for the Carbon Monoxide National Ambient Air Quality Standard for Fairbanks Carbon Monoxide Nonattainment Area, Alaska'' (FRL7240–8) received on July 3, 2002; to the Committee on Environment and Public Works.

EC–7764. A communication from the Principal Deputy Associate Administrator of the Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Finding of State Implementation Plan Inadequacy; Arizona—Salt River Monitoring Site; Metropolitan Phoenix PM–10 Nonattainment Area'' (FRL7238–8) received on July 3, 2002; to the Committee on Environment and Public Works.

EC–7765. A communication from the Principal Deputy Associate Administrator of the Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Georgia: Final Authorization of State

Hazardous Waste Management Program Revision'' (FRL7241–4) received on July 3, 2002; to the Committee on Environment and Public Works.

EC–7766. A communication from the Principal Deputy Associate Administrator of the Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry'' (FRL7240–5) received on July 3, 2002; to the Committee on Environment and Public Works.

EC–7767. A communication from the Principal Deputy Associate Administrator of the Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Ocean Dumping; Site Designation'' (FRL7241–2) received on July 3, 2002; to the Committee on Environment and Public Works.

EC–7768. A communication from the Principal Deputy Associate Administrator of the Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Correction of Typographical Errors and Removal of Obsolete Language in Regulations on Reportable Quantities'' (FRL7241–8) received on July 3, 2002; to the Committee on Environment and Public Works.

EC–7769. A communication from the Assistant Administrator for Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Magnuson Act Provisions; Fisheries off West Coast States in the Western Pacific; Pacific Coast Groundfish Fishery; Annual Specification; Pacific Whiting'' (RIN0648–AP85) received on June 26, 2002; to the Committee on Commerce, Science, and Transportation.

EC–7770. A communication from the Legal Advisor, Wireless Telecommunications Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Parts 2 and 25 of the Commission's Rules to Permit Operations of NGSO FSS Systems Co—Frequency with GSO and Terrestrial Systems in the Ku-Band Frequency Range'' (ET Doc. No. 98–206) received on June 27, 2002; to the Committee on Commerce, Science, and Transportation.

EC–7771. A communication from the Chief of Regulations and Administrative Law, United States Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Regatta Regulations (including 10 regulations)'' ((RIN2115–AE46)(2002–0001)) received on July 2, 2002; to the Committee on Commerce, Science, and Transportation.

EC–7772. A communication from the Commander, Acting Chief of Regulations and Administrative Law, United States Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Regatta Regulations; APBA Off-Shore Boat Race, Tybee Island, GA'' ((RIN2115–AE46)(2002–0023)) received on July 2, 2002; to the Committee on Commerce, Science, and Transportation.

EC–7773. A communication from the Commander, Acting Chief of Regulations and Administrative Law, United States Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Safety/Security Zone Regulations; Georgetown Channel, Potomac River, Washington D.C.'' ((RIN2115–AA97)(2002–0105)) received on July 2, 2002; to the Committee on Commerce, Science, and Transportation.

EC–7774. A communication from the Commander, Acting Chief of Regulations and Administrative Law, United States Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Regatta Regulations; Skull Creek, Hilton Head, SC'' ((RIN2115–AE46)(2002–0022)) received on July 2, 2002; to the Committee on Commerce, Science, and Transportation.

EC–7775. A communication from the Commander, Acting Chief of Regulations and Administrative Law, United States Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Safety/Security Zone Regulations; Naval Submarine Base Bangor, Puget Sound'' ((RIN2115–AA97)(2002–0106)) received on July 2, 2002; to the Committee on Commerce, Science, and Transportation.

EC–7776. A communication from the Commander, Acting Chief of Regulations and Administrative Law, United States Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Regatta Regulations; Harbour Town Fireworks Display, Calibogue Sound, Hilton Head, SC'' ((RIN2115–AE46)(2002–0021)) received on July 2, 2002; to the Committee on Commerce, Science, and Transportation.

EC–7777. A communication from the Commander, Acting Chief of Regulations and Administrative Law, United States Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Safety/Security Zone Regulations: Liquefied Natural Gas Tankers, Cook Inlet, AK'' ((RIN2115–AA97)(2002–0104)) received on July 2, 2002; to the Committee on Commerce, Science, and Transportation.

EC–7778. A communication from the Commander, Acting Chief of Regulations and Administrative Law, United States Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Drawbridge Regulations; Atlantic Intracoastal Waterway, Mile 1069.4 at Dania Beach, Broward County, FL'' ((RIN2115–AE47)(2002–0059)) received on July 2, 2002; to the Committee on Commerce, Science, and Transportation.

EC–7779. A communication from the Commander, Acting Chief of Regulations and Administrative Law, United States Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Safety/Security Zone Regulations; Saginaw River, Bay City, MI'' ((RIN2115–AA97)(2002–0109)) received on July 2, 2002; to the Committee on Commerce, Science, and Transportation.

EC–7780. A communication from the Commander, Acting Chief of Regulations and Administrative Law, United States Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Safety/Security Zone Regulations; Port of New York and New Jersey'' ((RIN2115–AA97)(2002–0113)) received on July 2, 2002; to the Committee on Commerce, Science, and Transportation.

EC–7781. A communication from the Commander, Acting Chief of Regulations and Administrative Law, United States Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Safety/Security Zone Regulations: Saginaw River, Bay City, MI'' ((RIN2115–AA97)(2002–0103)) received on July 2, 2002; to the Committee on Commerce, Science, and Transportation.

EC–7782. A communication from the Commander, Acting Chief of Regulations and Administrative Law, United States Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Safety/Security Zone Regulations; Charleston Harbor River, SC'' ((RIN2115–AA97)(2002–0108)) received on July 2, 2002; to the Committee on Commerce, Science, and Transportation.

EC–7783. A communication from the Commander, Acting Chief of Regulations and Administrative Law, United States Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Safety/Security Zone Regulations; San Francisco Bay, San Francisco, CA and Oakland, CA'' ((RIN2115–AA97)(2002–0107)) received on July 2, 2002; to the Committee on Commerce, Science, and Transportation.

EC–7784. A communication from the Commander, Acting Chief of Regulations and Administrative Law, United States Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Safety/Security Zone Regulations; Festa Italiana 2002; Milwaukee, Wisconsin'' ((RIN2115–AA97)(2002–0111)) received on July 2, 2002; to the Committee on Commerce, Science, and Transportation.

EC–7785. A communication from the Commander, Acting Chief of Regulations and Administrative Law, United States Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Regatta Regulations; Savannah Waterfront Association July 4th Fireworks Display, Savannah River, Savannah, GA'' ((RIN2115–AE46)(2002–0002)) received on July 2, 2002; to the Committee on Commerce, Science, and Transportation.

EC–7786. A communication from the Commander, Acting Chief of Regulations and Administrative Law, United States Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Safety/Security Zone Regulations; Sturgeon Bay Fireworks, Sturgeon Bay, Wisconsin'' ((RIN2115–AA97)(2002–0112)) received on July 2, 2002; to the Committee on Commerce, Science, and Transportation.

EC–7787. A communication from the Commander, Acting Chief of Regulations and Administrative Law, United States Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Safety/Security Zone Regulations; Detroit River, Grosse Ile, MI'' ((RIN2115–AA97)(2002–0110)) received on July 2, 2002; to the Committee on Commerce, Science, and Transportation.

EC–7788. A communication from the Program Analyst of the Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Eurocopter France Model AS350B, BA, B1, B2, B3, C, D, D1; and AS355E, F, F1, F2, N, and EC130 B4 Helicopters; CORRECTION'' ((RIN2120–AA64)(2002–0293)) received on July 2, 2002; to the Committee on Commerce, Science, and Transportation.

EC–7789. A communication from the Program Analyst of the Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: MD Helicopters Inc. Model MD 900 Helicopters'' ((RIN2120–AA64)(2002–0292)) received on July 2, 2002; to the Committee on Commerce, Science, and Transportation.

EC–7790. A communication from the Program Analyst of the Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Sikorsky Model S–70A and S–70C Helicopters'' ((RIN2120–AA64)(2002–0295)) received on July 2, 2002; to the Committee on Commerce, Science, and Transportation.

EC–7791. A communication from the Program Analyst of the Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Empresa Brasileira de Aeronautica SA Model EMB 135 and 145 Series Airplanes'' ((RIN2120–AA64)(2002–0294)) received on July 2, 2002; to the Committee on Commerce, Science, and Transportation.

EC–7792. A communication from the Program Analyst of the Federal Aviation Administration, Department of Transportation,

transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Rolls Royce plc RB211 Trent 875, 877, 884, 892, 892B, and 895 Series Turbofan Engines'' ((RIN2120–AA64)(2002–0296)) received on July 2, 2002; to the Committee on Commerce, Science, and Transportation.

EC–7793. A communication from the Program Analyst of the Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Rolls Royce plc RB211 Trent Series Turbofan Engines'' ((RIN2120–AA64)(2002–0298)) received on July 2, 2002; to the Committee on Commerce, Science, and Transportation.

EC–7794. A communication from the Program Analyst of the Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Air Tractor, Inc. Models AT400, 401, 401B, 402, 402A, 402B, AT 501, AT 802, and AT 802A Airplanes'' ((RIN2120–AA64)(2002–0299)) received on July 2, 2002; to the Committee on Commerce, Science, and Transportation.

EC–7795. A communication from the Program Analyst of the Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Fees for Services for Certain Flights; Notice of Agency Reconsideration of Final Rule'' ((RIN2120–AG17)(2002–0001)) received on July 2, 2002; to the Committee on Commerce, Science, and Transportation.

EC–7796. A communication from the Program Analyst of the Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Boeing Model 777 Series Airplanes'' ((RIN2120–AA64)(2002–0302)) received on July 2, 2002; to the Committee on Commerce, Science, and Transportation.

EC–7797. A communication from the Program Analyst of the Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Eurocopter France Model SA330F, G, J, and AS332C1, L, and L1 Helicopters; request for comments'' ((RIN2120–AA64)(2002–0301)) received on July 2, 2002; to the Committee on Commerce, Science, and Transportation.

EC–7798. A communication from the Program Analyst of the Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Airbus Model A300 B4–600 and A300 B4 600R Series Airplanes; and Model A300 F4–605 Airplanes'' ((RIN2120–AA64)(2002–0303)) received on July 2, 2002; to the Committee on Commerce, Science, and Transportation.

EC–7799. A communication from the Program Analyst of the Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: General Electric Company CF34 341 and –3B1 Series Turbofan Engines'' ((RIN2120–AA64)(2002–0304)) received on July 2, 2002; to the Committee on Commerce, Science, and Transportation.

EC–7800. A communication from the Program Analyst of the Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Rolls Royce plc RB211 Trent 875, 877, 884, 892, 892B, and 895 Series Turbofan Engines'' ((RIN2120–AA64)(2002–0305)) received on July 2, 2002; to the Committee on Commerce, Science, and Transportation.

EC–7801. A communication from the Chief, Regulations and Administrative Law, United States Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Safety/Security Zone Regulations (including 64 regulations)'' ((RIN2115–AA97)(2002–0001)) received on July 2, 2002; to the Committee on Commerce, Science, and Transportation.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mrs. FEINSTEIN:

S. 2716. A bill to modify the authority of the Federal Energy Regulatory Commission to conduct investigations, to increase the criminal penalties for violations of the Federal Power Act and the Natural Gas Act, and to authorize the Chairman of the Federal Energy Regulatory Commission to contract for consultant services; to the Committee on Energy and Natural Resources.

By Mr. BIDEN (for himself and Mr. HATCH):

S. 2717. A bill to increase criminal penalties relating to conspiracy, mail fraud, wire fraud, and ERISA violations, and for other purposes; to the Committee on the Judiciary.

ADDITIONAL COSPONSORS

S. 515

At the request of Mr. DOMENICI, the name of the Senator from Massachusetts (Mr. KERRY) was added as a cosponsor of S. 515, a bill to amend the Internal Revenue Code of 1986 to establish a permanent tax incentive for research and development, and for other purposes.

S. 572

At the request of Mr. CHAFEE, the names of the Senator from Kentucky (Mr. BUNNING) and the Senator from Washington (Mrs. MURRAY) were added as cosponsors of S. 572, a bill to amend title XIX of the Social Security Act to extend modifications to DSH allotments provided under the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000.

S. 830

At the request of Mr. CHAFEE, the names of the Senator from Rhode Island (Mr. REED) and the Senator from Missouri (Mrs. CARNAHAN) were added as cosponsors of S. 830, a bill to amend the Public Health Service Act to authorize the Director of the National Institute of Environmental Health Sciences to make grants for the development and operation of research centers regarding environmental factors that may be related to the etiology of breast cancer.

S. 873

At the request of Mr. HELMS, the name of the Senator from Colorado (Mr. ALLARD) was added as a cosponsor of S. 873, a bill to preserve and protect the free choice of individual employees to form, join, or assist labor organizations, or to refrain from such activities.

S. 946

At the request of Ms. SNOWE, the name of the Senator from Maryland (Mr. SARBANES) was added as a cosponsor of S. 946, a bill to establish an Office on Women's Health within the Department of Health and Human Services.

S. 1022

At the request of Mr. WARNER, the names of the Senator from Nevada (Mr. REID) and the Senator from Missouri (Mrs. CARNAHAN) were added as cosponsors of S. 1022, a bill to amend the Internal Revenue Code of 1986 to allow Federal civilian and military retirees to pay health insurance premiums on a pretax basis and to allow a deduction for TRICARE supplemental premiums.

S. 1760

At the request of Mr. THOMAS, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. 1760, a bill to amend title XVIII of the Social Security Act to provide for the coverage of marriage and family therapist services and mental health counselor services under part B of the medicare program, and for other purposes.

S. 1945

At the request of Mr. JOHNSON, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. 1945, a bill to provide for the merger of the bank and savings association deposit insurance funds, to modernize and improve the safety and fairness of the Federal deposit insurance system, and for other purposes.

S. 1975

At the request of Mr. REID, the name of the Senator from Louisiana (Mr. BREAUX) was added as a cosponsor of S. 1975, a bill to amend title III of the Public Health Service Act to include each year of fellowship training in geriatric medicine or geriatric psychiatry as a year of obligated service under the National Health Corps Loan Repayment Program.

S. 2010

At the request of Mr. LEAHY, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of S. 2010, a bill to provide for criminal prosecution of persons who alter or destroy evidence in certain Federal investigations or defraud investors of publicly traded securities, to disallow debts incurred in violation of securities fraud laws from being discharged in bankruptcy, to protect whistleblowers against retaliation by their employers, and for other purposes.

S. 2013

At the request of Mr. HARKIN, the name of the Senator from Pennsylvania (Mr. SPECTER) was added as a cosponsor of S. 2013, a bill to clarify the authority of the Secretary of Agriculture to prescribe performance standards for the reduction of pathogens in meat, meat products, poultry, and poultry products processed by establishments receiving inspection services.

S. 2268

At the request of Mr. MILLER, the names of the Senator from Arkansas

(Mrs. LINCOLN) and the Senator from Alabama (Mr. SHELBY) were added as cosponsors of S. 2268, a bill to amend the Act establishing the Department of Commerce to protect manufacturers and sellers in the firearms and ammunition industry from restrictions on interstate or foreign commerce.

S. 2272

At the request of Mrs. CLINTON, the name of the Senator from New Jersey (Mr. TORRICELLI) was added as a cosponsor of S. 2272, a bill to clarify certain provisions of the Tariff Suspension and Trade Act of 2000.

S. 2273

At the request of Mrs. CLINTON, the name of the Senator from New Jersey (Mr. TORRICELLI) was added as a cosponsor of S. 2273, a bill to reliquidate certain entries of tomato sauce preparation.

S. 2274

At the request of Mrs. CLINTON, the name of the Senator from New Jersey (Mr. TORRICELLI) was added as a cosponsor of S. 2274, a bill to reliquidate certain entries of tomato sauce preparation.

S. 2275

At the request of Mrs. CLINTON, the name of the Senator from New Jersey (Mr. TORRICELLI) was added as a cosponsor of S. 2275, a bill to reliquidate certain entries of tomato sauce preparation.

S. 2276

At the request of Mrs. CLINTON, the name of the Senator from New Jersey (Mr. TORRICELLI) was added as a cosponsor of S. 2276, a bill to reliquidate certain entries of tomato sauce preparation.

S. 2277

At the request of Mrs. CLINTON, the name of the Senator from New Jersey (Mr. TORRICELLI) was added as a cosponsor of S. 2277, a bill to reliquidate certain entries of tomato sauce preparation.

S. 2278

At the request of Mrs. CLINTON, the name of the Senator from New Jersey (Mr. TORRICELLI) was added as a cosponsor of S. 2278, a bill to reliquidate certain entries of tomato sauce preparation.

S. 2279

At the request of Mrs. CLINTON, the name of the Senator from New Jersey (Mr. TORRICELLI) was added as a cosponsor of S. 2279, a bill to reliquidate certain entries of tomato sauce preparation.

S. 2280

At the request of Mrs. CLINTON, the name of the Senator from New Jersey (Mr. TORRICELLI) was added as a cosponsor of S. 2280, a bill to reliquidate certain entries of tomato sauce preparation.

S. 2281

At the request of Mrs. CLINTON, the name of the Senator from New Jersey (Mr. TORRICELLI) was added as a cosponsor of S. 2281, a bill to reliquidate certain entries of tomato sauce preparation.

S. 2282

At the request of Mrs. CLINTON, the name of the Senator from New Jersey (Mr. TORRICELLI) was added as a cosponsor of S. 2282, a bill to reliquidate certain entries of tomato sauce preparation.

S. 2283

At the request of Mrs. CLINTON, the name of the Senator from New Jersey (Mr. TORRICELLI) was added as a cosponsor of S. 2283, a bill to reliquidate certain entries of tomato sauce preparation.

S. 2284

At the request of Mrs. CLINTON, the name of the Senator from New Jersey (Mr. TORRICELLI) was added as a cosponsor of S. 2284, a bill to reliquidate certain entries of tomato sauce preparation.

S. 2285

At the request of Mrs. CLINTON, the name of the Senator from New Jersey (Mr. TORRICELLI) was added as a cosponsor of S. 2285, a bill to reliquidate certain entries of tomato sauce preparation.

S. 2286

At the request of Mrs. CLINTON, the name of the Senator from New Jersey (Mr. TORRICELLI) was added as a cosponsor of S. 2286, a bill to reliquidate certain entries of tomato sauce preparation.

S. 2287

At the request of Mrs. CLINTON, the name of the Senator from New Jersey (Mr. TORRICELLI) was added as a cosponsor of S. 2287, a bill to reliquidate certain entries of tomato sauce preparation.

S. 2288

At the request of Mrs. CLINTON, the name of the Senator from New Jersey (Mr. TORRICELLI) was added as a cosponsor of S. 2288, a bill to reliquidate certain entries of tomato sauce preparation.

S. 2480

At the request of Mr. SANTORUM, his name was added as a cosponsor of S. 2480, a bill to amend title 18, United States Code, to exempt qualified current and former law enforcement officers from state laws prohibiting the carrying of concealed handguns.

At the request of Mr. LEAHY, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. 2480, supra.

S. 2484

At the request of Mr. BAUCUS, the name of the Senator from Hawaii (Mr. AKAKA) was added as a cosponsor of S. 2484, a bill to amend part A of title IV of the Social Security Act to reauthorize and improve the operation of temporary assistance to needy families programs operated by Indian tribes, and for other purposes.

S. 2554

At the request of Mr. SMITH of New Hampshire, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. 2554, a bill to amend title 49, United States Code, to establish a program for Federal flight deck officers, and for other purposes.

S. 2560

At the request of Mr. ALLARD, the name of the Senator from Kansas (Mr. ROBERTS) was added as a cosponsor of S. 2560, a bill to provide for a multiagency cooperative effort to encourage further research regarding the causes of chronic wasting disease and methods to control the further spread of the disease in deer and elk herds, to monitor the incidence of the disease, to support State efforts to control the disease, and for other purposes.

S. 2622

At the request of Mr. HOLLINGS, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. 2622, a bill to authorize the President to posthumously award a gold medal on behalf of Congress to Joseph A. De Laine in recognition of his contributions to the Nation.

S. 2642

At the request of Mr. NELSON of Florida, the name of the Senator from Wyoming (Mr. ENZI) was added as a cosponsor of S. 2642, a bill to require background checks of alien flight school applicants without regard to the maximum certificated weight of the aircraft for which they seek training, and to require a report on the effectiveness of the requirement.

S. 2648

At the request of Mr. HUTCHINSON, the name of the Senator from Alabama (Mr. SHELBY) was added as a cosponsor of S. 2648, a bill to reauthorize and improve the program of block grants to States for temporary assistance for needy families, improve access to quality child care, and for other purposes.

S. 2663

At the request of Mr. MCCAIN, the name of the Senator from South Dakota (Mr. DASCHLE) was added as a cosponsor of S. 2663, a bill to permit the designation of Israeli-Turkish qualifying industrial zones.

S. 2672

At the request of Mr. BINGAMAN, the name of the Senator from Oregon (Mr. WYDEN) was added as a cosponsor of S. 2672, a bill to provide opportunities for collaborative restoration projects on National Forest System and other public domain lands, and for other purposes.

S. 2674

At the request of Mr. BROWNBACK, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. 2674, a bill to improve access to health care medically underserved areas.

S. RES. 293

At the request of Mr. BIDEN, the name of the Senator from Wisconsin (Mr. KOHL) was added as a cosponsor of S. Res. 293, a resolution designating the week of November 10 through November 16, 2002, as ''National Veterans

Awareness Week'' to emphasize the need to develop educational programs regarding the contributions of veterans to the country.

S. RES. 302

At the request of Mr. REID, his name was added as a cosponsor of S. Res. 302, a resolution honoring Ted Williams and extending the condolences of the Senate on his death.

At the request of Mr. BYRD, his name was added as a cosponsor of S. Res. 302, supra.

