philanthropy, were able to receive top-notch medical care from one of the finest children's hospitals in the nation.

Bart Rickenbaugh, the only son of Caroline and Kent, followed in his parents footsteps as a caring and selfless man, who enriched the lives of everyone around him. As a husband, father and son, his deep love of family was the hallmark of his life. He was an avid sportsman and outdoorsman who loved to play hockey, ski, hunt and run. He was a four-year rugby player at Dartmouth College, and a former saddle bronc rider with the Professional Rodeo Cowboys Association. He moved from Denver to Bozeman two years ago, where he became a real estate lawyer. Bart is survived by his wife, Lisa, and children, Sam and Lila.

The Rickenbaughs are survived by their two daughters, Anne Rickenbaugh of Aspen and Katherine Rich of Carbondale, who will undoubtedly carry on the traditions of selflessness and love that have long been the hallmark of this extraordinary family.

Mr. Speaker, we are all terribly saddened by the loss of Kent, Caroline and Bart Rickenbaugh, but take comfort in the knowledge that our grief is overshadowed only by the legacy of courage, success and love that each of them left with all of us. Their lives are the very embodiment of all that makes this country great, and I am deeply honored to be able to bring each of them to the attention of this body of Congress. The memories and manifestations of the Rickenbaugh family's many contributions to the people of Denver will never fade, and I, along with each and every person whose lives were touched by this extraordinary family, will forever appreciate all that they have done for our great State.

INTRODUCTION OF THE CORPORATE AND CRIMINAL FRAUD ACCOUNTABILITY ACT OF 2002

HON. JOHN CONYERS, JR.

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Tuesday, April 9, 2002

Mr. CONYERS. Mr. Speaker, today I am introducing the ''Corporate and Criminal Fraud Accountability, Act of 2002,'' legislation that imposes tough criminal and civil penalties on corporate wrongdoers and helps protect employees and shareholders against future acts of corporate fraud. I am joined by Minority Leader GEPHARDT along with Representatives FRANK, JACKSON LEE, BERMAN, WATERS, LAFALCE, ENGEL, DINGELL, JACKSON, Jr. (IL), CHRISTENSEN, DAVIS (IL), CUMMINGS, SANDERS, SOLIS, CLAYTON, BROWN (FL), LYNCH, HOEFFEL, GUTIERREZ, and SCHAKOWSKY.

As you know, the past several months have revealed widespread incidences of corporate fraud and abuse committed by Enron and its advisers. With each passing day, a new revelation concerning the dissemination of misinformation, evidence shredding, obstruction of justice, and insider trading has been unveiled. And, as more companies file for bankruptcy, I am convinced that we may very well learn of additional instances of fraud occurring across corporate America.

One step we can take to prevent corporate wrongdoers from preying on innocent investors and employees is to enact legislation that increases the penalties that companies face for engaging in such rapacious acts. The bill that I am introducing, the ''Corporate and Criminal Fraud Accountability Act of 2002'', does just that. Among other things, it creates a new 10-year felony for defrauding shareholders of publicly-traded companies; clarifies current criminal laws relating to the destruction or fabrication of evidence, including the shredding of