AMENDMENT NO. 4174

At the request of Mr. WELLSTONE, his name was added as a cosponsor of amendment No. 4174 proposed to S. 2673, an original bill to improve quality and transparency in financial reporting and independent audits and accounting services for public companies, to create a Public Company Accounting Oversight Board, to enhance the standard setting process for accounting practices, to strengthen the independence of firms that audit public companies, to increase corporate responsibility and the usefulness of corporate financial disclosure, to protect the objectivity and independence of securities analysts, to improve Securities and Exchange Commission resources and oversight, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mrs. FEINSTEIN:

S. 2716. A bill to modify the authority of the Federal Energy Regulatory Commission to conduct investigations, to increase the criminal penalties for violations of the Federal Power Act and the Natural Gas Act, and to authorize the Chairman of the Federal Energy Regulatory Commission to contract for consultant services; to the Committee on Energy and Natural Resources.

Mrs. FEINSTEIN. Madam President, I am pleased to introduce this bill today to strengthen the authority of the Federal Energy Regulatory Commission. In May, 2000 an energy crisis began in California and eventually spread to the other Western States. For about a year, FERC refused to execute its mandate to enforce the provisions of the Federal Power Act which required the Agency to enforce ''just and reasonable'' electricity prices.

In May, 2001 Pat Wood became the Chairman of the Commission and under his leadership the Commission has finally begun to aggressively investigate what went wrong in the California and Western energy markets.

However, there are still some weaknesses in FERC's authority to investigate problems in energy markets, solicit necessary information and punish wrongdoers. A report by the General Accounting Office, GAO, last month concluded that FERC does not have the necessary legal authority to police competitive energy markets.

This legislation is designed to bolster FERC's authority and allow the Agency to levy penalties that will hold market manipulators accountable for violations of the law. This legislation will go a long way toward providing FERC with the resources and legal authority it needs to protect consumers and ensure that energy prices are just and reasonable.

My legislation would do five things: 1. It would grant FERC the authority to use monetary penalties on companies that don't comply with requests for information. This is essentially the same authority that the Securities and Exchange Commission has; 2. It would make it easier for FERC to hire the necessary outside help they need including accountants, lawyers, and investigators for investigative purposes; 3. It would eliminate the requirement that FERC receive approval from the Office of Management and Budget before launching an investigation or price discovery of electricity or natural gas markets involving more than 10 companies; 4. It would increase the penalty amounts to $1 million instead of the current $5,000 for violations of the Federal Power Act and the Natural Gas Act; five years instead of the current two for violations of the statute; and, $50,000 per day per violation instead of the current $500 for violations of rules or orders under the Federal Power Act and the Natural Gas Act; and 5. It would increase the Commission's authority to impose civil penalties, it also broadened to all sections of Part II of the Federal Power Act and the penalty amount is increased from $10,000 to $50,000 per violation per day.

I continue to support FERC and Chairman Pat Wood in its efforts to stabilize energy prices, and ensure that our energy markets function properly although I believe that much more still needs to be done.

But even if FERC has the will, the GAO report correctly points out that it may not have all the necessary tools. It is my hope that this legislation will help by providing FERC the necessary authority to continue to aggressively monitor energy markets and investigate wrongdoing.

AMENDMENTS SUBMITTED AND PROPOSED

SA 4182. Mrs. HUTCHISON submitted an amendment intended to be proposed by her to the bill S. 2673, to improve quality and transparency in financial reporting and independent audits and accounting services for public companies, to create a Public Company Accounting Oversight Board, to enhance the standard setting process for accounting practices, to strengthen the independence of firms that audit public companies, to increase corporate responsibility and the usefulness of corporate financial disclosure, to protect the objectivity and independence of securities analysts, to improve Securities and Exchange Commission resources and oversight, and for other purposes; which was ordered to lie on the table.

SA 4183. Mrs. BOXER submitted an amendment intended to be proposed by her to the bill S. 2673, supra; which was ordered to lie on the table.

SA 4184. Mr. GRAMM (for himself and Mr. SANTORUM) proposed an amendment to amendment SA 4174 proposed by Mr. DASCHLE (for Mr. LEAHY (for himself, Mr. MCCAIN, Mr. DASCHLE, Mr. DURBIN, Mr. HARKIN, Mr. CLELAND, Mr. LEVIN, Mr. KENNEDY, Mr. BIDEN, Mr. FEINGOLD, Mr. MILLER, Mr. EDWARDS, Mrs. BOXER, Mr. CORZINE, Mr. KERRY, Mr. SCHUMER, Mr. BROWNBACK, and Mr. NELSON of Florida)) to the bill (S. 2673) supra.

SA 4185. Mr. DASCHLE (for Mr. LEAHY (for himself, Mr. MCCAIN, Mr. DASCHLE, Mr. DURBIN, Mr. HARKIN, Mr. CLELAND, Mr. LEVIN, Mr. KENNEDY, Mr. BIDEN, Mr. FEINGOLD, Mr. MILLER, Mr. EDWARDS, Mrs. BOXER, Mr. CORZINE, Mr. KERRY, Mr. SCHUMER, Mr. BROWNBACK, Mr. NELSON of Florida, Mr. WELLSTONE, Ms. STABENOW, and Mr. JOHNSON)) proposed an amendment to the bill S. 2673, supra.

SA 4186. Mr. DASCHLE (for Mr. BIDEN (for himself and Mr. HATCH)) proposed an amendment to the bill S. 2673, supra.

SA 4187. Mr. EDWARDS (for himself, Mr. ENZI, and Mr. CORZINE) submitted an amendment intended to be proposed by him to the bill S. 2673, supra.

SA 4188. Mr. LOTT proposed an amendment to the bill S. 2673, supra.

SA 4189. Mr. GRAMM proposed an amendment to amendment SA 4188 proposed by Mr. LOTT to the bill (S. 2673) supra.

SA 4190. Mr. DASCHLE (for Mr. BIDEN (for himself and Mr. HATCH)) proposed an amendment to amendment SA 4186 proposed by Mr. DASCHLE (for Mr. BIDEN (for himself and Mr. HATCH)) to the bill (S . 2673) supra.

SA 4191. Mr. ENSIGN submitted an amendment intended to be proposed by him to the bill S. 2673, supra; which was ordered to lie on the table.

SA 4192. Mr. MCCAIN submitted an amendment intended to be proposed by him to the bill S. 2673, supra; which was ordered to lie on the table.

SA 4193. Mr. MCCAIN submitted an amendment intended to be proposed by him to the bill S. 2673, supra; which was ordered to lie on the table.

SA 4194. Mr. MCCAIN submitted an amendment intended to be proposed by him to the bill S. 2673, supra; which was ordered to lie on the table.

SA 4195. Mr. MCCAIN submitted an amendment intended to be proposed by him to the bill S. 2673, supra; which was ordered to lie on the table.

SA 4196. Mr. MCCAIN submitted an amendment intended to be proposed by him to the bill S. 2673, supra; which was ordered to lie on the table.

SA 4197. Mr. SHELBY (for himself and Mr. DURBIN) submitted an amendment intended to be proposed by him to the bill S. 2673, supra; which was ordered to lie on the table.

SA 4198. Mr. CLELAND submitted an amendment intended to be proposed by him to the bill S. 2673, supra; which was ordered to lie on the table.

SA 4199. Mr. CLELAND submitted an amendment intended to be proposed by him to the bill S. 2673, supra; which was ordered to lie on the table.

SA 4200. Mr. GRAMM (for Mr. MCCONNELL) proposed an amendment to amendment SA 4187 submitted by Mr. EDWARDS (for himself, Mr. ENZI, and Mr. CORZINE) to the bill (S. 2673) supra.

SA 4201. Mrs. CARNAHAN (for herself and Mr. LEAHY) submitted an amendment intended to be proposed by her to the bill S. 2673, supra; which was ordered to lie on the table.

SA 4202. Mrs. CARNAHAN (for herself and Mr. NELSON of Florida) submitted an amendment intended to be proposed by her to the bill S. 2673, supra; which was ordered to lie on the table.

SA 4203. Mr. MURKOWSKI (for himself, Mr. STEVENS, Mr. CRAIG, Mr. BURNS, Mr. CRAPO, Mr. SMITH of Oregon, and Mr. INHOFE) submitted an amendment intended to be proposed by him to the bill S. 2673, supra; which was ordered to lie on the table.

SA 4204. Mr. SMITH of New Hampshire (for himself, Mrs. BOXER, and Mr. BURNS) submitted an amendment which was ordered to lie on the table.

SA 4205. Mr. SMITH of New Hampshire (for himself, Mrs. BOXER, and Mr. BURNS) submitted an amendment intended to be proposed by him to the bill S. 2554, to amend title 49, United States Code, to establish a program for Federal flight deck officers, and for other purposes; which was referred to the Committee on Commerce, Science, and Transportation.

SA 4206. Mr. MILLER proposed an amendment to the bill S. 2673, to improve quality and transparency in financial reporting and independent audits and accounting services for public companies, to create a Public Company Accounting Oversight Board, to enhance the standard setting process for accounting practices, to strengthen the independence of firms that audit public companies, to increase corporate responsibility and the usefulness of corporate financial disclosure, to protect the objectivity and independence of securities analysts, to improve Securities and Exchange Commission resources and oversight, and for other purposes.

SA 4207. Mrs. FEINSTEIN submitted an amendment intended to be proposed by her to the bill S. 2673, supra; which was ordered to lie on the table.

SA 4208. Mr. WELLSTONE submitted an amendment intended to be proposed by him to the bill S. 2673, supra; which was ordered to lie on the table.

SA 4182. Mrs. HUTCHISON submitted an amendment intended to be proposed by her to the bill S. 2673, to improve quality and transparency in financial reporting and independent audits and accounting services for public companies, to create a Public Company Accounting Oversight Board, to enhance the standard setting process for accounting practices, to strengthen the independence of firms that audit public companies, to increase corporate responsibility and the usefulness of corporate financial disclosure, to protect the objectivity and independence of securities analysts, to improve Securities and Exchange Commission resources and oversight, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert:

TITLE ____—PENSION PLAN PROTECTION

SEC. ___00. SHORT TITLE.

This title may be cited as the ''Pension Plan Protection Act''.

Subtitle A—Provisions To Promote Ensuring Pension Plan Asset Diversification

SEC. ___01. DIVERSIFICATION REQUIREMENTS FOR CERTAIN PLANS HOLDING EMPLOYER SECURITIES.

Section 404 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1104) is amended by adding at the end the following new subsection:

''(e)(1) An applicable individual account plan shall meet the requirements of paragraphs (2), (3), and (4).

''(2) A plan meets the requirements of this paragraph if the plan provides participants and beneficiaries with at least 4 different investment options, including 3 options which do not involve the acquisition or holding of qualifying employer securities or qualifying employer real property.

''(3) A plan meets the requirements of this paragraph if the plan provides that no employee contribution or elective deferral may be required to be invested in qualifying employer securities or qualifying employer real property either—

''(A) pursuant to the terms of the plan, or

''(B) at the direction of a person other than the participant making the employee contribution or elective deferral or a beneficiary of the participant.

''(4)(A) A plan meets the requirements of this paragraph if each employee who has a nonforfeitable right to 100 percent of the employee's accrued benefit derived from employer contributions may, at any time after the 90th day following the allocation of any qualifying employer securities or qualifying employer real property to the employee under the plan, direct the plan to divest the employee's account of such securities or property and reinvest an equivalent amount in other assets.

''(B) The Secretary of the Treasury, in consultation with the Secretary, shall prescribe regulations under which an employee is given reasonable notice of the opportunity, and a reasonable period of time, to make the divestiture and reinvestment under subparagraph (A).

''(5) For purposes of this subsection—

''(A) The term 'applicable individual account plan' means any individual account plan, except that such term shall not include an employee stock ownership plan (within the meaning of section 4975(e)(7) of the Internal Revenue Code of 1986), or a plan which meets the requirements of section 409(a) of such Code, under which the only contributions which may be made are qualified nonelective contributions (as defined in section 401(m)(4)(C) of such Code).

''(B) ELECTIVE DEFERRALS.—The term 'elective deferrals' has the meaning given such term by section 402(g)(3) of such Code.

''(C) The terms 'qualifying employer securities' and 'qualifying employer real property' have the meanings given such terms by section 407(d).''

SEC. ___02. MANDATORY QUARTERLY STATEMENTS.

(a) IN GENERAL.—Section 104 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1024) is amended—

(1) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively, and

(2) by inserting after subsection (b) the following new subsection:

''(c)(1) The plan administrator of an applicable individual account plan shall, within a reasonable period of time following the close of each calendar quarter, provide to each participant or beneficiary a statement with respect to his or her individual account which includes—

''(A) the fair market value as of the close of such quarter of the assets in the account in each investment option,

''(B) the percentage as of such calendar quarter of assets which each investment option is of the total assets in the account,

''(C) any administrative and transaction fees incurred in connection with the account during such quarter, and

''(D) such other information as the Secretary of the Treasury may prescribe.

''(2) If, as of the close of any calendar quarter, the aggregate fair market value of applicable securities held by a participant or beneficiary in an applicable individual account plan exceeds 25 percent of the aggregate value of all assets held by the participant or beneficiary in the plan, the plan administrator shall include with the statement under paragraph (1) a separate notice which—

''(A) notifies the participant or beneficiary of such percentage, and

''(B) reminds the participant or beneficiary of the right to diversify plan assets and recommends that the participant or beneficiary seek advice from a professional investment advisor as to the need for a reassessment of the participant's or beneficiary's investment diversification.

''(3) The Secretary of Labor may by regulation provide that this subsection shall not apply to plans with fewer than 100 participants, except that any such exception shall not apply for any requirement under this subsection to provide a statement and notice to a participant or beneficiary under the plan to whom paragraph (2) applies for any calendar quarter.

''(4) Any statement or notice under this subsection shall be written in a manner calculated to be understood by the average plan participant.

''(5) For purposes of this subsection—

''(A) the term 'applicable individual account plan' has the meaning given such term by section 404(e), and

''(B) the term 'applicable securities' means any securities described in subparagraph (A), (B), or (C) of section 407(d)(5) which are issued by the same person or an affiliate of, or related person to, such person.

''(6) For purposes of this subsection, all applicable individual account plans maintained by the same employer shall be treated as one employer.''

(b) ENFORCEMENT.—Section 502(c)(1) of such Act (29 U.S.C. 1132(c)(1)) is amended by striking ''or section 101(e)(1)'' and inserting '', section 101(e)(1), or section 104(c)''.

SEC. ___03. STUDY RELATING TO INDIVIDUAL ACCOUNT PLANS.

(a) IN GENERAL.—As soon as practicable after the date of the enactment of this Act, the Secretary of Labor, in consultation with the Secretary of the Treasury and the Securities and Exchange Commission, shall conduct a study relating to the investment of plan assets of individual account plans in stock or other securities.

(b) MATTERS TO BE STUDIED.—In conducting the study under subsection (a), the Secretary shall—

(1) consider the feasibility and likely effects of a statutory requirement that plan participants and beneficiaries be allowed to trade securities on a daily basis,

(2) consider the feasibility and likely effects of a mechanism to allow plan participants and beneficiaries to sell employer securities during a period of high market volatility if a blackout period is in effect,

(3) consider the feasibility and likely effects of establishing an insurance program to protect participants and beneficiaries from losses of their initial investment of employer and employee contributions in employer securities due to fraud, and

(4) consider such other matters as the Secretary determines appropriate to ensure the protection of participants or beneficiaries from insufficient diversification of plan assets.

(c) REPORT.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Labor shall submit to each House of Congress a report setting forth the results of the study conducted under this section, including any statutory or administrative changes as the Secretary determines appropriate.

Subtitle B—Prohibited Transaction Exemption For the Provision of Investment Advice

SEC. ___11. PROHIBITED TRANSACTION EXEMPTION FOR THE PROVISION OF INVESTMENT ADVICE.

(a) EXEMPTION FROM PROHIBITED TRANSACTIONS.—Section 408(b) of the Employee Retirement Income Security Act of 1974 (29

U.S.C. 1108(b)) is amended by adding at the end the following new paragraph:

''(14)(A) Any transaction described in subparagraph (B) in connection with the provision of investment advice described in section 3(21)(A)(ii), in any case in which—

''(i) the investment of assets of the plan is subject to the direction of plan participants or beneficiaries,

''(ii) the advice is provided to the plan or a participant or beneficiary of the plan by a fiduciary adviser in connection with any sale, acquisition, or holding of a security or other property for purposes of investment of plan assets, and

''(iii) the requirements of subsection (g) are met in connection with the provision of the advice.

''(B) The transactions described in this subparagraph are the following:

''(i) the provision of the advice to the plan, participant, or beneficiary;

''(ii) the sale, acquisition, or holding of a security or other property (including any lending of money or other extension of credit associated with the sale, acquisition, or holding of a security or other property) pursuant to the advice; and

''(iii) the direct or indirect receipt of fees or other compensation by the fiduciary adviser or an affiliate thereof (or any employee, agent, or registered representative of the fiduciary adviser or affiliate) in connection with the provision of the advice or in connection with a sale, acquisition, or holding of a security or other property pursuant to the advice.''.

(b) REQUIREMENTS.—Section 408 of such Act is amended further by adding at the end the following new subsection:

''(g) REQUIREMENTS RELATING TO PROVISION OF INVESTMENT ADVICE BY FIDUCIARY ADVISERS.—

''(1) IN GENERAL.—The requirements of this subsection are met in connection with the provision of investment advice referred to in section 3(21)(A)(ii), provided to an employee benefit plan or a participant or beneficiary of an employee benefit plan by a fiduciary adviser with respect to the plan in connection with any sale, acquisition, or holding of a security or other property for purposes of investment of amounts held by the plan, if—

''(A) in the case of the initial provision of the advice with regard to the security or other property by the fiduciary adviser to the plan, participant, or beneficiary, the fiduciary adviser provides to the recipient of the advice, at a time reasonably contemporaneous with the initial provision of the advice, a written notification (which may consist of notification by means of electronic communication)—

''(i) of all fees or other compensation relating to the advice that the fiduciary adviser or any affiliate thereof is to receive (including compensation provided by any third party) in connection with the provision of the advice or in connection with the sale, acquisition, or holding of the security or other property,

''(ii) of any material affiliation or contractual relationship of the fiduciary adviser or affiliates thereof in the security or other property,

''(iii) of any limitation placed on the scope of the investment advice to be provided by the fiduciary adviser with respect to any such sale, acquisition, or holding of a security or other property,

''(iv) of the types of services provided by the fiduciary advisor in connection with the provision of investment advice by the fiduciary adviser, and

''(v) that the adviser is acting as a fiduciary of the plan in connection with the provision of the advice,

''(B) the fiduciary adviser provides appropriate disclosure, in connection with the sale, acquisition, or holding of the security or other property, in accordance with all applicable securities laws,

''(C) the sale, acquisition, or holding occurs solely at the direction of the recipient of the advice,

''(D) the compensation received by the fiduciary adviser and affiliates thereof in connection with the sale, acquisition, or holding of the security or other property is reasonable, and

''(E) the terms of the sale, acquisition, or holding of the security or other property are at least as favorable to the plan as an arm's length transaction would be.

''(2) STANDARDS FOR PRESENTATION OF INFORMATION.—The notification required to be provided to participants and beneficiaries under paragraph (1)(A) shall be written in a clear and conspicuous manner and in a manner calculated to be understood by the average plan participant and shall be sufficiently accurate and comprehensive to reasonably apprise such participants and beneficiaries of the information required to be provided in the notification.

''(3) EXEMPTION CONDITIONED ON CONTINUED AVAILABILITY OF REQUIRED INFORMATION ON REQUEST FOR 1 YEAR.—The requirements of paragraph (1)(A) shall be deemed not to have been met in connection with the initial or any subsequent provision of advice described in paragraph (1) to the plan, participant, or beneficiary if, at any time during the provision of advisory services to the plan, participant, or beneficiary, the fiduciary adviser fails to maintain the information described in clauses (i) through (iv) of subparagraph (A) in currently accurate form and in the manner described in paragraph (2) or fails—

''(A) to provide, without charge, such currently accurate information to the recipient of the advice no less than annually,

''(B) to make such currently accurate information available, upon request and without charge, to the recipient of the advice, or

''(C) in the event of a material change to the information described in clauses (i) through (iv) of paragraph (1)(A), to provide, without charge, such currently accurate information to the recipient of the advice at a time reasonably contemporaneous to the material change in information.

''(4) MAINTENANCE FOR 6 YEARS OF EVIDENCE OF COMPLIANCE.—A fiduciary adviser referred to in paragraph (1) who has provided advice referred to in such paragraph shall, for a period of not less than 6 years after the provision of the advice, maintain any records necessary for determining whether the requirements of the preceding provisions of this subsection and of subsection (b)(14) have been met. A transaction prohibited under section 406 shall not be considered to have occurred solely because the records are lost or destroyed prior to the end of the 6-year period due to circumstances beyond the control of the fiduciary adviser.

''(5) EXEMPTION FOR PLAN SPONSOR AND CERTAIN OTHER FIDUCIARIES.—

''(A) IN GENERAL.—Subject to subparagraph (B), a plan sponsor or other person who is a fiduciary (other than a fiduciary adviser) shall not be treated as failing to meet the requirements of this part solely by reason of the provision of investment advice referred to in section 3(21)(A)(ii) (or solely by reason of contracting for or otherwise arranging for the provision of the advice), if—

''(i) the advice is provided by a fiduciary adviser pursuant to an arrangement between the plan sponsor or other fiduciary and the fiduciary adviser for the provision by the fiduciary adviser of investment advice referred to in such section,

''(ii) the terms of the arrangement require compliance by the fiduciary adviser with the requirements of this subsection, and

''(iii) the terms of the arrangement include a written acknowledgment by the fiduciary adviser that the fiduciary adviser is a fiduciary of the plan with respect to the provision of the advice.

''(B) CONTINUED DUTY OF PRUDENT SELECTION OF ADVISER AND PERIODIC REVIEW.—Nothing in subparagraph (A) shall be construed to exempt a plan sponsor or other person who is a fiduciary from any requirement of this part for the prudent selection and periodic review of a fiduciary adviser with whom the plan sponsor or other person enters into an arrangement for the provision of advice referred to in section 3(21)(A)(ii). The plan sponsor or other person who is a fiduciary has no duty under this part to monitor the specific investment advice given by the fiduciary adviser to any particular recipient of the advice.

''(C) AVAILABILITY OF PLAN ASSETS FOR PAYMENT FOR ADVICE.—Nothing in this part shall be construed to preclude the use of plan assets to pay for reasonable expenses in providing investment advice referred to in section 3(21)(A)(ii).

''(6) DEFINITIONS.—For purposes of this subsection and subsection (b)(14)—

''(A) FIDUCIARY ADVISER.—The term 'fiduciary adviser' means, with respect to a plan, a person who is a fiduciary of the plan by reason of the provision of investment advice by the person to the plan or to a participant or beneficiary and who is—

''(i) registered as an investment adviser under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.) or under the laws of the State in which the fiduciary maintains its principal office and place of business,

''(ii) a bank or similar financial institution referred to in section 408(b)(4),

''(iii) an insurance company qualified to do business under the laws of a State,

''(iv) a person registered as a broker or dealer under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.),

''(v) an affiliate of a person described in any of clauses (i) through (iv), or

''(vi) an employee, agent, or registered representative of a person described in any of clauses (i) through (v) who satisfies the requirements of applicable insurance, banking, and securities laws relating to the provision of the advice.

''(B) AFFILIATE.—The term 'affiliate' of another entity means an affiliated person of the entity (as defined in section 2(a)(3) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(3))).

''(C) REGISTERED REPRESENTATIVE.—The term 'registered representative' of another entity means a person described in section 3(a)(18) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(18)) (substituting the entity for the broker or dealer referred to in such section) or a person described in section 202(a)(17) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(17)) (substituting the entity for the investment adviser referred to in such section).''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to advice referred to in section 3(21)(A)(ii) of the Employee Retirement Income Security Act of 1974 provided on or after January 1, 2002.

Subtitle C—General Provisions

SEC. ___21. EFFECTIVE DATE AND RELATED RULES.

(a) IN GENERAL.—Except as otherwise provided in this title, the amendments made by this title shall apply with respect to plan years beginning on or after January 1, 2002.

(b) SPECIAL RULE FOR COLLECTIVELY BARGAINED PLANS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified on or before the date of the enactment of this Act, subsection (a) shall be applied to benefits pursuant to, and individuals covered by, any such agreement by substituting for ''January 1, 2002'' the date of the commencement of the first plan year beginning on or after the earlier of—

(1) the later of—

(A) January 1, 2003, or

(B) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof after the date of the enactment of this Act), or

(2) January 1, 2004.

(c) PLAN AMENDMENTS.—If the amendments made by this title require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after January 1, 2004, if—

(1) during the period after such amendments made by this title take effect and before such first plan year, the plan is operated in accordance with the requirements of such amendments made by this title, and

(2) such plan amendment applies retroactively to the period after such amendments made by this title take effect and before such first plan year.

SA 4183. Mrs. BOXER submitted an amendment intended to be proposed by her to the bill S. 2673, to improve quality and transparency in financial reporting and independent audits and accounting services for public companies, to create a Public Company Accounting Oversight Board, to enhance the standard setting process for accounting practices, to strengthen the independence of firms that audit public companies, to increase corporate responsibility and the usefulness of corporate financial disclosure, to protect the objectivity and independence of securities analysts, to improve Securities and Exchange Commission resources and oversight, and for other purposes; which was ordered to lie on the table; as follows:

On page 103, line 4, insert '', or any household member of the securities analyst,'' after ''analyst''.

SA 4184. Mr. GRAMM (for himself and Mr. SANTORUM) proposed an amendment to SA 4174 proposed by Mr. DASCHLE (for Mr. LEAHY (for himself, Mr. MCCAIN, Mr. DASCHLE, Mr. DURBIN, Mr. HARKIN, Mr. CLELAND, Mr. LEVIN, Mr. KENNEDY, Mr. BIDEN, Mr. FEINGOLD, Mr. MILLER, Mr. EDWARDS, Mrs. BOXER, Mr. CORZINE, Mr. KERRY, Mr. SCHUMER, Mr. BROWNBACK, and Mr. NELSON of Florida)) to the bill (S. 2673) to improve quality and transparency in financial reporting and independent audits and accounting services for public companies, to create a Public Company Accounting Oversight Board, to enhance the standard setting process for accounting practices, to strengthen the independence of firms that audit public companies, to increase corporate responsibility and the usefulness of corporate financial disclosure, to protect the objectivity and independence of securities analysts, to improve Securities and Exchange Commission resources and oversight, and for other purposes; which was ordered to lie on the table; as follows:

At the end of the division, insert the following new section:

''SEC. . EXEMPTION AUTHORITY.

''(1) CASE-BY-CASE WAIVERS.—Notwithstanding section 201(b) of this Act, the Board may, on a case-by-case basis, exempt any person, issuer, public accounting firm, or transaction from the prohibition on the provision of services under section 10A(g) of the Securities Exchange Act of 1934 (as added by this section), to the extent that such exemption is necessary or appropriate in the public interest and is consistent with the protection of investors, and subject to review by the Commission in the same manner as for rules of the Board under section 107.

''(2) SMALL BUSINESS EXEMPTION.—The Board may, by rule exempt any person, issuer or public accounting firm (or classes of such persons, issuers or public accounting firms) from the prohibition on the provision of services under section 10A(g) of the Securities Exchange Act of 1934 (as added by this section), based upon the small business nature of such person, issuer or public accounting firm, taking into consideration applicable factors such as total asset size, availability and cost of retaining multiple service providers, number of public company audits performed, and such other factors and conditions as the Board deems appropriate consistent with the purposes of this Act.''.

SA 4185. Mr. DASCHLE (for Mr. LEAHY (for himself, Mr. MCCAIN, Mr. DASCHLE, Mr. DURBIN, Mr. HARKIN, Mr. CLELAND, Mr. LEVIN, Mr. KENNEDY, Mr. BIDEN, Mr. FEINGOLD, Mr. MILLER, Mr. EDWARDS, Mrs. BOXER, Mr. CORZINE, Mr. KERRY, Mr. SCHUMER, Mr. BROWNBACK, Mr. NELSON of Florida, Mr. WELLSTONE, Ms. STABENOW, and Mr. JOHNSON)) proposed an amendment to the bill S. 2673, to improve quality and transparency in financial reporting and independent audits and accounting services for public companies, to create a Public Company Accounting Oversight Board, to enhance the standard setting process for accounting practices, to strengthen the independence of firms that audit public companies, to increase corporate responsibility and the usefulness of corporate financial disclosure, to protect the objectivity and independence of securities analysts, to improve Securities and Exchange Commission resources and oversight, and for other purposes; which was ordered to lie on the table; as follows:

On page 117, strike Act and insert the following:

TITLE VIII—CORPORATE AND CRIMINAL FRAUD ACCOUNTABILITY

SEC. 801. SHORT TITLE.

This title may be cited as the ''Corporate and Criminal Fraud Accountability Act of 2002''.

SEC. 802. CRIMINAL PENALTIES FOR ALTERING DOCUMENTS.

(a) IN GENERAL.—Chapter 73 of title 18, United States Code, is amended by adding at the end the following:

''§ 1519. Destruction, alteration, or falsification of records in Federal investigations and bankruptcy

''Whoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States or any case filed under title 11, or in relation to or contemplation of any such matter or case, shall be fined under this title, imprisoned not more than 10 years, or both.

''§ 1520. Destruction of corporate audit records

''(a)(1) Any accountant who conducts an audit of an issuer of securities to which section 10A(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78j–1(a)) applies, shall maintain all audit or review workpapers for a period of 5 years from the end of the fiscal period in which the audit or review was concluded.

''(2) The Securities and Exchange Commission shall promulgate, within 180 days, after adequate notice and an opportunity for comment, such rules and regulations, as are reasonably necessary, relating to the retention of relevant records such as workpapers, documents that form the basis of an audit or review, memoranda, correspondence, communications, other documents, and records (including electronic records) which are created, sent, or received in connection with an audit or review and contain conclusions, opinions, analyses, or financial data relating to such an audit or review, which is conducted by any accountant who conducts an audit of an issuer of securities to which section 10A(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78j–1(a)) applies.

''(b) Whoever knowingly and willfully violates subsection (a)(1), or any rule or regulation promulgated by the Securities and Exchange Commission under subsection (a)(2), shall be fined under this title, imprisoned not more than 5 years, or both.

''(c) Nothing in this section shall be deemed to diminish or relieve any person of any other duty or obligation, imposed by Federal or State law or regulation, to maintain, or refrain from destroying, any document.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 73 of title 18, United States Code, is amended by adding at the end the following new items:

''1519. Destruction, alteration, or falsification of records in Federal investigations and bankruptcy.

''1520. Destruction of corporate audit records.''.

SEC. 803. DEBTS NONDISCHARGEABLE IF INCURRED IN VIOLATION OF SECURITIES FRAUD LAWS.

Section 523(a) of title 11, United States Code, is amended—

(1) in paragraph (17), by striking ''or'' after the semicolon;

(2) in paragraph (18), by striking the period at the end and inserting ''; or''; and

(3) by adding at the end, the following:

''(19) that—

''(A) arises under a claim relating to—

''(i) the violation of any of the Federal securities laws (as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47)), any State securities laws, or any regulations or orders issued under such Federal or State securities laws; or

''(ii) common law fraud, deceit, or manipulation in connection with the purchase or sale of any security; and

''(B) results, in relation to any claim described in subparagraph (A), from—

''(i) any judgment, order, consent order, or decree entered in any Federal or State judicial or administrative proceeding;

''(ii) any settlement agreement entered into by the debtor; or

''(iii) any court or administrative order for any damages, fine, penalty, citation, restitutionary payment, disgorgement payment, attorney fee, cost, or other payment owed by the debtor.''.

SEC. 804. STATUTE OF LIMITATIONS FOR SECURITIES FRAUD.

(a) IN GENERAL.—Section 1658 of title 28, United States Code, is amended—

(1) by inserting ''(a)'' before ''Except''; and

(2) by adding at the end the following:

''(b) Notwithstanding subsection (a), a private right of action that involves a claim of fraud, deceit, manipulation, or contrivance in contravention of a regulatory requirement concerning the securities laws, as defined in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47)), may be brought not later than the earlier of—

''(1) Two years after the discovery of the facts constituting the violation; or

''(2) Five years after such violation.''.

(b) EFFECTIVE DATE.—The limitations period provided by section 1658(b) of title 28, United States Code, as added by this section, shall apply to all proceedings addressed by this section that are commenced on or after the date of enactment of this Act.

(c) NO CREATION OF ACTIONS.—Nothing in this section shall create a new, private right of action.

SEC. 805. REVIEW OF FEDERAL SENTENCING GUIDELINES FOR OBSTRUCTION OF JUSTICE AND EXTENSIVE CRIMINAL FRAUD.

Pursuant to section 994 of title 28, United States Code, and in accordance with this section, the United States Sentencing Commission shall review and amend, as appropriate, the Federal Sentencing Guidelines and related policy statements to ensure that—

(1) the base offense level and existing enhancements contained in United States Sentencing Guideline 2J1.2 relating to obstruction of justice are sufficient to deter and punish that activity;

(2) the enhancements and specific offense characteristics relating to obstruction of justice are adequate in cases where—

(A) documents and other physical evidence are actually destroyed, altered, or fabricated;

(B) the destruction, alteration, or fabrication of evidence involves—

(i) a large amount of evidence, a large number of participants, or is otherwise extensive;

(ii) the selection of evidence that is particularly probative or essential to the investigation; or

(iii) more than minimal planning; or

(C) the offense involved abuse of a special skill or a position of trust;

(3) the guideline offense levels and enhancements for violations of section 1519 or 1520 of title 18, United States Code, as added by this title, are sufficient to deter and punish that activity;

(4) the guideline offense levels and enhancements under United States Sentencing Guideline 2B1.1 (as in effect on the date of enactment of this Act) are sufficient for a fraud offense when the number of victims adversely involved is significantly greater than 50;

(5) a specific offense characteristic enhancing sentencing is provided under United States Sentencing Guideline 2B1.1 (as in effect on the date of enactment of this Act) for a fraud offense that endangers the solvency or financial security of a substantial number of victims; and

(6) the guidelines that apply to organizations in United States Sentencing Guidelines, chapter 8, are sufficient to deter and punish organizational criminal misconduct.

SEC. 806. PROTECTION FOR EMPLOYEES OF PUBLICLY TRADED COMPANIES WHO PROVIDE EVIDENCE OF FRAUD.

(a) IN GENERAL.—Chapter 73 of title 18, United States Code, is amended by inserting after section 1514 the following:

''§ 1514A. Civil action to protect against retaliation in fraud cases

''(a) WHISTLEBLOWER PROTECTION FOR EMPLOYEES OF PUBLICLY TRADED COMPANIES.—No company with a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78*l*), or that is required to file reports under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(d)), or any officer, employee, contractor, subcontractor, or agent of such company, may discharge, demote, suspend, threaten, harass, or in any other manner discriminate against an employee in the terms and conditions of employment because of any lawful act done by the employee—

''(1) to provide information, cause information to be provided, or otherwise assist in an investigation regarding any conduct which the employee reasonably believes constitutes a violation of section 1341, 1343, 1344, or 1348, any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders, when the information or assistance is provided to or the investigation is conducted by—

''(A) a Federal regulatory or law enforcement agency;

''(B) any Member of Congress or any committee of Congress; or

''(C) a person with supervisory authority over the employee (or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct); or

''(2) to file, cause to be filed, testify, participate in, or otherwise assist in a proceeding filed or about to be filed (with any knowledge of the employer) relating to an alleged violation of section 1341, 1343, 1344, or 1348, any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders.

''(b) ENFORCEMENT ACTION.—

''(1) IN GENERAL.—A person who alleges discharge or other discrimination by any person in violation of subsection (a) may seek relief under subsection (c), by—

''(A) filing a complaint with the Secretary of Labor; or

''(B) if the Secretary has not issued a final decision within 180 days of the filing of the complaint and there is no showing that such delay is due to the bad faith of the claimant, bringing an action at law or equity for de novo review in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy.

''(2) PROCEDURE.—

''(A) IN GENERAL.—An action under paragraph (1)(A) shall be governed under the rules and procedures set forth in section 42121(b) of title 49, United States Code.

''(B) EXCEPTION.—Notification made under section 42121(b)(1) of title 49, United States Code, shall be made to the person named in the complaint and to the employer.

''(C) BURDENS OF PROOF.—An action brought under paragraph (1)(B) shall be governed by the legal burdens of proof set forth in section 42121(b) of title 49, United States Code.

''(D) STATUTE OF LIMITATIONS.—An action under paragraph (1) shall be commenced not later than 90 days after the date on which the violation occurs.

''(c) REMEDIES.—

''(1) IN GENERAL.—An employee prevailing in any action under subsection (b)(1) shall be entitled to all relief necessary to make the employee whole.

''(2) COMPENSATORY DAMAGES.—Relief for any action under paragraph (1) shall include—

''(A) reinstatement with the same seniority status that the employee would have had, but for the discrimination;

''(B) the amount of back pay, with interest; and

''(C) compensation for any special damages sustained as a result of the discrimination, including litigation costs, expert witness fees, and reasonable attorney fees.

''(d) RIGHTS RETAINED BY EMPLOYEE.—Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any employee under any Federal or State law, or under any collective bargaining agreement.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 73 of title 18, United States Code, is amended by inserting after the item relating to section 1514 the following new item:

''1514A. Civil action to protect against retaliation in fraud cases.''.

SEC. 807. CRIMINAL PENALTIES FOR DEFRAUDING SHAREHOLDERS OF PUBLICLY TRADED COMPANIES.

(a) IN GENERAL.—Chapter 63 of title 18, United States Code, is amended by adding at the end the following:

''§ 1348. Securities fraud

''Whoever knowingly executes, or attempts to execute, a scheme or artifice—

''(1) to defraud any person in connection with any security of an issuer with a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78*l*) or that is required to file reports under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(d)); or

''(2) to obtain, by means of false or fraudulent pretenses, representations, or promises, any money or property in connection with the purchase or sale of any security of an issuer with a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78*l*) or that is required to file reports under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(d));

shall be fined under this title, or imprisoned not more than 10 years, or both.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 63 of title 18, United States Code, is amended by adding at the end the following new item:

''1348. Securities fraud.''.

SA 4186. Mr. DASCHLE (for Mr. BIDEN (for himself and Mr. HATCH)) proposed an amendment to the bill S. 2673, to improve quality and transparency in financial reporting and independent audits and accounting services for public companies, to create a Public Company Accounting Oversight Board, to enhance the standard setting process for accounting practices, to strengthen the independence of firms that audit public companies, to increase corporate responsibility and the usefulness of corporate financial disclosure,

to protect the objectivity and independence of securities analysts, to improve Securities and Exchange Commission resources and oversight, and for other purposes; as follows:

At the end, add the following:

TITLE VIII—WHITE-COLLAR CRIME PENALTY ENHANCEMENTS.

SEC. 801 SHORT TITLE.

This title may be cited as the ''White-Collar Crime Penalty Enhancement Act of 2002''.

SEC. 802. CRIMINAL PENALTIES FOR CONSPIRACY TO COMMIT OFFENSE OR TO DEFRAUD THE UNITED STATES.

Section 371 of title 18, United States Code, is amended by striking ''If two or more'' and all that follows through ''If, however,'' and inserting the following:

''(a) IN GENERAL.—If 2 or more persons—

''(1) conspire to commit any offense against the United States, in any manner or for any purpose, and 1 or more of such persons do any act to effect the object of the conspiracy, each person shall be fined or imprisoned, or both, as set forth in the specific substantive offense which was the object of the conspiracy; or

''(2) conspire to defraud the United States, or any agency thereof in any manner or for any purpose, and 1 or more of such persons do any act to effect the object of the conspiracy, each person shall be fined under this title, or imprisoned not more than 10 years, or both.

''(b) MISDEMEANOR OFFENSE.—If, however,''.

SEC. 803. CRIMINAL PENALTIES FOR MAIL AND WIRE FRAUD.

(a) MAIL FRAUD.—Section 1341 of title 18, United States Code, is amended by striking ''five years'' and inserting ''10 years''.

(b) WIRE FRAUD.—Section 1343 of title 18, United States Code, is amended by striking ''five years'' and inserting ''10 years''.

SEC. 804. CRIMINAL PENALTIES FOR VIOLATIONS OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.

Section 501 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1131) is amended—

(1) by striking ''$5,000'' and inserting ''$100,000'';

(1) by striking ''one year'' and inserting ''10 years''; and

(3) by striking ''$100,000'' and inserting ''$500,000''.

SEC. 805. AMENDMENT TO SENTENCING GUIDELINES RELATING TO CERTAIN WHITE-COLLAR OFFENSES.

(a) DIRECTIVE TO THE UNITED STATES SENTENCING COMMISSION.—Pursuant to its authority under section 994(p) of title 18, United States Code, and in accordance with this section, the United States Sentencing Commission shall review and, as appropriate, amend the Federal Sentencing Guidelines and related policy statements to implement the provisions of this title.

(b) REQUIREMENTS.—In carrying out this section, the Sentencing Commission shall—

(1) ensure that the sentencing guidelines and policy statements reflect the serious nature of the offenses and the penalties set forth in this title, the growing incidence of serious fraud offenses which are identified above, and the need to modify the sentencing guidelines and policy statements to deter, prevent, and punish such offenses;

(2) consider the extent to which the guidelines and policy statements adequately address—

(A) whether the guideline offense levels and enhancements for violations of the sections amended by this title are sufficient to deter and punish such offenses, and specifically, are adequate in view of the statutory increases in penalties contained in this title; and

(B) whether a specific offense characteristic should be added in United States Sentencing Guideline section 2B1.1 in order to provide for stronger penalties for fraud when the crime is committed by a corporate officer or director;

(3) assure reasonable consistency with other relevant directives and sentencing guidelines;

(4) account for any additional aggravating or mitigating circumstances that might justify exceptions to the generally applicable sentencing ranges;

(5) make any necessary conforming changes to the sentencing guidelines; and

(6) assure that the guidelines adequately meet the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States Code.

SEC. 806. CORPORATE RESPONSIBILITY FOR FINANCIAL REPORTS.

(a) IN GENERAL.—Chapter 63 of title 18, United States Code, is amended by adding at the end the following:

''§ 1348. Failure of corporate officers to certify financial reports

''(a) CERTIFICATION OF PERIODIC FINANCIAL REPORTS.—Each periodic report containing financial statements filed by an issuer with the Securities Exchange Commission pursuant to section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a) or 78o(d)) shall be accompanied by a written statement by the chairman of the board, chief executive officer, and chief financial officer (or equivalent thereof) of the issuer.

''(b) CONTENT.—The statement required under subsection (a) shall certify the appropriateness of the financial statements and disclosures contained in the periodic report or financial report, and that those financial statements and disclosures fairly present, in all material respects, the operations and financial condition of the issuer.

''(c) CRIMINAL PENALTIES.—Notwithstanding any other provision of law—

''(1) any person who recklessly violates any provision of this section shall upon conviction be fined not more than $500,000, or imprisoned not more than 5 years, or both; or

''(2) any person who willfully violates any provision of this section shall upon conviction be fined not more than $1,000,000, or imprisoned not more than 10 years, or both.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The section analysis for chapter 63 of title 18, United States Code, is amended by adding at the end the following:

''1348. Failure of corporate officers to certify financial reports.''.

SA 4187. Mr. EDWARDS (for himself, Mr. ENZI, and Mr. CORZINE) submitted an amendment intended to be proposed to the bill S. 2673, to improve quality and transparency in financial reporting and independent audits and accounting services for public companies, to create a Public Company Accounting Oversight Board, to enhance the standard setting process for accounting practices, to strengthen the independence of firms that audit public companies, to increase corporate responsibility and the usefulness of corporate financial disclosure, to protect the objectivity and independence of securities analysts, to improve Securities and Exchange Commission resources and oversight, and for other purposes; as follows:

On page 108, line 15, insert before the end quotation marks the following:

''(c) RULES OF PROFESSIONAL RESPONSIBILITY FOR ATTORNEYS.—Not later than 180 days after the date of enactment of this section, the Commission shall establish rules, in the public interest and for the protection of investors, setting forth minimum standards of professional conduct for attorneys appearing and practicing before the Commission in any way in the representation of public companies, including a rule requiring an attorney to report evidence of a material violation of law by the company or any agent thereof to the chief legal counsel or the chief executive officer of the company (or the equivalent thereof) and, if the counsel or officer does not appropriately respond to the evidence (adopting, as necessary, appropriate remedial measures or sanctions with respect to the violation), requiring the attorney to report the evidence to the audit committee of the board of directors or to another committee of the board of directors comprised solely of directors not employed directly or indirectly by the company, or to the board of directors.

SA 4188. Mr. LOTT proposed an amendment to the bill S. 2673, to improve quality and transparency in financial reporting and independent audits and accounting services for public companies, to create a Public Company Accounting Oversight Board, to enhance the standard setting process for accounting practices, to strengthen the independence of firms that audit public companies, to increase corporate responsibility and the usefulness of corporate financial disclosure, to protect the objectivity and independence of securities analysts, to improve Securities and Exchange Commission resources and oversight, and for other purposes; as follows:

At the appropriate place, insert the following:

SEC. . HIGHER MAXIMUM PENALTIES FOR MAIL AND WIRE FRAUD.

(a) MAIL FRAUD.—Section 1341 is amended by striking ''five'' and inserting ''ten''.

(b) WIRE FRAUD.—Section 1343 is amended by striking ''five'' and inserting ''ten''.

SEC. . TAMPERING WITH A RECORD OR OTHERWISE IMPEDING AN OFFICIAL PROCEEDING.

Section 1512 of title 18, United States Code is amended—

(a) by re-designating subsections (c), (d), (e), (f), (g), (h), and (i) as subsections (d), (e), (f), (g), (h), (i) and (j);

(b) by inserting after subsection (b) the following new subsection:

''(c) Whoever corruptly—

''(1) alters, destroys, mutilates or conceals a record, document or other object, or attempts to do so, with the intent to impair the object's integrity or availability for use in an official proceeding; or

''(2) otherwise obstructs, influences, or impedes any official proceeding, or attempts to do so;

''shall be fined under this title or imprisoned not more than ten years, or both.''

SEC. . TEMPORARY FREEZE AUTHORITY FOR THE SECURITIES AND EXCHANGE COMMISSION.

(a) IN GENERAL.—The Securities Exchange Act of 1934 is amended by inserting after section 21C(c)(2) (15 U.S.C. 78u-3(c)(2)) the following:

''(3) TEMPORARY FREEZE.—

''(A) Whenever during the course of a lawful investigation involving possible violations of the federal securities laws by an

issuer of publicly traded securities or any of its directors, officers, partners, controlling persons, agents or employees, it shall appear to the Commission that it is likely that the issuer will make extraordinary payments (whether compensation or otherwise) to any of the foregoing persons, the Commission may petition a federal district court for a temporary order requiring the issuer to escrow, subject to court supervision, those payments in an interest-bearing account for 45 days. Such an order shall be entered, if the court finds that the issuer is likely to make such extraordinary payments, only after notice and opportunity for a hearing, unless the court determines that notice and hearing prior to entry of the order would be impracticable or contrary to the public interest. A temporary order shall become effective immediately and shall be served upon the parties subject to it and, unless set aside, limited or suspended by court of competent jurisdiction, shall remain effective and enforceable for 45 days. The period of the order may be extended by the court upon good cause shown for not longer than 45 days, provided that the combined period of the order not exceed 90 days.

''(B) If the individual affected by such order is charged with violations of the federal securities laws by the expiration of the 45 days (or the expiration of any extended period), the escrow would continue, subject to court approval, until the conclusion of any legal proceedings. The issuer and the affected director, officer, partner, controlling person, agent or employee would have the right to petition the court for review of the order. If the individual affected by such order is not charged, the escrow will terminate at the expiration of the 45 days (or the expiration of any extended period), and the payments (with accrued interest) returned to the issuer.

(b) TECHNICAL AMENDMENT.—Section 21C(c)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78u-3(c)(2)) is amended by striking ''This'' and inserting ''Paragraph (1) of this''.

SEC. . AMENDMENT TO THE FEDERAL SENTENCING GUIDELINES.

(a) REQUEST FOR IMMEDIATE CONSIDERATION BY THE UNITED STATES SENTENCING COMMISSION.—Pursuant to its authority under section 994(p) of title 28, United States Code, and in accordance with this section, the United States Sentencing Commission is requested to—

(1) promptly review the sentencing guidelines applicable to securities and accounting fraud and related offenses;

(2) expeditiously consider promulgation of new sentencing guidelines or amendments to existing sentencing guidelines to provide an enhancement for officers or directors of publicly traded corporations who commit fraud and related offenses; and

(3) submit to Congress an explanation of actions taken by the Commission pursuant to paragraph (2) and any additional policy recommendations the Commission may have for combating offenses described in paragraph (1).

(b) OTHER.—In carrying out this section, the Sentencing Commission is requested to:

(1) ensure that the sentencing guidelines and policy statements reflect the serious nature of securities, pension, and accounting fraud and the need for aggressive and appropriate law enforcement action to prevent such offenses;

(2) assure reasonable consistency with other relevant directives and with other guidelines;

(3) account for any aggravating or mitigating circumstances that might justify exceptions, including circumstances for which the sentencing guidelines currently provide sentencing enhancements;

(4) make any necessary conforming changes to the sentencing guidelines; and

(5) assure that the guidelines adequately meet the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States Code.

(c) EMERGENCY AUTHORITY AND DEADLINE FOR COMMISSION ACTION.—The Commission is requested to promulgate the guidelines or amendments provided for under this section as soon as practicable, and in any event not later than the 120 days after the date of the enactment of this Act, in accordance with the procedures set forth in section 21(a) of the Sentencing Reform Act of 1987, as though the authority under that Act had not yet expired.

SEC. . AUTHORITY OF THE COMMISSION TO PROHIBIT PERSONS FROM SERVING AS OFFICERS OR DIRECTORS.

(a) In section 21C of the Exchange Act of 1934, add at the end a new subsection as follows:

''( ) AUTHORITY OF THE COMMISSION TO PROHIBIT PERSONS FROM SERVING AS OFFICERS OR DIRECTORS.—In any cease-and-desist proceeding under subsection (a), the Commission may issue an order to prohibit, conditionally or unconditionally, and permanently or for such period of time as it shall determine, any person who has violated section 10(b) of this title or the rules or regulations thereunder from acting as an officer or director of any issuer that has a class of securities registered pursuant to section 12 of this title or that is required to file reports pursuant to section 15(d) of this title if the person's conduct demonstrates unfitness to serve as an officer or director of any such issuer.''

(b) In section 8A of the Securities Act add at the end a new subsection as follows:

''( ) AUTHORITY OF THE COMMISSION TO PROHIBIT PERSONS FROM SERVING AS OFFICERS OR DIRECTORS.—In any cease-and-desist proceeding under subsection (a), the Commission may issue an order to prohibit, conditionally or unconditionally, and permanently or for such period of time as it shall determine, any person who has violated section 17(a)(1) of this title from acting as an officer or director of any issuer that has a class of securities registered pursuant to section 12 of the Securities Exchange Act of 1934 or that is required to file reports pursuant to section 15(d) of that Act if the person's conduct demonstrates unfitness to serve as an officer or director of any such issuer.''

SA 4189. Mr. GRAMM proposed an amendment to amendment SA 4188 proposed by Mr. LOTT to the bill (S. 2673) to improve quality and transparency in financial reporting and independent audits and accounting services for public companies, to create a Public Company Accounting Oversight Board, to enhance the standard setting process for accounting practices, to strengthen the independence of firms that audit public companies, to increase corporate responsibility and the usefulness of corporate financial disclosure, to protect the objectivity and independence of securities analysts, to improve Securities and Exchange Commission resources and oversight, and for other purposes; as follows:

Strike all after the first word, and insert the following:

SEC. . HIGHER MAXIMUM PENALTIES FOR MAIL AND WIRE FRAUD.

(a) MAIL FRAUD.—Section 1341 is amended by striking ''five'' and inserting ''ten''.

(b) WIRE FRAUD.—Section 1343 is amended by striking ''five'' and inserting ''ten''.

SEC. . TAMPERING WITH A RECORD OR OTHERWISE IMPEDING AN OFFICIAL PROCEEDING.

Section 1512 of title 18, United States Code is amended—

(a) by re-designating subsections (c), (d), (e), (f), (g), (h), and (i) as subsections (d), (e), (f), (g), (h), (i) and (j);

(b) by inserting after subsection (b) the following new subsection:

''(c) Whoever corruptly—

''(1) alters, destroys, mutilates or conceals a record, document or other object, or attempts to do so, with the intent to impair the object's integrity or availability for use in an official proceeding; or

''(2) otherwise obstructs, influences, or impedes any official proceeding, or attempts to do so;

''shall be fined under this title or imprisoned not more than ten years, or both.''

SEC. . TEMPORARY FREEZE AUTHORITY FOR THE SECURITIES AND EXCHANGE COMMISSION.

(a) IN GENERAL.—The Securities Exchange Act of 1934 is amended by inserting after section 21C(c)(2) (15 U.S.C. 78u-3(c)(2)) the following:

''(3) TEMPORARY FREEZE.—

''(A) Whenever during the course of a lawful investigation involving possible violations of the federal securities laws by an issuer of publicly traded securities or any of its directors, officers, partners, controlling persons, agents or employees, it shall appear to the Commission that it is likely that the issuer will make extraordinary payments (whether compensation or otherwise) to any of the foregoing persons, the Commission may petition a federal district court for a temporary order requiring the issuer to escrow, subject to court supervision, those payments in an interest-bearing account for 45 days. Such an order shall be entered, if the court finds that the issuer is likely to make such extraordinary payments, only after notice and opportunity for a hearing, unless the court determines that notice and hearing prior to entry of the order would be impracticable or contrary to the public interest. A temporary order shall become effective immediately and shall be served upon the parties subject to it and, unless set aside, limited or suspended by court of competent jurisdiction, shall remain effective and enforceable for 45 days. The period of the order may be extended by the court upon good cause shown for not longer than 45 days, provided that the combined period of the order not exceed 90 days.

''(B) If the individual affected by such order is charged with violations of the federal securities laws by the expiration of the 45 days (or the expiration of any extended period), the escrow would continue, subject to court approval, until the conclusion of any legal proceedings. The issuer and the affected director, officer, partner, controlling person, agent or employee would have the right to petition the court for review of the order. If the individual affected by such order is not charged, the escrow will terminate at the expiration of the 46 days (or the expiration of any extended period), and the payments (with accrued interest) returned to the issuer.

(b) TECHNICAL AMENDMENT.—Section 21C(c)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78u-3(c)(2)) is amended by striking ''This'' and inserting ''Paragraph (1) of this''.

SEC. . AMENDMENT TO THE FEDERAL SENTENCING GUIDELINES.

(a) REQUEST FOR IMMEDIATE CONSIDERATION BY THE UNITED STATES SENTENCING COMMISSION.—Pursuant to its authority under section 994(p) of title 28, United States Code,

and in accordance with this section, the United States Sentencing Commission is requested to—

(1) promptly review the sentencing guidelines applicable to securities and accounting fraud and related offenses;

(2) expeditiously consider promulgation of new sentencing guidelines or amendments to existing sentencing guidelines to provide an enhancement for officers or directors of publicly traded corporations who commit fraud and related offenses; and

(3) submit to Congress an explanation of actions taken by the Commission pursuant to paragraph (2) and any additional policy recommendations the Commission may have for combating offenses described in paragraph (1).

(b) OTHER.—In carrying out this section, the Sentencing Commission is requested to:

(1) ensure that the sentencing guidelines and policy statements reflect the serious nature of securities, pension, and accounting fraud and the need for aggressive and appropriate law enforcement action to prevent such offenses;

(2) assure reasonable consistency with other relevant directives and with other guidelines;

(3) account for any aggravating or mitigating circumstances that might justify exceptions, including circumstances for which the sentencing guidelines currently provide sentencing enhancements;

(4) make any necessary conforming changes to the sentencing guidelines; and

(5) assure that the guidelines adequately meet the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States Code.

(c) EMERGENCY AUTHORITY AND DEADLINE FOR COMMISSION ACTION.—The Commission is requested to promulgate the guidelines or amendments provided for under this section as soon as practicable, and in any event not later than the 120 days after the date of the enactment of this Act, in accordance with the procedures set forth in section 21(a) of the Sentencing Reform Act of 1987, as though the authority under that Act had not yet expired.

SEC. . AUTHORITY OF THE COMMISSION TO PROHIBIT PERSONS FROM SERVING AS OFFICERS OR DIRECTORS.

(a) In section 21C of the Exchange Act of 1934, add at the end a new subsection as follows:

''( ) AUTHORITY OF THE COMMISSION TO PROHIBIT PERSONS FROM SERVING AS OFFICERS OR DIRECTORS.—In any cease-and-desist proceeding under subsection (a), the Commission may issue an order to prohibit, conditionally or unconditionally, and permanently or for such period of time as it shall determine, any person who has violated section 10(b) of this title or the rules or regulations thereunder from acting as an officer or director of any issuer that has a class of securities registered pursuant to section 12 of this title or that is required to file reports pursuant to section 15(d) of this title if the person's conduct demonstrates unfitness to serve as an officer or director of any such issuer.''

(b) In section 8A of the Securities Act add at the end a new subsection as follows:

''( ) AUTHORITY OF THE COMMISSION TO PROHIBIT PERSONS FROM SERVING AS OFFICERS OR DIRECTORS.—In any cease-and-desist proceeding under subsection (a), the Commission may issue an order to prohibit, conditionally or unconditionally, and permanently or for such period of time as it shall determine, any person who has violated section 17(a)(1) of this title from acting as an officer or director of any issuer that has a class of securities registered pursuant to section 12 of the Securities Exchange Act of 1934 or that is required to file reports pursuant to section 15(d) of that Act if the person's conduct demonstrates unfitness to serve as an officer or director of any such issuer.''

SA 4190. Mr. DASCHLE (for Mr. BIDEN (for himself and Mr. HATCH) proposed an amendment to amendment SA 4186 proposed by Mr. DASCHLE (for Mr. BIDEN (for himself and Mr. HATCH)) to the bill (S. 2673) to improve quality and transparency in financial reporting and independent audits and accounting services for public companies, to create a Public Company Accounting Oversight Board, to enhance the standard setting process for accounting practices, to strengthen the independence of firms that audit public companies, to increase corporate responsibility and the usefulness of corporate financial disclosure, to protect the objectivity and independence of securities analysts, to improve Securities and Exchange Commission resources and oversight, and for other purposes; as follows:

Strike all after the first word and insert the following:

VIII—WHITE-COLLAR CRIME PENALTY ENHANCEMENTS.

SEC. 801 SHORT TITLE.

This title may be cited as the ''White-Collar Crime Penalty Enhancement Act of 2002''.

SEC. 802. CRIMINAL PENALTIES FOR CONSPIRACY TO COMMIT OFFENSE OR TO DEFRAUD THE UNITED STATES.

Section 371 of title 18, United States Code, is amended by striking ''If two or more'' and all that follows through ''If, however,'' and inserting the following:

''(a) IN GENERAL.—If 2 or more persons—

''(1) conspire to commit any offense against the United States, in any manner or for any purpose, and 1 or more of such persons do any act to effect the object of the conspiracy, each person shall be fined or imprisoned, or both, as set forth in the specific substantive offense which was the object of the conspiracy; or

''(2) conspire to defraud the United States, or any agency thereof in any manner or for any purpose, and 1 or more of such persons do any act to effect the object of the conspiracy, each person shall be fined under this title, or imprisoned not more than 10 years, or both.

''(b) MISDEMEANOR OFFENSE.—If, however,''.

SEC. 803. CRIMINAL PENALTIES FOR MAIL AND WIRE FRAUD.

(a) MAIL FRAUD.—Section 1341 of title 18, United States Code, is amended by striking ''five years'' and inserting ''10 years''.

(b) WIRE FRAUD.—Section 1343 of title 18, United States Code, is amended by striking ''five years'' and inserting ''10 years''.

SEC. 804. CRIMINAL PENALTIES FOR VIOLATIONS OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.

Section 501 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1131) is amended—

(1) by striking ''$5,000'' and inserting ''$100,000'';

(1) by striking ''one year'' and inserting ''10 years''; and

(3) by striking ''$100,000'' and inserting ''$500,000''.

SEC. 805. AMENDMENT TO SENTENCING GUIDELINES RELATING TO CERTAIN WHITE-COLLAR OFFENSES.

(a) DIRECTIVE TO THE UNITED STATES SENTENCING COMMISSION.—Pursuant to its authority under section 994(p) of title 18, United States Code, and in accordance with this section, the United States Sentencing Commission shall review and, as appropriate, amend the Federal Sentencing Guidelines and related policy statements to implement the provisions of this title.

(b) REQUIREMENTS.—In carrying out this section, the Sentencing Commission shall—

(1) ensure that the sentencing guidelines and policy statements reflect the serious nature of the offenses and the penalties set forth in this title, the growing incidence of serious fraud offenses which are identified above, and the need to modify the sentencing guidelines and policy statements to deter, prevent, and punish such offenses;

(2) consider the extent to which the guidelines and policy statements adequately address—

(A) whether the guideline offense levels and enhancements for violations of the sections amended by this title are sufficient to deter and punish such offenses, and specifically, are adequate in view of the statutory increases in penalties contained in this title; and

(B) whether a specific offense characteristic should be added in United States Sentencing Guideline section 2B1.1 in order to provide for stronger penalties for fraud when the crime is committed by a corporate officer or director;

(3) assure reasonable consistency with other relevant directives and sentencing guidelines;

(4) account for any additional aggravating or mitigating circumstances that might justify exceptions to the generally applicable sentencing ranges;

(5) make any necessary conforming changes to the sentencing guidelines; and

(6) assure that the guidelines adequately meet the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States Code.

SEC. 806. CORPORATE RESPONSIBILITY FOR FINANCIAL REPORTS.

(a) IN GENERAL.—Chapter 63 of title 18, United States Code, is amended by adding at the end the following:

''§ 1348. Failure of corporate officers to certify financial reports

''(a) CERTIFICATION OF PERIODIC FINANCIAL REPORTS.—Each periodic report containing financial statements filed by an issuer with the Securities Exchange Commission pursuant to section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a) or 78o(d)) shall be accompanied by a written statement by the chairman of the board, chief executive officer, and chief financial officer (or equivalent thereof) of the issuer.

''(b) CONTENT.—The statement required under subsection (a) shall certify the appropriateness of the financial statements and disclosures contained in the periodic report or financial report, and that those financial statements and disclosures fairly present, in all material respects, the operations and financial condition of the issuer.

''(c) CRIMINAL PENALTIES.—Notwithstanding any other provision of law—

''(1) any person who recklessly violates any provision of this section shall upon conviction be fined not more than $500,000, or imprisoned not more than 5 years, or both; or

''(2) any person who willfully violates any provision of this section shall upon conviction be fined not more than $1,000,000, or imprisoned not more than 10 years, or both.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The section analysis for chapter 63 of title 18, United States Code, is amended by adding at the end the following:

''1348. Failure of corporate officers to certify financial reports.''.

This section shall take effect one day after date of this bill's enactment.

SA 4191. Mr. ENSIGN submitted an amendment intended to be proposed by him to the bill S. 2673, to improve quality and transparency in financial reporting and independent audits and accounting services for public companies, to create a Public Company Accounting Oversight Board, to enhance the standard setting process for accounting practices, to strenghten the independence of firms that audit public companies, to increase corporate responsibility and the usefulness of corporate financial disclosure, to protect the objectivity and independence of securities analysts, to improve Securities and Exchange Commission resources and oversight, and for other purposes, which was ordered to lie on the table; as follows:

On page 78, strike lines 15 through 24, and insert the following:

In supervising public accounting firms that are not registered by the Board and their associated persons, appropriate State regulatory authorities should make an independent determination of the proper standards applicable, particularly taking into consideration the size and nature of the business of the accounting firms they supervise and the size and nature of the business of the clients of those firms. The standards applied by the Board under this Act could create undue burdens and costs if applied without independent consideration to nonpublic accounting companies and other accounting firms that provide services to small business clients.

SA 4192. Mr. MCCAIN submitted an amendment intended to be proposed by him to the bill S. 2673, to improve quality and transparency in financial reporting and independent audits and accounting services for public companies, to create a Public Company Accounting Oversight Board, to enhance the standard setting process for accounting practices, to strengthen the independence of firms that audit public companies, to increase corporate responsibility and the usefulness of corporate financial disclosure, to protect the objectivity and independence of securities analysis, to improve Securities and Exchange Commission resources and oversight, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. . STOCK OPTIONS MUST BE BOOKED AS EXPENSE WHEN GRANTED.

Any corporation that grants a stock option to an officer or employee to purchase a publicly traded security in the United States shall record the granting of the option as an expense in that corporation's income statement for the year in which the option is granted.

SA 4193. Mr. MCCAIN submitted an amendment intended to be proposed by him to the bill S. 2673, to improve quality and transparency in financial reporting and independent audits and accounting services for public companies, to create a Public Company Accounting Oversight Board, to enhance the standard setting process for accounting practices, to strengthen the independence of firms that audit public companies, to increase corporate responsibility and the usefulness of corporate financial disclosure, to protect the objectivity and independence of securities analysis, to improve Securities and Exchange Commission resources and oversight, and for other purposes; which was ordered to lie on the table; as follows:

On page 69, strike line 8 and all that follows through page 70, line 19, and insert ''any non-audit service.''.

SA 4194. Mr. MCCAIN submitted an amendment intended to be proposed by him to the bill S. 2673, to improve quality and transparency in financial reporting and independent audits and accounting services for public companies, to create a Public Company Accounting Oversight Board, to enhance the standard setting process for accounting practices, to strengthen the independence of firms that audit public companies, to increase corporate responsibility and the usefulness of corporate financial disclosure, to protect the objectivity and independence of securities analysts, to improve Securities and Exchange Commission resources and oversight, and for other purposes; which was ordered to lie on the table; as follows:

On page 82, strike lines 19 through 24 and insert the following:

(b) CONTENT.—The chief executive officer and chief financial officer—

(1) shall certify, under penalty of perjury, that the reports and statements described in subsection (a) fairly present, in all material respects, the operations and financial condition of the issuer; and

(2) shall include a brief narrative of the basis for the decision to so certify, including a discussion of any questionable accounting treatment.

SA 4195. Mr. MCCAIN submitted an amendment intended to be proposed by him to the bill S. 2673, to improve quality and transparency in financial reporting and independent audits and accounting services for public companies, to create a Public Company Accounting Oversight Board, to enhance the standard setting process for accounting practices, to strengthen the independence of firms that audit public companies, to increase corporate responsibility and the usefulness of corporate financial disclosure, to protect the objectivity and independence of securities analysts, to improve Securities and Exchange Commission resources and oversight, and for other purposes; which was ordered to lie on the table; as follows:

On page 86, line 8, strike ''during'' and all that follows through page 89, line 20 and insert the following: ''at any time during the term of employment of that person by the issuer, or service to that issuer as a director or executive officer, or during the 90-day period following the date of termination of such employment or service.

''(b) EXCEPTION.—Nothing in subsection (a) shall be construed to prohibit the purchase, sale, acquisition, or other transfer of equity securities of the issuer for the purpose of avoiding expiration of stock options, but only to the extent necessary to pay the option price of the securities and any applicable taxes or to satisfy a court ordered judgment.

''(c) REMEDY.—

''(1) IN GENERAL.—Any profit realized by a director or executive officer referred to in subsection (a) from any purchase, sale, or other acquisition or transfer in violation of this section shall inure to and be recoverable by the issuer, irrespective of any intention on the part of such director or executive officer in entering into the transaction.

''(2) ACTIONS TO RECOVER PROFITS.—An action to recover profits in accordance with this section may be instituted at law or in equity in any court of competent jurisdiction by the issuer, or by the owner of any security of the issuer in the name and in behalf of the issuer if the issuer fails or refuses to bring such action within 60 days after the date of request, or fails diligently to prosecute the action thereafter.

''(d) RULEMAKING AUTHORIZED.—The Commission may issue rules to clarify the application of this subsection, to ensure adequate notice to all persons affected by this subsection, and to prevent evasion thereof.by the issuer.''.

SA 4196. MR. MCCAIN submitted an amendment intended to be proposed by him to the bill S. 2673, to improve quality and transparency in financial reporting and independent audits and accounting services for public companies, to create a Public Company Accounting Oversight Board, to enhance the standard setting process for accounting practices, to strengthen the independence of firms that audit public companies, to increase corporate responsibility and the usefulness of corporate financial disclosure, to protect the objectivity and independence of securities analysts, to improve Securities and Exchange Commission resources and oversight, and for other purposes; which was ordered to lie on the table; as follows:

On page 82, line 9, strike the quotation marks and the final period and insert the following:

''(n) STANDARDS RELATING TO BOARDS OF DIRECTORS.—

''(1) COMMISSION RULES.—

''(A) IN GENERAL.—Effective not later than 270 days after the date of enactment of this subsection, the Commission shall, by rule, direct the national securities exchanges and national securities associations to prohibit the listing of any security of an issuer that is not in compliance with the requirements of any portion of paragraph (2).

''(B) OPPORTUNITY TO CURE DEFECTS.—The rules of the Commission under subparagraph (A) shall provide for appropriate procedures for an issuer to have an opportunity to cure any defects that would be the basis for a prohibition under subparagraph (A), before the imposition of such prohibition.

''(2) INDEPENDENCE.—

''(A) IN GENERAL.—Each member of the board of directors of the issuer (other than the chief executive officer) shall be independent.

''(B) CRITERIA.—In order to be considered independent for purposes of this paragraph, a member of a board of directors of an issuer may not, other than in his or her capacity as a member of that board of directors—

''(i) accept any consulting, advisory, or other compensatory fee from the issuer;

''(ii) be an affiliated person of the issuer or any subsidiary thereof; or

''(iii) otherwise maintain any other material relationship with the issuer or the management thereof.

''(C) EXEMPTION AUTHORITY.—The Commission may exempt from the requirements of subparagraph (B) a particular relationship with respect to members of a board of directors, as the Commission determines appropriate in light of the circumstances.''.

SA 4197. Mr. SHELBY (for himself and Mr. DURBIN) submitted an amendment intended to be proposed by him to the bill S. 2673, to improve quality and transparency in financial reporting and independent audits and accounting services for public companies, to create a Public Company Accounting Oversight Board, to enhance the standard setting process for accounting practices, to strengthen the independence of firms that audit public companies, to increase corporate responsibility and the usefulness of corporate financial disclosure, to protect the objectivity and independence of securities analysts, to improve Securities and Exchange Commission resources and oversight, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. LITIGATION PROVISIONS.

(a) COMMISSION AUTHORITY.—Section 20(e) of the Securities Exchange Act of 1934 (15 U.S.C. 78t(e)) is amended by striking ''knowingly'' and inserting ''recklessly''.

(b) PRIVATE LITIGATION.—Section 21D of the Securities Exchange Act of 1934 (15 U.S.C. 78u–4) is amended—

(1) in subsection (f)(10)(B), by inserting ''notwithstanding subsection (g),'' before ''reckless''; and

(2) by adding at the end the following:

''(g) PERSONS THAT AID OR ABET VIOLATIONS.—Any person that recklessly provides substantial assistance to another person in violation of a provision of this title, or of any rule or regulation issued under this title, shall be deemed to be in violation of such provision to the same extent as the person to whom such assistance is provided.''.

SA 4198. Mr. CLELAND submitted an amendment intended to be proposed by him to the bill S. 2673, to improve quality and transparency in financial reporting and independent audits and accounting services for public companies, to create a Public Company Accounting Oversight Board, to enhance the standard setting process for accounting practices, to strengthen the independence of firms that audit public companies, to increase corporate responsibility and the usefulness of corporate financial disclosure, to protect the objectivity and independence of securities analysts, to improve Securities and Exchange Commission resources and oversight, and for other purposes; which was ordered to lie on the table; as follows:

On page 84, strike lines 12 through 15, and insert the following: ''executive officer, chief financial officer, and any other officer or director of the corporation with knowledge, at the time of the misconduct, of the material noncompliance of the issuer shall reimburse the issuer for—

''(1) any bonus, compensation derived from a severance agreement, or other incentive-based or equality-based compensation received by that person''.

SA 4199. Mr. CLELAND submitted an amendment intended to be proposed by him to the bill S. 2673, to improve quality and transparency in financial reporting and independent audits and accounting services for public companies, to create a Public Company Accounting Oversight Board, to enhance the standard setting process for accounting practices, to strengthen the independence of firms that audit public companies, to increase corporate responsibility and the usefulness of corporate financial disclosure, to protect the objectivity and independence of securities analysts, to improve Securities and Exchange Commission resources and oversight, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC._____. INDIVIDUAL ACCOUNT PLANS REQUIRED TO GIVE PARTICIPANTS ADEQUATE INFORMATION TO ASSIST THEM IN DIVERSIFYING PENSION ASSETS.

(a) IN GENERAL.—Section 104 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1024) is amended—

(1) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively, and

(2) by inserting after subsection (b) the following new subsection:

''(c)(1) The plan administrator of an applicable individual account plan shall, within a reasonable period of time following the close of each calendar quarter, provide to each participant or beneficiary a statement with respect to his or her individual account which includes—

''(A) the fair market value as of the close of such quarter of the assets in the account in each investment option,

''(B) the percentage as of such calendar quarter of assets which each investment option is of the total assets in the account,

''(C) the percentage of the investment in employer securities which came from employer contributions other than elective deferrals (and earnings thereon) and which came from employee contributions and elective deferrals (and earnings thereon), and

''(D) such other information as the Secretary may prescribe.

''(2)(A) Each statement shall also include a separate statement which is prominently displayed and which reads as follows:

'Under commonly accepted principles of good investment advice, a retirement account should be invested in a broadly diversified portfolio of stocks and bonds. It is unwise for employees to hold significant concentrations of employer stock in an account that is meant for retirement savings'.

''(B) The plan administrator of an applicable individual account plan shall provide the separate statement described in subparagraph (A) to an individual at the time the individual first becomes a participant in the plan.

''(3) Any statement or notice under this subsection shall be written in a manner calculated to be understood by the average plan participant.

''(4) For purposes of this subsection—

''(A) The term 'applicable individual account plan' means an individual account plan to which section 404(c)(1) applies.

''(B) The term 'elective deferrals' has the meaning given such term by section 402(g)(3) of such Code.

''(C) The term 'employer securities' has the meaning given such term by section 407(d)(1).''

(b) ENFORCEMENT.—Section 502(c)(1) of such Act (29 U.S.C. 1132(c)(1)) is amended by striking ''or section 101(e)(1)'' and inserting '', section 101(e)(1), or section 104(c)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to calendar quarters beginning on and after January 1, 2003.

SA 4200. Mr. GRAMM (for Mr. MCCONNELL) proposed an amendment to amendment SA 4187 submitted by Mr. EDWARDS (for himself, Mr. ENZI, and Mr. CORZINE) to the bill (S. 2673) to improve quality and transparency in financial reporting and independent audits and accounting services for public companies, to create a Public Company Accounting Oversight Board, to enhance the standard setting process for accounting practices, to strengthen the independence of firms that audit public companies, to increase corporate responsibility and the usefulness of corporate financial disclosure, to protect the objectivity and independence of securities analysts, to improve Securities and Exchange Commission resources and oversight, and for other purposes; as follows:

On page 2, line 17, strike ''directors,'' and insert the following:

directors.

SEC. ___. ATTORNEY PRACTICES RELATING TO CLIENTS.

(a) DEFINITIONS.—In this section:

(1) AGENCY.—The term ''agency'' means any agency or department of the United States or State government including a local government.

(2) ATTORNEY.—The term ''attorney'' means any natural person, professional law association, corporation, or partnership authorized under applicable law to practice law.

(3) ATTORNEY SERVICES.—The term ''attorney services''—

(A) means the professional advice or counseling of or representation by an attorney; and

(B) shall not include services requiring out-of-pocket expenses in connection with providing attorney services, such as travel expenses, witness fees, copying, messengers, postage, phone, or preparation by a person other than the attorney of any study, analysis, report, or test.

(4) CLASS ACTION.—

(A) IN GENERAL.—The term ''class action'' means—

(i) any civil action filed under rule 23 of the Federal Rules of Civil Procedure or similar State statute or rule of judicial procedure authorizing an action to be brought by 1 or more representative persons as a class action; or

(ii) any civil action in which—

(I) the named plaintiff purports to act for the interests of its members (who are not named parties to the action) or for the interests of the general public, seeks a remedy of damages, restitution, disgorgement, or any other form of monetary relief, and is not a State attorney general; or

(II) monetary relief claims in the action are proposed to be tried jointly in any respect with the claims of 100 or more other persons on the ground that the claims involve common questions of law or fact.

(B) CLASS TREATMENT.—In any civil action described under subparagraph (A)(ii), the persons who allegedly were injured shall be

treated as members of a proposed plaintiff class and the monetary relief that is sought shall be treated as the claims of individual class members.

(5) CONTINGENT FEE.—The term ''contingent fee''—

(A) means the cost or price of attorney services determined by applying a specified percentage, which may be a firm fixed percentage, a graduated or sliding percentage, or any combination thereof, to the amount of the settlement or judgment obtained or otherwise allowing the attorney to share in the proceeds of a settlement or judgment obtained which the defendant was required to make payment in order to satisfy an obligation to the plaintiff; and

(B) includes any fees a defendant pays directly to an attorney retained by a plaintiff outside the terms of a settlement or judgment.

(6) HOURLY FEE.—The term ''hourly fee'' means the cost or price per hour of attorney services.

(7) LOCAL GOVERNMENT.—The term ''local government''—

(A) means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty; and

(B) includes—

(i) a local public authority;

(ii) a special district;

(iii) an intrastate district;

(iv) a council of governments;

(v) a sponsor group representative organization; or

(vi) any other instrumentality of a local government.

(8) PAYMENT.—The term ''payment'' means any gift, subscription, loan, advance, or deposit of money or anything of value.

(9) PERSON.—The term ''person'' includes—

(A) an individual, corporation, company, association, authority, firm, partnership, or society, regardless of whether such entity is operated for profit or not for profit; and

(B) the Federal Government or any State or local government.

(10) PLAINTIFF.—The term ''plaintiff'' means a person who retains an attorney to represent that person in asserting or bringing a civil claim or civil action.

(11) RETAIN.—The term ''retain'' means the act of a plaintiff in obtaining attorney services, whether by express or implied agreement, by seeking and obtaining attorney services.

(12) STATE.—The term ''State'' means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and a multi-State, regional, or interstate entity having governmental duties and powers.

(b) APPLICABILITY.—

(1) IN GENERAL.—This section shall apply to any cause of action brought in Federal court or under Federal law, including any related settlement.

(2) NONAPPLICABILITY.—

(A) CERTAIN CONTRACTS.—Except in the case of class actions, this section does not apply to agreements to provide attorney services if the person who enters into such an agreement is represented at that time by another attorney who is retained for the purpose of negotiating a contingency fee contract on behalf of that person.

(B) GOVERNMENT ATTORNEYS.—This section does not apply to attorneys who are classified as employees of the United States Government, a State, or an agency thereof.

(c) DISCLOSURES BY ATTORNEY.—

(1) WRITTEN DISCLOSURE.—

(A) IN GENERAL.—Before an attorney is retained by a plaintiff, the attorney shall disclose in writing to the potential plaintiff the plaintiff's rights under this section, including the right to receive a written statement of the information described in this subsection and subsection (e).

(B) CONTENTS OF DISCLOSURE.—Specifically, the attorney shall provide a written statement to the potential plaintiff containing—

(i) the estimated number of hours of attorney services that will be spent—

(I) settling or attempting to settle the claim or action; and

(II) handling the claim or action through trial or appeal;

(ii) the attorney's hourly fee or fees for services in pursuing the claim or action and any conditions, limitations, restrictions, or other qualifications on the fee including likely expenses and the plaintiff's obligation for those expenses;

(iii) the attorney's contingent fee for services in pursuing the claim or action and any conditions, limitations, restrictions, or other qualifications on the fee, including likely expenses and the plaintiff's obligation for those expenses;

(iv) the probability of a successful outcome in the case (which may be expressed as a percentage);

(v) the estimated recovery reasonably expected in the case (which may be expressed as a range);

(vi) the estimated costs or expenses that the plaintiff will bear; and

(vii) all fee agreements to be made concerning the case, including the amount to be paid to any cocounsel associated with the case or to refer the plaintiff to another attorney in exchange for a referral fee.

(2) MONTHLY STATEMENT.—In addition to the requirements under paragraph (1), the attorney shall render monthly statements to the plaintiff containing a description of the amount of time expended and expenses incurred in the pursuit of the plaintiff's claim or action by each attorney assigned to the plaintiff's matter.

(d) AGREEMENT ON COMPENSATION.—

(1) CONTINGENT FEE.—An attorney who has been retained on a contingent fee basis may not be paid a contingent fee greater than the attorney's contingent fee rate disclosed under subsection (c).

(2) HOURLY FEE.—An attorney representing a plaintiff in connection with the claim or action may not be paid an hourly fee greater than the attorney's hourly fee or fees disclosed under subsection (c) multiplied by the total number of hours spent by the attorney in connection with the claim or action.

(3) EXCEPTIONS.—

(A) OTHER REQUIREMENTS.—A plaintiff may not be given the option of choosing to compensate the attorney on a contingent fee basis for claims or actions where it would be a violation of an applicable Code of Professional Responsibility or otherwise illegal for an attorney to be compensated on a contingent fee basis.

(B) GOVERNMENT ATTORNEYS.—This section does not authorize the United States or any State or subdivision thereof to retain an attorney on a contingent fee basis.

(e) INFORMATION ABOUT SETTLEMENT OFFERS, SETTLEMENT, OR ADJUDICATION.—

(1) SETTLEMENT OFFERS.—An attorney retained by a plaintiff shall immediately transmit to the plaintiff—

(A) all written settlement offers to the plaintiff with an estimate of the likelihood of achieving a more or less favorable resolution to the claim or action;

(B) the likely timing of such resolution; and

(C) the likely attorney's fees and expenses required to obtain such a resolution.

(2) SETTLEMENT OR ADJUDICATION.—An attorney retained by a plaintiff shall, within a reasonable time not later than 30 days after the date on which the claim or action is finally settled or adjudicated, provide a written statement to the plaintiff containing—

(A) in a case in which an attorney is compensated with an hourly fee—

(i) the actual number of hours expended by each attorney on behalf of the plaintiff in connection with the claim or action and such attorney's hourly rate, as set forth in the written disclosure statement required to be provided under subsection (c); and

(ii) the total amount of the hourly fees;

(B) in a case in which an attorney is compensated with a contingent fee—

(i) the contingent fee rate, as set forth in the written disclosure statement required to be provided under subsection (c);

(ii) the total amount of the contingent fee;

(iii) the number of hours expended in the case; and

(iv) the effective hourly rate, determined by dividing the total amount of the contingent fee by the number of hours expended in the case; and

(C) the expenses to be charged to the plaintiff under the agreement for attorney services consistent with this section.

(f) REASONABLENESS OF ATTORNEYS FEES.—

(1) IN GENERAL.—Notwithstanding any other provision of this section, an attorney to whom this section applies may not charge an unreasonable or excessive fee.

(2) RIGHT TO REVIEW.—A plaintiff may request an objective review of his attorney's fee by a court of competent jurisdiction to assure that it is reasonable and fair in light of the circumstances, based on such factors as whether liability was contested, whether the amount of damages was clear, and how much actual time a lawyer reasonably spent on the case.

(g) CLASS ACTIONS.—

(1) IN GENERAL.—An attorney representing a class in a civil action shall make the disclosures, transmittals, and provisions of information required under this section to the presiding judge. The presiding judge shall determine, upon certifying the action as a class action, the appropriate hourly fee or fees and the maximum percentage of the recovery to be paid in attorney's fees. Notwithstanding any other provision of law or agreement to the contrary, the presiding judge shall award attorneys fees consistent with this section.

(2) LIMITATION.—Attorneys fees described under paragraph (1) may not exceed a reasonable fee, based on—

(A) the number of hours of nonduplicative, professional quality legal work, provided by the attorney of material value to the outcome of the representation of the class; and

(B) reasonable hourly rates for the individuals performing such work, based on hourly rates charged by other attorneys for the rendition of comparable services including rates charged by adversary defense counsel in the class action.

(3) ADJUSTMENT FACTOR.—To the extent that items are not taken into account in establishing the reasonable hourly rates referred to in this subsection, an appropriate adjustment factor, including reasonable multipliers, to compensate the attorney for risks of nonpayment of fees and, when clearly established, for exceptionally skillful or innovative services provided during such periods of risk, may be employed, except that—

(A) in no case shall the appropriate adjustment factor be greater than 6; and

(B) in all cases, the appropriate adjustment factor shall be determined in accordance with the strict standards established by the Federal courts for permissible lodestar multipliers.

(h) RESIGNATION OR DISCHARGE.—If an attorney who is retained on a contingent fee

basis is discharged or resigns, any fee owed to that attorney shall be based on that attorney's contribution to the plaintiff's ultimate success.

(i) UNSOLICITED COMMUNICATIONS DURING BEREAVEMENT PERIOD.—

(1) IN GENERAL.—In the event of a death or personal injury resulting in bodily harm, no unsolicited communication concerning a potential civil action for personal injury or wrongful death may be made by an attorney (including any associate, agent, employee, or other representative of an attorney) or any potential party to the litigation to an individual injured in that event, or to a relative of an individual killed or injured in that event, before the 45th day following the date of the death or injury.

(2) RULE OF CONSTRUCTION.—Nothing in paragraph (1) shall be construed to authorize a communication otherwise prohibited by Federal or State or local government law or a rule or standard of any bar association or similar entity.

(j) ENFORCEMENT.—

(1) IN GENERAL.—The Attorney General of the United States may file a civil action in an appropriate district court of the United States to enforce this section.

(2) CIVIL PENALTY.—A person violating this section is liable to the United States Government for a civil penalty of not more than $5,000 for each violation.

SA 4201. Mrs. CARNAHAN (for herself and Mr. LEAHY) submitted an amendment intended to be proposed by her to the bill S. 2673, to improve quality and transparency in financial reporting and independent audits and accounting services for public companies, to create a Public Company Accounting Oversight Board, to enhance the standard setting process for accounting practices, to strengthen the independence of firms that audit public companies, to increase corporate responsibility and the usefulness of corporate financial disclosure, to protect the objectivity and independence of securities analysts, to improve Securities and Exchange Commission resources and oversight, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. FAIR TREATMENT OF COMPENSATION IN BANKRUPTCY.

(a) INCREASED PRIORITY CLAIM AMOUNT FOR EMPLOYEE WAGES AND BENEFITS.—Section 507(a) of title 11, United States Code, is amended—

(1) in paragraph (3), by striking ''$4,000'' and inserting ''$13,500''; and

(2) in paragraph (4), by striking ''$4,000'' and inserting ''$13,500''.

(b) RECOVERY OF EXCESSIVE COMPENSATION.—Section 547 of title 11, United States Code, is amended by adding at the end the following:

''(h) The court, on motion of a party of interest, may avoid any transfer of compensation made to a member of the board of directors or an employee of the debtor on or within 90 days before the date of the filing of the petition that the court finds, after notice and a hearing, to be—

''(1) out of the ordinary course of business; or

''(2) unjust enrichment.''.

SA 4202. Mrs. CARNAHAN (for herself and Mr. NELSON of Florida) submitted an amendment intended to be proposed by her to the bill S. 2673, to improve quality and transparency in financial reporting and independent audits and accounting services for public companies, to create a Public Company Accounting Oversight Board, to enhance the standard setting process for accounting practices, to strengthen the independence of firms that audit public companies, to increase corporate responsibility and the usefulness of corporate financial disclosure, to protect the objectivity and independence of securities analysts, to improve Securities and Exchange Commission resources and oversight, and for other purposes; which was ordered to lie on the table; as follows:

On page 89, after line 20, insert the following:

SEC. 307. PUBLIC COMPANY COMPENSATION COMMITTEES.

Section 10A of the Securities Exchange Act of 1934 (15 U.S.C. 78f) is amended by adding at the end the following:

''(n) STANDARDS RELATING TO COMPENSATION COMMITTEES.—

''(1) COMMISSION RULES.—

''(A) IN GENERAL.—Effective not later than 270 days after the date of enactment of this subsection, the Commission shall, by rule, direct the national securities exchanges and national securities associations to prohibit the listing of any security of an issuer that is not in compliance with the requirements of any portion of paragraphs (2) through (6).

''(B) OPPORTUNITY TO CURE DEFECTS.—The rules of the Commission under subparagraph (A) shall provide for appropriate procedures for an issuer to have an opportunity to cure any defects that would be the basis for a prohibition under subparagraph (A), before the imposition of such prohibition.

''(2) INDEPENDENCE.—

''(A) IN GENERAL.—Each member of the compensation committee of the issuer shall be a member of the board of directors of the issuer, and shall otherwise be independent.

''(B) CRITERIA.—In order to be considered to be independent for purposes of this paragraph, a member of a compensation committee of an issuer may not, other than in his or her capacity as a member of the compensation committee, the board of directors, or any other board committee—

''(i) accept any consulting, advisory, or other compensatory fee from the issuer; or

''(ii) be an affiliated person of the issuer or any subsidiary thereof.

''(C) EXEMPTION AUTHORITY.—The Commission may exempt from the requirements of subparagraph (B) a particular relationship with respect to compensation committee members, as the Commission determines appropriate in light of the circumstances.

''(3) COMPENSATION COMMITTEE.—For purposes of this subsection, the term 'compensation committee' means—

''(A) a committee (or equivalent body) established by and amongst the board of directors of an issuer for the purpose of overseeing the establishment of compensation for employees of the issuer; and

''(B) if no such committee exists with respect to an issuer, the entire board of directors of the issuer.''.

SA 4203. Mr. MURKOWSKI (for himself, Mr. STEVENS, Mr. CRAIG, Mr. BURNS, Mr. CRAPO, Mr. SMITH of Oregon, and Mr. INHOFE) submitted an amendment intended to be proposed by him to the bill S. 2673, to improve quality and transparency in financial reporting and independent audits and accounting services for public companies, to create a Public Company Accounting Oversight Board, to enhance the standard setting process for accounting practices, to strengthen the independence of firms that audit public companies, to increase corporate responsibility and the usefulness of corporate financial disclosure, to protect the objectivity and independence of securities analysts, to improve Securities and Exchange Commission resources and oversight, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place insert the following:

SEC. ___. NINTH CIRCUIT COURT OF APPEALS REORGANIZATION.

(a) SHORT TITLE.—This section may be cited as the ''Ninth Circuit Court of Appeals Reorganization Act of 2002''.

(b) NUMBER AND COMPOSITION OF CIRCUITS.—Section 41 of title 28, United States Code, is amended—

(1) in the matter before the table, by striking ''thirteen'' and inserting ''fourteen''; and

(2) in the table—

(A) by striking the item relating to the ninth circuit and inserting the following:

''Ninth	Arizona, California, Nevada.'';

and

(B) by inserting after the item relating to the eleventh circuit the following:

''Twelfth	Alaska, Guam, Hawaii, Idaho, Montana, Northern Mariana Islands, Oregon, Washington.''.

(c) NUMBER OF CIRCUIT JUDGES.—The table in section 44(a) of title 28, United States Code, is amended—

(1) by striking the item relating to the ninth circuit and inserting the following:

''Ninth	20'';

and

(2) by inserting after the item relating to the eleventh circuit the following:

''Twelfth	8''.

(d) PLACES OF CIRCUIT COURT.—The table in section 48(a) of title 28, United States Code, is amended—

(1) by striking the item relating to the ninth circuit and inserting the following:

''Ninth	San Francisco, Los Angeles.'';

and

(2) by inserting after the item relating to the eleventh circuit the following:

''Twelfth	Portland, Seattle.''.

(e) ASSIGNMENT OF CIRCUIT JUDGES.—Each circuit judge in regular active service of the former ninth circuit whose official station on the day before the effective date of this section—

(1) is in Arizona, California, or Nevada is assigned as a circuit judge of the new ninth circuit; and

(2) is in Alaska, Guam, Hawaii, Idaho, Montana, Northern Mariana Islands, Oregon, or Washington is assigned as a circuit judge of the twelfth circuit.

(f) ELECTION OF ASSIGNMENT BY SENIOR JUDGES.—Each judge who is a senior judge of the former ninth circuit on the day before the effective date of this section may elect to be assigned to the new ninth circuit or to the twelfth circuit and shall notify the Director of the Administrative Office of the United States Courts of such election.

(g) SENIORITY OF JUDGES.—The seniority of each judge—

(1) who is assigned under subsection (e); or

(2) who elects to be assigned under subsection (f);

shall run from the date of commission of such judge as a judge of the former ninth circuit.

(h) APPLICATION TO CASES.—The provisions of the following paragraphs of this subsection apply to any case in which, on the day before the effective date of this section, an appeal or other proceeding has been filed with the former ninth circuit:

(1) If the matter has been submitted for decision, further proceedings in respect of the matter shall be had in the same manner and with the same effect as if this section had not been enacted.

(2) If the matter has not been submitted for decision, the appeal or proceeding, together with the original papers, printed records, and record entries duly certified, shall, by appropriate orders, be transferred to the court to which the matter would have been submitted had this section been in full force and effect at the time such appeal was taken or other proceeding commenced, and further proceedings in respect of the case shall be had in the same manner and with the same effect as if the appeal or other proceeding had been filed in such court.

(3) A petition for rehearing or a petition for rehearing en banc in a matter decided before the effective date of this section, or submitted before the effective date of this section and decided on or after the effective date as provided in paragraph (1), shall be treated in the same manner and with the same effect as though this section had not been enacted. If a petition for rehearing en banc is granted, the matter shall be reheard by a court comprised as though this section had not been enacted.

(i) DEFINITIONS.—In this section, the term—

(1) ''former ninth circuit'' means the ninth judicial circuit of the United States as in existence on the day before the effective date of this section;

(2) ''new ninth circuit'' means the ninth judicial circuit of the United States established by the amendment made by subsection (b)(2); and

(3) ''twelfth circuit'' means the twelfth judicial circuit of the United States established by the amendment made by subsection (b)(3).

(j) ADMINISTRATION.—The court of appeals for the ninth circuit as constituted on the day before the effective date of this section may take such administrative action as may be required to carry out this section and the amendments made by this section. Such court shall cease to exist for administrative purposes on July 1, 2004.

(k) EFFECTIVE DATE.—This section and the amendments made by this section shall take effect 60 days after the date of enactment of this Act.

SA 4204. Mr. SMITH of New Hampshire (for himself, Mrs. BOXER, and Mr. BURNS) submitted an amendment which was ordered to lie on the table; as follows:

At the appropriate place, insert the following new title:

TITLE ____—FLIGHT AND CABIN SECURITY ON PASSENGER AIRCRAFT

SECTION ___1. SHORT TITLE.

This title may be cited as the ''Arming Pilots Against Terrorism and Cabin Defense Act of 2002''.

SEC. ___2. FINDINGS.

Congress makes the following findings:

(1) Terrorist hijackers represent a profound threat to the American people.

(2) According to the Federal Aviation Administration, between 33,000 and 35,000 commercial flights occur every day in the United States.

(3) The Aviation and Transportation Security Act (public law 107–71) mandated that air marshals be on all high risk flights such as those targeted on September 11, 2001.

(4) Without air marshals, pilots and flight attendants are a passenger's first line of defense against terrorists.

(5) A comprehensive and strong terrorism prevention program is needed to defend the Nation's skies against acts of criminal violence and air piracy. Such a program should include—

(A) armed Federal air marshals;

(B) other Federal agents;

(C) reinforced cockpit doors;

(D) properly-trained armed pilots;

(E) flight attendants trained in self-defense and terrorism prevention; and

(F) electronic communications devices, such as real-time video monitoring and hands-free wireless communications devices to permit pilots to monitor activities in the cabin.

SEC. ___3. FEDERAL FLIGHT DECK OFFICER PROGRAM.

(a) IN GENERAL.—Subchapter I of chapter 449 of title 49, United States Code, is amended by adding at the end the following:

''§ 44921. Federal flight deck officer program

''(a) ESTABLISHMENT.—Not later than 90 days after the date of enactment of the Arming Pilots Against Terrorism and Cabin Defense Act of 2002, the Under Secretary of Transportation for Security shall establish a program to deputize qualified pilots of commercial cargo or passenger aircraft who volunteer for the program as Federal law enforcement officers to defend the flight decks of commercial aircraft of air carriers engaged in air transportation or intrastate air transportation against acts of criminal violence or air piracy. Such officers shall be known as 'Federal flight deck officers'. The program shall be administered in connection with the Federal air marshal program.

''(b) QUALIFIED PILOT.—Under the program described in subsection (a), a qualified pilot is a pilot of an aircraft engaged in air transportation or intrastate air transportation who—

''(1) is employed by an air carrier;

''(2) has demonstrated fitness to be a Federal flight deck officer in accordance with regulations promulgated pursuant to this title; and

''(3) has been the subject of an employment investigation (including a criminal history record check) under section 44936(a)(1).

''(c) TRAINING, SUPERVISION, AND EQUIPMENT.—The Under Secretary of Transportation for Security shall provide or make arrangements for training, supervision, and equipment necessary for a qualified pilot to be a Federal flight deck officer under this section at no expense to the pilot or the air carrier employing the pilot. The Under Secretary may approve private training programs which meet the Under Secretary's specifications and guidelines. Air carriers shall make accommodations to facilitate the training of their pilots as Federal flight deck officers and shall facilitate Federal flight deck officers in the conduct of their duties under this program.

''(d) DEPUTIZATION.—

''(1) IN GENERAL.—The Under Secretary of Transportation for Security shall train and deputize, as a Federal flight deck officer under this section, any qualified pilot who submits to the Under Secretary a request to be such an officer.

''(2) INITIAL DEPUTIZATION.—Not later than 120 days after the date of enactment of this section, the Under Secretary shall deputize not fewer than 500 qualified pilots who are former military or law enforcement personnel as Federal flight deck officers under this section.

''(3) FULL IMPLEMENTATION.—Not later than 24 months after the date of enactment of this section, the Under Secretary shall deputize any qualified pilot as a Federal flight deck officer under this section.

''(e) COMPENSATION.—Pilots participating in the program under this section shall not be eligible for compensation from the Federal Government for services provided as a Federal flight deck officer.

''(f) AUTHORITY TO CARRY FIREARMS.—The Under Secretary of Transportation for Security shall authorize a Federal flight deck officer under this section to carry a firearm to defend the flight deck of a commercial passenger or cargo aircraft while engaged in providing air transportation or intrastate air transportation. No air carrier may prohibit a Federal flight deck officer from carrying a firearm in accordance with the provisions of the Arming Pilots Against Terrorism and Cabin Defense Act of 2002.

''(g) AUTHORITY TO USE FORCE.—Notwithstanding section 44903(d), a Federal flight deck officer may use force (including lethal force) against an individual in the defense of a commercial aircraft in air transportation or intrastate air transportation if the officer reasonably believes that the security of the aircraft is at risk.

''(h) LIMITATION ON LIABILITY.—

''(1) LIABILITY OF AIR CARRIERS.—An air carrier shall not be liable for damages in any action brought in a Federal or State court arising out of the air carrier employing a pilot of an aircraft who is a Federal flight deck officer under this section or out of the acts or omissions of the pilot in defending an aircraft of the air carrier against acts of criminal violence or air piracy.

''(2) LIABILITY OF FEDERAL FLIGHT DECK OFFICERS.—A Federal flight deck officer shall not be liable for damages in any action brought in a Federal or State court arising out of the acts or omissions of the officer in defending an aircraft against acts of criminal violence or air piracy unless the officer is guilty of gross negligence or willful misconduct.

''(3) EMPLOYEE STATUS OF FEDERAL FLIGHT DECK OFFICERS.—A Federal flight deck officer shall be considered an 'employee of the Government while acting within the scope of his office or employment' with respect to any act or omission of the officer in defending an aircraft against acts of criminal violence or air piracy, for purposes of sections 1346(b), 2401(b), and 2671 through 2680 of title 28 United States Code.

''(i) REGULATIONS.—Not later than 90 days after the date of enactment of this section, the Under Secretary of Transportation for Security, in consultation with the Firearms Training Unit of the Federal Bureau of Investigation, shall issue regulations to carry out this section.

''(j) PILOT DEFINED.—In this section, the term 'pilot' means an individual who is responsible for the operation of an aircraft, and includes a co-pilot or other member of the flight deck crew.''.

(b) CONFORMING AMENDMENTS.—

(1) CHAPTER ANALYSIS.—The analysis for such chapter 449 is amended by inserting after the item relating to section 44920 the following new item:

''44921. Federal flight deck officer program.''.

(2) EMPLOYMENT INVESTIGATIONS.—Section 44936(a)(1)(B) is amended—

(A) by aligning clause (iii) with clause (ii);

(B) by striking ''and'' at the end of clause (iii);

(C) by striking the period at the end of clause (iv) and inserting ''; and''; and

(D) by adding at the end the following:

''(v) qualified pilots who are deputized as Federal flight deck officers under section 44921.''.

(3) FLIGHT DECK SECURITY.—Section 128 of the Aviation and Transportation Security Act (49 U.S.C. 44903 note) is repealed.

SEC. ___4. CABIN SECURITY.

(a) TECHNICAL AMENDMENTS.—Section 44903, of title 49, United States Code, is amended—

(1) by redesignating subsection (h) (relating to authority to arm flight deck crew with less-than-lethal weapons, as added by section 126(b) of public law 107–71) as subsection (j); and

(2) by redesignating subsection (h) (relating to limitation on liability for acts to thwart criminal violence or aircraft piracy, as added by section 144 of public law 107–71) as subsection (k).

(b) AVIATION CREWMEMBER SELF-DEFENSE DIVISION.—Section 44918 of title 49, United States Code, is amended—

(1) by striking subsection (a) and inserting the following new subsection:

''(a) IN GENERAL.—

''(1) REQUIREMENT FOR AIR CARRIERS.—Not later than 60 days after the date of enactment of the Arming Pilots Against Terrorism and Cabin Defense Act of 2002, the Under Secretary of Transportation for Security, shall prescribe detailed requirements for an air carrier cabin crew training program, and for the instructors of that program as described in subsection (b) to prepare crew members for potential threat conditions. In developing the requirements, the Under Secretary shall consult with appropriate law enforcement personnel who have expertise in self-defense training, security experts, and terrorism experts, and representatives of air carriers and labor organizations representing individuals employed in commercial aviation.

''(2) AVIATION CREWMEMBER SELF-DEFENSE DIVISION.—Not later than 60 days after the date of enactment of the Arming Pilots Against Terrorism and Cabin Defense Act of 2002, the Under Secretary of Transportation for Security shall establish an Aviation Crew Self-Defense Division within the Transportation Security Administration. The Division shall develop and administer the implementation of the requirements described in this section. The Under Secretary shall appoint a Director of the Aviation Crew Self-Defense Division who shall be the head of the Division. The Director shall report to the Under Secretary. In the selection of the Director, the Under Secretary shall solicit recommendations from law enforcement, air carriers, and labor organizations representing individuals employed in commercial aviation. The Director shall have a background in self-defense training, including military or law enforcement training with an emphasis in teaching self-defense and the appropriate use force. Regional training supervisors shall be under the control of the Director and shall have appropriate training and experience in teaching self-defense and the appropriate use of force.'';

(2) by striking subsection (b), and inserting the following new subsection:

''(b) PROGRAM ELEMENTS.—

''(1) IN GENERAL.—The requirements prescribed under subsection (a) shall include, at a minimum, 28 hours of self-defense training that incorporates classroom and situational training that contains the following elements:

''(A) Determination of the seriousness of any occurrence.

''(B) Crew communication and coordination.

''(C) Appropriate responses to defend oneself, including a minimum of 16 hours of hands-on training, with reasonable and effective requirements on time allotment over a 4 week period, in the following levels of self-defense:

''(i) awareness, deterrence, and avoidance;

''(ii) verbalization;

''(iii) empty hand control;

''(iv) intermediate weapons and self-defense techniques; and

''(v) deadly force.

''(D) Use of protective devices assigned to crewmembers (to the extent such devices are approved by the Administrator or Under Secretary).

''(E) Psychology of terrorists to cope with hijacker behavior and passenger responses.

''(F) Live situational simulation joint training exercises regarding various threat conditions, including all of the elements required by this section.

''(G) Flight deck procedures or aircraft maneuvers to defend the aircraft.

''(2) PROGRAM ELEMENTS FOR INSTRUCTORS.—The requirements prescribed under subsection (a) shall contain program elements for instructors that include, at a minimum, the following:

''(A) A certification program for the instructors who will provide the training described in paragraph (1).

''(B) A requirement that no training session shall have fewer than 1 instructor for every 12 students.

''(C) A requirement that air carriers provide certain instructor information, including names and qualifications, to the Aviation Crew Member Self-Defense Division within 30 days after receiving the requirements described in subsection (a).

''(D) Training course curriculum lesson plans and performance objectives to be used by instructors.

''(E) Written training bulletins to reinforce course lessons and provide necessary progressive updates to instructors.

''(3) RECURRENT TRAINING.—Each air carrier shall provide the training under the program every 6 months after the completion of the initial training.

''(4) INITIAL TRAINING.—Air carriers shall provide the initial training under the program within 24 months of the date of enactment of the Arming Pilots Against Terrorism and Cabin Defense Act of 2002.

''(5) COMMUNICATION DEVICES.—The requirements described in subsection (a) shall include a provision mandating that air carriers provide flight and cabin crew with a discreet, hands-free, wireless method of communicating with the flight deck.

''(6) REAL-TIME VIDEO MONITORING.—The requirements described in subsection (a) shall include a program to provide flight deck crews with real-time video surveillance of the cabins of commercial airline flights. In developing this program, the Under Secretary shall consider—

''(A) maximizing the security of the flight deck;

''(B) enhancing the safety of the flight deck crew;

''(C) protecting the safety of the passengers and crew;

''(D) preventing acts of criminal violence or air piracy;

''(E) the cost of the program;

''(F) privacy concerns; and

''(G) the feasibility of installing such a device in the flight deck.''; and

(3) by adding at the end the following new subsections:

''(f) RULEMAKING AUTHORITY.—Notwithstanding subsection (j) (relating to authority to arm flight deck crew with less than-lethal weapons) of section 44903, of this title, within 180 days after the date of enactment of the Arming Pilots Against Terrorism and Cabin Defense Act of 2002, the Under Secretary of Transportation for Security, in consultation with persons described in subsection (a)(1), shall prescribe regulations requiring air carriers to—

''(1) provide adequate training in the proper conduct of a cabin search and allow adequate duty time to perform such a search; and

''(2) conduct a preflight security briefing with flight deck and cabin crew and, when available, Federal air marshals or other authorized law enforcement officials.

''(g) LIMITATION ON LIABILITY.—

''(1) AIR CARRIERS.—An air carrier shall not be liable for damages in any action brought in a Federal or State court arising out of the acts or omissions of the air carrier's training instructors or cabin crew using reasonable and necessary force in defending an aircraft of the air carrier against acts of criminal violence or air piracy.

''(2) TRAINING INSTRUCTORS AND CABIN CREW.—An air carrier's training instructors or cabin crew shall not be liable for damages in any action brought in a Federal or State court arising out of an act or omission of a training instructor or a member of the cabin crew regarding the defense of an aircraft against acts of criminal violence or air piracy unless the crew member is guilty of gross negligence or willful misconduct.''.

(c) NONLETHAL WEAPONS FOR FLIGHT ATTENDANTS.—

(1) STUDY.—The Under Secretary of Transportation for Security shall conduct a study to determine whether possession of a nonlethal weapon by a member of an air carrier's cabin crew would aid the flight deck crew in combating air piracy and criminal violence on commercial airlines.

(2) REPORT.—Not later than 6 months after the date of enactment of this Act, the Under Secretary of Transportation for Security shall prepare and submit to Congress a report on the study conducted under paragraph (1).

SA 4205. Mr. SMITH of New Hampshire (for himself, Mrs. BOXER, and Mr. BURNS) submitted an amendment intended to be proposed by him to the bill S. 2554, to amend title 49, United States Code, to establish a program for Federal flight deck officers, and for other purposes; which was referred to the Committee on Commerce, Science, and Transportation; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Arming Pilots Against Terrorism and Cabin Defense Act of 2002''.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) Terrorist hijackers represent a profound threat to the American people.

(2) According to the Federal Aviation Administration, between 33,000 and 35,000 commercial flights occur every day in the United States.

(3) The Aviation and Transportation Security Act (public law 107–71) mandated that air marshals be on all high risk flights such as those targeted on September 11, 2001.

(4) Without air marshals, pilots and flight attendants are a passenger's first line of defense against terrorists.

(5) A comprehensive and strong terrorism prevention program is needed to defend the Nation's skies against acts of criminal violence and air piracy. Such a program should include—

(A) armed Federal air marshals;

(B) other Federal agents;

(C) reinforced cockpit doors;

(D) properly-trained armed pilots;

(E) flight attendants trained in self-defense and terrorism prevention; and

(F) electronic communications devices, such as real-time video monitoring and hands-free wireless communications devices to permit pilots to monitor activities in the cabin.

SEC. 3. FEDERAL FLIGHT DECK OFFICER PROGRAM.

(a) IN GENERAL.—Subchapter I of chapter 449 of title 49, United States Code, is amended by adding at the end the following:

"§ 44921. Federal flight deck officer program

''(a) ESTABLISHMENT.—Not later than 90 days after the date of enactment of the Arming Pilots Against Terrorism and Cabin Defense Act of 2002, the Under Secretary of Transportation for Security shall establish a program to deputize qualified pilots of commercial cargo or passenger aircraft who volunteer for the program as Federal law enforcement officers to defend the flight decks of commercial aircraft of air carriers engaged in air transportation or intrastate air transportation against acts of criminal violence or air piracy. Such officers shall be known as 'Federal flight deck officers'. The program shall be administered in connection with the Federal air marshal program.

''(b) QUALIFIED PILOT.—Under the program described in subsection (a), a qualified pilot is a pilot of an aircraft engaged in air transportation or intrastate air transportation who—

''(1) is employed by an air carrier;

''(2) has demonstrated fitness to be a Federal flight deck officer in accordance with regulations promulgated pursuant to this title; and

''(3) has been the subject of an employment investigation (including a criminal history record check) under section 44936(a)(1).

''(c) TRAINING, SUPERVISION, AND EQUIPMENT.—The Under Secretary of Transportation for Security shall provide or make arrangements for training, supervision, and equipment necessary for a qualified pilot to be a Federal flight deck officer under this section at no expense to the pilot or the air carrier employing the pilot. The Under Secretary may approve private training programs which meet the Under Secretary's specifications and guidelines. Air carriers shall make accommodations to facilitate the training of their pilots as Federal flight deck officers and shall facilitate Federal flight deck officers in the conduct of their duties under this program.

''(d) DEPUTIZATION.—

''(1) IN GENERAL.—The Under Secretary of Transportation for Security shall train and deputize, as a Federal flight deck officer under this section, any qualified pilot who submits to the Under Secretary a request to be such an officer.

''(2) INITIAL DEPUTIZATION.—Not later than 120 days after the date of enactment of this section, the Under Secretary shall deputize not fewer than 500 qualified pilots who are former military or law enforcement personnel as Federal flight deck officers under this section.

''(3) FULL IMPLEMENTATION.—Not later than 24 months after the date of enactment of this section, the Under Secretary shall deputize any qualified pilot as a Federal flight deck officer under this section.

''(e) COMPENSATION.—Pilots participating in the program under this section shall not be eligible for compensation from the Federal Government for services provided as a Federal flight deck officer.

''(f) AUTHORITY TO CARRY FIREARMS.—The Under Secretary of Transportation for Security shall authorize a Federal flight deck officer under this section to carry a firearm to defend the flight deck of a commercial passenger or cargo aircraft while engaged in providing air transportation or intrastate air transportation. No air carrier may prohibit a Federal flight deck officer from carrying a firearm in accordance with the provisions of the Arming Pilots Against Terrorism and Cabin Defense Act of 2002.

''(g) AUTHORITY TO USE FORCE.—Notwithstanding section 44903(d), a Federal flight deck officer may use force (including lethal force) against an individual in the defense of a commercial aircraft in air transportation or intrastate air transportation if the officer reasonably believes that the security of the aircraft is at risk.

''(h) LIMITATION ON LIABILITY.—

''(1) LIABILITY OF AIR CARRIERS.—An air carrier shall not be liable for damages in any action brought in a Federal or State court arising out of the air carrier employing a pilot of an aircraft who is a Federal flight deck officer under this section or out of the acts or omissions of the pilot in defending an aircraft of the air carrier against acts of criminal violence or air piracy.

''(2) LIABILITY OF FEDERAL FLIGHT DECK OFFICERS.—A Federal flight deck officer shall not be liable for damages in any action brought in a Federal or State court arising out of the acts or omissions of the officer in defending an aircraft against acts of criminal violence or air piracy unless the officer is guilty of gross negligence or willful misconduct.

''(3) EMPLOYEE STATUS OF FEDERAL FLIGHT DECK OFFICERS.—A Federal flight deck officer shall be considered an 'employee of the Government while acting within the scope of his office or employment' with respect to any act or omission of the officer in defending an aircraft against acts of criminal violence or air piracy, for purposes of sections 1346(b), 2401(b), and 2671 through 2680 of title 28 United States Code.

''(i) REGULATIONS.—Not later than 90 days after the date of enactment of this section, the Under Secretary of Transportation for Security, in consultation with the Firearms Training Unit of the Federal Bureau of Investigation, shall issue regulations to carry out this section.

''(j) PILOT DEFINED.—In this section, the term 'pilot' means an individual who is responsible for the operation of an aircraft, and includes a co-pilot or other member of the flight deck crew.''.

(b) CONFORMING AMENDMENTS.—

(1) CHAPTER ANALYSIS.—The analysis for such chapter 449 is amended by inserting after the item relating to section 44920 the following new item:

''44921. Federal flight deck officer program.''.

(2) EMPLOYMENT INVESTIGATIONS.—Section 44936(a)(1)(B) is amended—

(A) by aligning clause (iii) with clause (ii);

(B) by striking ''and'' at the end of clause (iii);

(C) by striking the period at the end of clause (iv) and inserting ''; and''; and

(D) by adding at the end the following:

''(v) qualified pilots who are deputized as Federal flight deck officers under section 44921.''.

(3) FLIGHT DECK SECURITY.—Section 128 of the Aviation and Transportation Security Act (49 U.S.C. 44903 note) is repealed.

SEC. 4. CABIN SECURITY.

(a) TECHNICAL AMENDMENTS.—Section 44903, of title 49, United States Code, is amended—

(1) by redesignating subsection (h) (relating to authority to arm flight deck crew with less-than-lethal weapons, as added by section 126(b) of public law 107–71) as subsection (j); and

(2) by redesignating subsection (h) (relating to limitation on liability for acts to thwart criminal violence or aircraft piracy, as added by section 144 of public law 107–71) as subsection (k).

(b) AVIATION CREWMEMBER SELF-DEFENSE DIVISION.—Section 44918 of title 49, United States Code, is amended—

(1) by striking subsection (a) and inserting the following new subsection:

''(a) IN GENERAL.—

''(1) REQUIREMENT FOR AIR CARRIERS.—Not later than 60 days after the date of enactment of the Arming Pilots Against Terrorism and Cabin Defense Act of 2002, the Under Secretary of Transportation for Security, shall prescribe detailed requirements for an air carrier cabin crew training program, and for the instructors of that program as described in subsection (b) to prepare crew members for potential threat conditions. In developing the requirements, the Under Secretary shall consult with appropriate law enforcement personnel who have expertise in self-defense training, security experts, and terrorism experts, and representatives of air carriers and labor organizations representing individuals employed in commercial aviation.

''(2) AVIATION CREWMEMBER SELF-DEFENSE DIVISION.—Not later than 60 days after the date of enactment of the Arming Pilots Against Terrorism and Cabin Defense Act of 2002, the Under Secretary of Transportation for Security shall establish an Aviation Crew Self-Defense Division within the Transportation Security Administration. The Division shall develop and administer the implementation of the requirements described in this section. The Under Secretary shall appoint a Director of the Aviation Crew Self-Defense Division who shall be the head of the Division. The Director shall report to the Under Secretary. In the selection of the Director, the Under Secretary shall solicit recommendations from law enforcement, air carriers, and labor organizations representing individuals employed in commercial aviation. The Director shall have a background in self-defense training, including military or law enforcement training with an emphasis in teaching self-defense and the appropriate use force. Regional training supervisors shall be under the control of the Director and shall have appropriate training and experience in teaching self-defense and the appropriate use of force.'';

(2) by striking subsection (b), and inserting the following new subsection:

''(b) PROGRAM ELEMENTS.—

''(1) IN GENERAL.—The requirements prescribed under subsection (a) shall include, at a minimum, 28 hours of self-defense training that incorporates classroom and situational training that contains the following elements:

''(A) Determination of the seriousness of any occurrence.

''(B) Crew communication and coordination.

''(C) Appropriate responses to defend oneself, including a minimum of 16 hours of hands-on training, with reasonable and effective requirements on time allotment over a 4 week period, in the following levels of self-defense:

''(i) awareness, deterrence, and avoidance;

''(ii) verbalization;

''(iii) empty hand control;

''(iv) intermediate weapons and self-defense techniques; and

''(v) deadly force.

''(D) Use of protective devices assigned to crewmembers (to the extent such devices are approved by the Administrator or Under Secretary).

''(E) Psychology of terrorists to cope with hijacker behavior and passenger responses.

''(F) Live situational simulation joint training exercises regarding various threat conditions, including all of the elements required by this section.

''(G) Flight deck procedures or aircraft maneuvers to defend the aircraft.

''(2) PROGRAM ELEMENTS FOR INSTRUCTORS.—The requirements prescribed under subsection (a) shall contain program elements for instructors that include, at a minimum, the following:

''(A) A certification program for the instructors who will provide the training described in paragraph (1).

''(B) A requirement that no training session shall have fewer than 1 instructor for every 12 students.

''(C) A requirement that air carriers provide certain instructor information, including names and qualifications, to the Aviation Crew Member Self-Defense Division within 30 days after receiving the requirements described in subsection (a).

''(D) Training course curriculum lesson plans and performance objectives to be used by instructors.

''(E) Written training bulletins to reinforce course lessons and provide necessary progressive updates to instructors.

''(3) RECURRENT TRAINING.—Each air carrier shall provide the training under the program every 6 months after the completion of the initial training.

''(4) INITIAL TRAINING.—Air carriers shall provide the initial training under the program within 24 months of the date of enactment of the Arming Pilots Against Terrorism and Cabin Defense Act of 2002.

''(5) COMMUNICATION DEVICES.—The requirements described in subsection (a) shall include a provision mandating that air carriers provide flight and cabin crew with a discreet, hands-free, wireless method of communicating with the flight deck.

''(6) REAL-TIME VIDEO MONITORING.—The requirements described in subsection (a) shall include a program to provide flight deck crews with real-time video surveillance of the cabins of commercial airline flights. In developing this program, the Under Secretary shall consider—

''(A) maximizing the security of the flight deck;

''(B) enhancing the safety of the flight deck crew;

''(C) protecting the safety of the passengers and crew;

''(D) preventing acts of criminal violence or air piracy;

''(E) the cost of the program;

''(F) privacy concerns; and

''(G) the feasibility of installing such a device in the flight deck.''; and

(3) by adding at the end the following new subsections:

''(f) RULEMAKING AUTHORITY.—Notwithstanding subsection (j) (relating to authority to arm flight deck crew with less than-lethal weapons) of section 44903, of this title, within 180 days after the date of enactment of the Arming Pilots Against Terrorism and Cabin Defense Act of 2002, the Under Secretary of Transportation for Security, in consultation with persons described in subsection (a)(1), shall prescribe regulations requiring air carriers to—

''(1) provide adequate training in the proper conduct of a cabin search and allow adequate duty time to perform such a search; and

''(2) conduct a preflight security briefing with flight deck and cabin crew and, when available, Federal air marshals or other authorized law enforcement officials.

''(g) LIMITATION ON LIABILITY.—

''(1) AIR CARRIERS.—An air carrier shall not be liable for damages in any action brought in a Federal or State court arising out of the acts or omissions of the air carrier's training instructors or cabin crew using reasonable and necessary force in defending an aircraft of the air carrier against acts of criminal violence or air piracy.

''(2) TRAINING INSTRUCTORS AND CABIN CREW.—An air carrier's training instructors or cabin crew shall not be liable for damages in any action brought in a Federal or State court arising out of an act or omission of a training instructor or a member of the cabin crew regarding the defense of an aircraft against acts of criminal violence or air piracy unless the crew member is guilty of gross negligence or willful misconduct.''.

(c) NONLETHAL WEAPONS FOR FLIGHT ATTENDANTS.—

(1) STUDY.—The Under Secretary of Transportation for Security shall conduct a study to determine whether possession of a nonlethal weapon by a member of an air carrier's cabin crew would aid the flight deck crew in combating air piracy and criminal violence on commercial airlines.

(2) REPORT.—Not later than 6 months after the date of enactment of this Act, the Under Secretary of Transportation for Security shall prepare and submit to Congress a report on the study conducted under paragraph (1).

SA 4206. Mr. MILLER proposed an amendment to the bill S. 2673, to improve quality and transparency in financial reporting and independent audits and accounting services for public companies, to create a Public Company Accounting Oversight Board, to enhance the standard setting process for accounting practices, to strengthen the independence of firms that audit public companies, to increase corporate responsibility and the usefulness of corporate financial disclosure, to protect the objectivity and independence of securities analysts, to improve Securities and Exchange Commission resources and oversight, and for other purposes; as follows:

At the end add the following new title:

TITLE VIII—CORPORATE TAX RETURNS

SEC. 801. SENSE OF THE SENATE REGARDING THE SIGNING OF CORPORATE TAX RETURNS BY CHIEF EXECUTIVE OFFICERS.

It is the sense of the Senate that the Federal income tax return of a corporation should be signed by the chief executive officer of such corporation.

SA 4207. Mrs. FEINSTEIN submitted an amendment intended to be proposed by her to the bill S. 2673, to improve quality and transparency in financial reporting and independent audits and accounting services for public companies, to create a Public Company Accounting Oversight Board, to enhance the standard setting process for accounting practices, to strengthen the independence of firms that audit public companies, to increase corporate responsibility and the usefulness of corporate financial disclosure, to protect the objectivity and independence of securities analysts, to improve Securities and Exchange Commission resources and oversight, and for other purposes; which was ordered to lie on the table; as follows:

On page 101, line 25, insert after ''dealers'' the following: '', or who have conducted advisory assignments with respect to mergers and acquisitions, divestitures, corporate defense activities, restructurings, or spin-offs on behalf of the issuer,''.

SA 4208. Mr. WELLSTONE submitted an amendment intended to be proposed by him to the bill S. 2673, to improve quality and transparency in financial reporting and independent audits and accounting services for public companies, to create a Public Company Accounting Oversight Board, to enhance the standard setting process for accounting practices, to strengthen the independence of firms that audit public companies, to increase corporate responsibility and the usefulness of corporate financial disclosure, to protect the objectivity and independence of securities analysts, to improve Securities and Exchange Commission resources and oversight, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. . ADMINISTRATIVE SUBPOENAS.

(a) CIVIL MONEY PENALTIES.—Section 21(c) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(c)) is amended by inserting before the final period '', and the court may impose civil money penalties pursuant to subsection (d)(3)''.

(b) FAILURE TO COMPLY WITHOUT JUST CAUSE.—Section 21(d)(3)(A) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(d)(3)(A)) is amended by inserting ''or without just cause, has failed or refused to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, and other records, if in his power so to do, in obedience to the subpoena of the Commission,'' after ''pursuant to section 21A,''.

NOTICES OF HEARINGS/MEETINGS

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

Mr. HARKIN. Mr. President, I would like to announce that the Committee on Agriculture, Nutrition, and Forestry will conduct a hearing on July 10, 2002 in SD–106 at 10:00 a.m. The purpose of this hearing will be to discuss energy derivatives.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. BINGAMAN. Mr. President, I would like to announce for the information of the Senate and the public that a hearing has been scheduled before the Committee on Energy and Natural Resources.

The hearing will take place on Thursday, July 18, at 9:30 a.m. in room 366 of the Dirksen Senate Office Building in Washington, DC.

The purpose of the hearing is to receive testimony on the effectiveness and sustainability of U.S. technology transfer programs for energy efficiency, nuclear, fossil and renewable energy; and to identify necessary changes to those programs to support U.S. competitiveness in the global marketplace.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing record should send two copies of their testimony to the Committee on Energy and Natural Resources, ATTN Democratic Staff,

United States Senate, 312 Dirksen Senate Office Building, Washington, DC 20510.

For further information, please contact Jennifer Michael on 202–224–7143 or Jonathan Black on 202–224–6722.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. BINGAMAN. Mr. President, I would like to announce for the information of the Senate and the public that a hearing has been scheduled before the Subcommittee on National Parks of the Committee on Energy and Natural Resources.

The hearing will take place on Thursday, July 18, 2002, at 2:30 p.m. in room 366 of the Dirksen Senate Office Building in Washington, DC.

The purpose of the hearing is to receive testimony on the following bills:

S. 1865, to authorize the Secretary of the Interior to study the suitability and feasibility of establishing the Lower Los Angeles River and San Gabriel River watersheds in the State of California as a unit of the National Park System, and for other purposes;

S. 1943, to expand the boundary of the George Washington Birthplace National Monument, and for other purposes;

S. 2571, to direct the Secretary of the Interior to conduct a special resources study to evaluate the suitability and feasibility of establishing the Rim of the Valley Corridor as a unit of the Santa Monica Mountains National Recreation Area;

S. 2595, to authorize the expenditure of funds on private lands and facilities at Mesa Verde National Park, in the State of Colorado, and for other purposes; and

H.R. 1925, to direct the Secretary of the Interior to study the suitability and feasibility of designating the Waco Mammoth Site Area in Waco, Texas, as a unit of the National Park System, and for other purposes.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing record should send two copies of their testimony to the Committee on Energy and Natural Resources, United States Senate, 312 Dirksen Senate Office Building, Washington, DC 20510.

For further information, please contact David Brooks of the Committee staff at (202) 224–9863.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. BINGAMAN. Mr. President, I would like to announce for the information of the Senate and the public that a hearing has been scheduled before the Subcommittee on Public Lands and Forests of the Committee on Energy and Natural Resources.

The hearing will take place on Thursday, July 25, at 2:30 p.m. in room 366 of the Dirksen Senate Office Building in Washington, DC.

The purpose of the hearing is to receive testimony on S. 2672, to provide opportunities for collaborative restoration projects on National Forest System and other public domain lands, and for other purposes.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing record should send two copies of their testimony to the Committee on Energy and Natural Resources, United States Senate, 312 Dirksen Senate Office Building, Washington, DC 20510.

For further information, please contact Kira Finkler of the Committee staff at 202/224–8164.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Agriculture, Nutrition, and Forestry be allowed to conduct a hearing during the session of the Senate on Wednesday, July 10, 2002. The purpose of this hearing will be to discuss energy derivatives. The hearing will take place at 9:30 a.m.

The PRESIDING OFFICER. Without objection it is so ordered.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to hold a Hearing during the session of the Senate on Wednesday, July 10, 2002, at 2:30 p.m. in SD–366.

The purpose of the hearing is to explore the present and future roles of the Department of Energy/National Nuclear Security Administration national laboratories in protecting our homeland security.

The PRESIDING OFFICER. Without objection it is so ordered.

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Environment and Public Works be authorized to meet on Wednesday, July 10, 2002, at 2:00 p.m. to conduct a hearing to receive testimony on the President's proposal to establish the Department of Homeland Security.

The hearing will be held in SD–406.

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

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Health, Education, Labor, and Pensions be authorized to meet in executive session during the session of the Senate on Wednesday, July 10, 2002, at 10:00 a.m. in SD–430 during the session of the Senate.

Agenda

S. 710, Eliminate Colorectal Cancer Act of 2001.

S. 2328, Safe Motherhood Act for Research and Treatment.

S. 812, Greater Access to Affordable Pharmaceuticals Act of 2001.

S. 2489, Lifespan Respite Care Act of 2002.

Nominations: Richard H. Carmona, of Arizona to be Surgeon General of the Public Health Service; Naomi Shihab Nye, of Texas, to be a Member of the National Council on the Humanities; Earl A. Powell III, of Virginia, to be a Member of the National Council on the Arts; Robert Davila, of New York, to be a Member of the National Council on Disability; Michael Pack, of Maryland, to be a Member of the National Council on the Humanities; Peter J. Hurtgen, of Maryland, to be Federal Mediation Conciliation Director.

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

COMMITTEE ON INDIAN AFFAIRS

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Indian Affairs be authorized to meet on Wednesday, July 10, 2002, at 10:00 a.m. in Room 485 of the Russell Senate Office Building to conduct an oversight hearing on Native American Elder Health Issues.

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

COMMITTEE ON VETERANS' AFFAIRS

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Veterans' Affairs be authorized to meet during the session of the Senate on Wednesday, July 10, 2002, for a hearing on ''Military Exposures: The continuing challenges of care and compensation.''

The hearing will take place in SR–418 of the Russell Senate Office Building at 9:30 a.m.

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

SUBCOMMITTEE ON CRIME AND DRUGS

Mr. REID. Mr. President, I ask unanimous consent that the Committee on the Judiciary Subcommittee on Crime and Drugs be authorized to meet to conduct a hearing on ''Penalties From White Collar Crime: Are We Really Getting Tough on Crime?'' on Wednesday, July 10, 2002, at 2:30 p.m. in Room 226 of the Dirksen Senate Office Building.

Agenda

Witnesses

Panel I: Michael Chertoff, Assistant Attorney General, Criminal Division, U.S. Department of Justice, Washington, DC; and William W. Mercer, U.S. Attorney for the District of Montana, U.S. Attorneys' White Collar Crime Working Group, Billings, MT.

Panel II: John C. Coffee, Jr., Adolf A. Berle Professor of Law, Columbia University Law School, New York, NY: Thomas Donaldson, Mark O. Winkelman Professor, the Wharton School, University of Pennsylvania, Philadelphia, PA; Charles M. Elson, Edgar S. Woolard, Jr. Professor of Corporate Governance, Director, Center for Corporate Governance, University of Delaware, Newark, DE; George

Terwilliger, Partner, White & Case, LLP, Washington, DC; and Tom Devine, Legal Director, Government Accountability Project, Washington, DC.

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

SUBCOMMITTE ON SURFACE TRANSPORTATION AND MERCHANT MARINE

Mr. REID. Mr. President, I ask unanimous consent that the Subcommittee on Surface Transportation and Merchant Marine be authorized to meet at 9:30 a.m. on rail safety on Wednesday, July 20, 2002.

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

SUBCOMMITTEE ON WATER AND POWER

Mr. REID. Mr. President, I ask unanimous consent that the Subcommittee on Water and Power of the Committee on Energy and Natural Resources be authorized to hold a Hearing during the session of the Senate on Wednesday, July 10, 2002, at 9:30 a.m. in SD–366.

The purpose of the hearing is to receive testimony on water resource management issues concerning the Missouri River.

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

JOINT COMMITTEE ON PRINTING

Mr. REID. Mr. President, I ask unanimous consent that the Joint Committee on Printing be authorized to meet during the session of the Senate on Wednesday, July 10 at 11:00 a.m., in SR–301, Russell Senate Office Building. the Committee is holding a hearing to receive testimony from The Honorable Mitchell E. Daniels, Jr., Director, Office of Management and Budget; The Honorable Michael F. DiMario, Public Printer, United States Government Printing Office; Ms. Julia F. Wallace, Regional Depository Librarian (representing the American Library Association, Association of Research Librarians, American Association of Law Libraries, and the Medical Library Association); Benjamin Y. Cooper, Executive Vice President for Public Affairs, Printing Industries of America; Mr. William J. Boarman, President Printing, Publishing and Media Workers Sector, Communication Workers of America on federal government printing and public access to government documents.

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

PRIVILEGE OF THE FLOOR

Mr. WELLSTONE. Madam President, I ask unanimous consent Fiona Wright of my staff be given floor privileges for the duration of the debate on this bill.

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

EXECUTIVE SESSION

NOMINATION OF LAVENSKI R. SMITH, OF ARKANSAS, TO BE UNITED STATES CIRCUIT JUDGE FOR THE EIGHTH CIRCUIT

Mr. REID. Madam President, I move to proceed to executive session to consider Executive Calendar No. 903, Lavenski Smith, to be United States Circuit Judge.

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

The motion was agreed to.

CLOTURE MOTION

Mr. REID. Madam President, this nomination is cleared on this side but because of an objection from a Member on the other side of the aisle, I send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close the debate on Executive Calendar No. 903, the nomination of Lavenski R. Smith, of Arkansas, to be United States Circuit Judge for the Eighth Circuit:

Zell Miller, Fritz Hollings, Kent Conrad, Byron L. Dorgan, Harry Reid, Jeff Bingaman, Debbie Stabenow, Jack Reed, Barbara Boxer, Patrick Leahy, Barbara Mikulski, Blanche R. Lincoln, Bob Graham, Jean Carnahan, Jay Rockefeller, Charles Schumer.

Mr. REID. Madam President, I ask unanimous consent that the live quorum prior to this vote as required under rule XXII be waived and that the Senate resume legislative session.

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

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now resume legislative session.

The PRESIDING OFFICER (Mr. REID). The Senator from Washington is recognized.

PROVIDING FOR AN INDEPENDENT INVESTIGATION OF FOREST SERVICE FIREFIGHTER DEATHS

Ms. CANTWELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 3971, Calendar No. 446.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 3971) to provide for an independent investigation of Forest Service firefighter deaths that are caused by wildfire entrapment or burnover.

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

The PRESIDING OFFICER. The Senator from Washington.

Ms. CANTWELL. Mr. President, I rise today to urge the passage of this legislation. Roughly a year ago, about this time of night, my colleague, Senator MURRAY, and I stood before the Senate in a terrible moment to describe our sympathy for the deaths of four young firefighters: Devin Weaver, Jessica Johnson, Karen Fitzpatrick, and Tom Craven.

They lost their lives fighting a forest fire that had been out of control, and, as we found out, these four young people were barely trained. They were on the job, having had training, but were new, and this was their first fire.

Since that day on the Senate floor, we have had hearings, investigations, a lot of discussion, and what we found in the report from the Forest Service on the Thirtymile fire is that some of the same issues that had arisen in a fire, the Storm King fire, many years ago were the same issues that were arising again; the fact that maybe there were rules in place but they were not being followed.

When the report came back to say that, sadly, the young men and women who perished fighting the Thirtymile fire did not have to die, it was a very painful moment. The fact that they did not have to die meant we were not really implementing the processes and procedures that needed to be in place.

Tonight I am glad to say that we are taking a big step forward in assuring the oversight and accountability of the Forest Service, by making sure there is an independent investigation in the case of forest fire fatalities.

This legislation will not bring back Devin Weaver, Jessica Johnson, Karen Fitzpatrick, or Tom Craven, but it will say that the Congress—the House and the Senate—does believe there needs to be accountability, there needs to be oversight, there needs to be protection. There needs to be rules in place not just because we can point to them on a piece of paper but that they are actually being followed.

So tonight, even though it has been just 1 year, I feel at least we can go to families and say we do believe accountability is important.

I thank my colleague in the House, DOC HASTINGS, for getting this legislation passed as companion legislation to what we have.

I note that the Senate did take action earlier this year. We passed this as an amendment as part of the farm bill, and, unfortunately, it did not make it through the conference process. So we are passing this legislation tonight, to send on to the President for his signature, in hopes he will sign this in fast order and help improve the process to make sure we have accountability in the Forest Service in this particular area.

Mr. President, I ask unanimous consent the bill be read three times, passed, and the motion to reconsider be laid upon the table, with no further intervening action or debate, and that any statements relating thereto be printed in the RECORD.

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

The bill (H.R. 3971) was read the third time and passed.

LOUISIANA STATE UNIVERSITY TIGERS MEN'S OUTDOOR TRACK AND FIELD TEAM

Mr. REID. Madam President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of S. Res. 298 and the Senate now proceed to its consideration.

The PRESIDING OFFICER (Ms. CANTWELL). Without objection, it is so ordered.

The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 298) honoring the Louisiana State University Tigers Men's Outdoor Track and Field Team.

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

Mr. REID. Madam President, I ask unanimous consent the resolution and preamble be agreed to en bloc, the motion to reconsider be laid upon the table, and any statements relating thereto be printed in the RECORD as if read, without intervening action or debate.

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

The resolution (S. Res. 298) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 298

Whereas Louisiana State University Men's Outdoor Track and Field Team won the 2002 NCAA Division I Championship;

Whereas head coach Pat Henry was awarded the MONDO NCAA Division I Coach of the Year, and led the team to victory over top seeded Tennessee;

Whereas 9 time all-American and 6 time national champion senior Walter Davis was awarded the MONDO Athlete of the Year and won the long jump event and the triple jump event in the 2002 NCAA Division I Championship hosted by Louisiana State University, as well as running the beginning leg of the 4x100 meter relay;

Whereas Tiger athletes Robert Parham, Pete Coley, and Bennie Brazell also competed in the 4x100 meter relay with a time of 38.32 seconds, the fourth fastest time in NCAA history;

Whereas Robert Parham also won his heat in the 200 meter dash with a time of 20.45 seconds and Bennie Brazell and Lueroy Colquhoun advanced to the finals in the 400 meter hurdles by winning their preliminaries with respective times of 49.57 and 49.99;

Whereas Javier Nieto finished eighth in the hammer throw to become the first Louisiana State University Tiger to be honored as an all-American in that event since 1993;

Whereas due to the efforts and abilities of the student athletes and head coach Pat Henry, the Louisiana State University Men's Outdoor Track and Field team won the 2002 NCAA Division I Championship; and

Whereas the team's victory exemplifies the hard work ethic and high goals set by Louisiana State University and the State of Louisiana: Now, therefore, be it

Resolved, That the Senate congratulates the Tigers of the Louisiana State University Men's Outdoor Track and Field team on winning the 2002 NCAA Division I Championship.

NATIONAL NIGHT OUT

Mr. REID. Madam President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 455, S. Res. 284.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 284) expressing support for ''National Night Out'' and requesting that the President make neighborhood crime prevention, community policing, and reduction of school crime important priorities of the Administration.

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

Mr. REID. Madam President, I ask unanimous consent the resolution and preamble be agreed to en bloc, the motion to reconsider be laid on the table, and any statements relating thereto be printed in the RECORD at the appropriate place as if read.

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

The resolution (S. Res. 284) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 284

Whereas neighborhood crime is a continuing concern of the American people;

Whereas the fight against neighborhood crime and terrorism requires the cooperation of community residents, neighborhood crime watch organizations, schools, community policing groups, and other law enforcement officials;

Whereas neighborhood crime watch organizations are effective in promoting awareness about, and the participation of volunteers in, crime prevention activities at the local level;

Whereas the vigilance of neighborhood crime watch organizations creates safer communities and discourages drug dealers from operating in the communities monitored by those organizations;

Whereas the American people are concerned about violence and crime in schools, especially about incidents that result in fatalities at school, and are seeking methods to prevent such violence and crime;

Whereas community-based programs involving law enforcement personnel, school administrators, teachers, parents, and local communities are effective in reducing violence and crime in schools;

Whereas the Federal Government has made efforts to prevent neighborhood crime, including supporting community policing programs;

Whereas the Attorney General has called Federal efforts to support community policing a ''miraculous sort of success'';

Whereas the Administration has supported neighborhood watch programs through the establishment of the Citizen Corps;

Whereas on August 6, 2002, people across America will take part in National Night Out, an event that highlights the importance of community participation in crime prevention efforts;

Whereas on National Night Out participants will light up their homes and neighborhoods between 7:00 p.m. and 10:00 p.m. on that date, and spend that time outside with their neighbors; and

Whereas schools that turn their lights on from 7:00 p.m. to 10:00 p.m. on August 6, 2002, send a positive message to the participants of National Night Out and show their commitment to reducing crime and violence in schools: Now, therefore, be it

Resolved, That the Senate—

(1) supports the goals of National Night Out;

(2) recognizes that the fight against neighborhood crime and terrorism requires individuals, neighborhood crime watch organizations, schools, and community policing groups and other law enforcement officials to work together;

(3) encourages neighborhood residents, crime watch organizations, and schools to participate in National Night Out activities on August 6, 2002, between 7:00 p.m. and 10:00 p.m.; and

(4) requests that the President—

(A) issue a proclamation calling on the people of the United States to participate in National Night Out with appropriate activities; and

(B) make neighborhood crime prevention, community policing, and reduction of school crime important priorities of the Administration.

SUDDEN OAK DEATH SYNDROME CONTROL ACT OF 2001

Mr. REID. Madam President, I ask unanimous consent that the Agriculture Committee be discharged from further consideration of S. 997 and the Senate proceed to that legislation.

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

The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 997) to direct the Secretary of Agriculture to conduct research, monitoring, management, treatment, and outreach activities relating to sudden oak death syndrome and to establish a Sudden Oak Death Syndrome Advisory Committee.

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

Mr. REID. Madam President, I ask unanimous consent the bill be read three times, passed, the motion to reconsider be laid upon the table; that any statements relating thereto be printed in the RECORD at the appropriate place as if given, with no intervening action or debate.

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

The bill (S. 997) was read the third time and passed, as follows:

S. 997

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 ''Sudden Oak Death Syndrome Control Act of 2001''.

SEC. 2. FINDINGS.

Congress finds that—

(1) tan oak, coast live oak, Shreve's oak, and black oak trees are among the most beloved features of the topography of California and the Pacific Northwest and efforts should be made to protect those trees from disease;

(2) the die-off of those trees, as a result of the exotic Phytophthora fungus, is approaching epidemic proportions;

(3) very little is known about the new species of Phytophthora, and scientists are struggling to understand the causes of sudden oak death syndrome, the methods of

transmittal, and how sudden oak death syndrome can best be treated;

(4) the Phytophthora fungus has been found on—

(A) Rhododendron plants in nurseries in California; and

(B) wild huckleberry plants, potentially endangering the commercial blueberry and cranberry industries;

(5) sudden oak death syndrome threatens to create major economic and environmental problems in California, the Pacific Northwest, and other regions, including—

(A) the increased threat of fire and fallen trees;

(B) the cost of tree removal and a reduction in property values; and

(C) loss of revenue due to—

(i) restrictions on imports of oak products and nursery stock; and

(ii) the impact on the commercial rhododendron, blueberry, and cranberry industries; and

(6) Oregon and Canada have imposed an emergency quarantine on the importation of oak trees, oak products, and certain nursery plants from California.

SEC. 3. RESEARCH, MONITORING, AND TREATMENT OF SUDDEN OAK DEATH SYNDROME.

(a) IN GENERAL.—The Secretary of Agriculture (referred to in this Act as the ''Secretary'') shall carry out a sudden oak death syndrome research, monitoring, and treatment program to develop methods to control, manage, or eradicate sudden oak death syndrome from oak trees on both public and private land.

(b) RESEARCH, MONITORING, AND TREATMENT ACTIVITIES.—In carrying out the program under subsection (a), the Secretary may—

(1) conduct open space, roadside, and aerial surveys;

(2) provide monitoring technique workshops;

(3) develop baseline information on the distribution, condition, and mortality rates of oaks in California and the Pacific Northwest;

(4) maintain a geographic information system database;

(5) conduct research activities, including research on forest pathology, Phytophthora ecology, forest insects associated with oak decline, urban forestry, arboriculture, forest ecology, fire management, silviculture, landscape ecology, and epidemiology;

(6) evaluate the susceptibility of oaks and other vulnerable species throughout the United States; and

(7) develop and apply treatments.

SEC. 4. MANAGEMENT, REGULATION, AND FIRE PREVENTION.

(a) IN GENERAL.—The Secretary shall conduct sudden oak death syndrome management, regulation, and fire prevention activities to reduce the threat of fire and fallen trees killed by sudden oak death syndrome.

(b) MANAGEMENT, REGULATION, AND FIRE PREVENTION ACTIVITIES.—In carrying out subsection (a), the Secretary may—

(1) conduct hazard tree assessments;

(2) provide grants to local units of government for hazard tree removal, disposal and recycling, assessment and management of restoration and mitigation projects, green waste treatment facilities, reforestation, resistant tree breeding, and exotic weed control;

(3) increase and improve firefighting and emergency response capabilities in areas where fire hazard has increased due to oak die-off;

(4) treat vegetation to prevent fire, and assessment of fire risk, in areas heavily infected with sudden oak death syndrome;

(5) conduct national surveys and inspections of—

(A) commercial rhododendron and blueberry nurseries; and

(B) native rhododendron and huckleberry plants;

(6) provide for monitoring of oaks and other vulnerable species throughout the United States to ensure early detection; and

(7) provide diagnostic services.

SEC. 5. EDUCATION AND OUTREACH.

(a) IN GENERAL.—The Secretary shall conduct education and outreach activities to make information available to the public on sudden death oak syndrome.

(b) EDUCATION AND OUTREACH ACTIVITIES.—In carrying out subsection (a), the Secretary may—

(1) develop and distribute educational materials for homeowners, arborists, urban foresters, park managers, public works personnel, recreationists, nursery workers, landscapers, naturists, firefighting personnel, and other individuals, as the Secretary determines appropriate;

(2) design and maintain a website to provide information on sudden oak death syndrome; and

(3) provide financial and technical support to States, local governments, and nonprofit organizations providing information on sudden oak death syndrome.

SEC. 6. SUDDEN OAK DEATH SYNDROME ADVISORY COMMITTEE.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—The Secretary shall establish a Sudden Oak Death Syndrome Advisory Committee (referred to in this section as the ''Committee'') to assist the Secretary in carrying out this Act.

(2) MEMBERSHIP.—

(A) COMPOSITION.—The Committee shall consist of—

(i) 1 representative of the Animal and Plant Health Inspection Service, to be appointed by the Administrator of the Animal and Plant Health Inspection Service;

(ii) 1 representative of the Forest Service, to be appointed by the Chief of the Forest Service;

(iii) 2 individuals appointed by the Secretary from each of the States affected by sudden oak death syndrome; and

(iv) any individual, to be appointed by the Secretary, in consultation with the Governors of the affected States, that the Secretary determines—

(I) has an interest or expertise in sudden oak death syndrome; and

(II) would contribute to the Committee.

(B) DATE OF APPOINTMENTS.—The appointment of a member of the Committee shall be made not later than 90 days after the enactment of this Act.

(3) INITIAL MEETING.—Not later than 30 days after the date on which all members of the Committee have been appointed, the Committee shall hold the initial meeting of the Committee.

(b) DUTIES.—

(1) IMPLEMENTATION PLAN.—The Committee shall prepare a comprehensive implementation plan to address the management, control, and eradication of sudden oak death syndrome.

(2) REPORTS.—

(A) INTERIM REPORT.—Not later than 1 year after the date of enactment of this Act, the Committee shall submit to Congress the implementation plan prepared under paragraph (1).

(B) FINAL REPORT.—Not later than 3 years after the date of enactment of this Act, the Committee shall submit to Congress a report that contains—

(i) a summary of the activities of the Committee;

(ii) an accounting of funds received and expended by the Committee; and

(iii) findings and recommendations of the Committee.

SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated for each of fiscal years 2002 through 2007—

(1) to carry out section 3, $7,500,000, of which up to $1,500,000 shall be used for treatment;

(2) to carry out section 4, $6,000,000;

(3) to carry out section 5, $500,000; and

(4) to carry out section 6, $250,000.

MEASURE READ THE FIRST TIME—H.R. 4954

Mr. REID. Mr. President, it is my understanding that H.R. 4954 is now at the desk and is due for its first reading.

The PRESIDING OFFICER. The clerk will read the title of the bill for the first time.

The assistant legislative clerk read as follows:

A bill (H.R. 4954) to amend Title XVIII of the Social Security Act to provide for a voluntary program for prescription drug coverage under the Medicare Program, to modernize and reform payments and the regulatory structure of the Medicare Program, and for other purposes.

Mr. REID. Madam President, I now ask for its second reading and I object to my own request.

The PRESIDING OFFICER. The bill will receive its second reading on the next legislative day.

ORDERS FOR THURSDAY, JULY 11, 2002

Mr. REID. Madam President, I ask unanimous consent that when the Senate completes its business today, it recess until 9:30 a.m., Thursday, July 11; that following the prayer and the pledge, there be a period for morning business until 10:30 a.m., with Senators permitted to speak therein for up to 10 minutes each, with the first half of the time under the control of the Republican leader or his designee and the second half of the time under the control of the majority leader or his designee; that leader time be reserved; that at 10:30 a.m. the Senate resume consideration of the accounting reform bill under the previous order; and, further, that the live quorum with respect to the cloture motion filed on the accounting bill be waived.

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

PROGRAM

Mr. REID. The next rollcall vote will occur at approximately 12 noon tomorrow in relation to the McConnell second-degree amendment. Cloture has been filed on this most important legislation. All first-degree amendments must be filed prior to 1 p.m. tomorrow.

RECESS UNTIL 9:30 A.M. TOMORROW

Mr. REID. Madam President, if there is no further business to come before

the Senate, I ask unanimous consent that the Senate stand in recess under the previous order.

There being no objection, the Senate, at 8:02 p.m., recessed until Thursday July 11, 2002, at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate July 10, 2002:

FEDERAL COMMUNICATIONS COMMISSION

JONATHAN STEVEN ADELSTEIN, OF SOUTH DAKOTA, TO BE A MEMBER OF THE FEDERAL COMMUNICATIONS COMMISSION FOR THE REMAINDER OF THE TERM EXPIRING JUNE 30, 2003, VICE GLORIA TRISTANI, RESIGNED.

MORRIS K. UDALL SCHOLARSHIP AND EXCELLENCE IN NATIONAL ENVIRONMENTAL POLICY FOUNDATION

ROBERT BOLDREY, OF MICHIGAN, TO BE A MEMBER OF THE BOARD OF TRUSTEES OF THE MORRIS K. UDALL SCHOLARSHIP AND EXCELLENCE IN NATIONAL ENVIRONMENTAL POLICY FOUNDATION FOR A TERM EXPIRING MAY 26, 2007, VICE JUDITH M. ESPINOSA, TERM EXPIRED.

MALCOLM B. BOWEKATY, OF NEW MEXICO, TO BE A MEMBER OF THE BOARD OF TRUSTEES OF THE MORRIS K. UDALL SCHOLARSHIP AND EXCELLENCE IN NATIONAL ENVIRONMENTAL POLICY FOUNDATION FOR A TERM EXPIRING OCTOBER 6, 2006, VICE BILL ANOATUBBY, TERM EXPIRED.

HERBERT GUENTHER, OF ARIZONA, TO BE A MEMBER OF THE BOARD OF TRUSTEES OF THE MORRIS K. UDALL SCHOLARSHIP AND EXCELLENCE IN NATIONAL ENVIRONMENTAL POLICY FOUNDATION FOR A TERM OF TWO YEARS. (NEW POSITION)

RICHARD NARCIA, OF ARIZONA, TO BE A MEMBER OF THE BOARD OF TRUSTEES OF THE MORRIS K. UDALL SCHOLARSHIP AND EXCELLENCE IN NATIONAL ENVIRONMENTAL POLICY FOUNDATION FOR A TERM EXPIRING AUGUST 25, 2006, VICE NORMA GILBERT UDALL, TERM EXPIRED.

BRADLEY UDALL, OF COLORADO, TO BE A MEMBER OF THE BOARD OF TRUSTEES OF THE MORRIS K. UDALL SCHOLARSHIP AND EXCELLENCE IN NATIONAL ENVIRONMENTAL POLICY FOUNDATION FOR A TERM EXPIRING OCTOBER 6, 2006, VICE MATT JAMES, TERM EXPIRED.

WITHDRAWAL

Executive message transmitted by the President to the Senate on July 10, 2002, withdrawing from further Senate consideration the following nomination:

STUART D. RICK, OF MARYLAND, TO BE A MEMBER OF THE MERIT SYSTEMS PROTECTION BOARD FOR THE TERM OF SEVEN YEARS EXPIRING MARCH 1, 2007, WHICH WAS SENT TO THE SENATE ON APRIL 9, 2002.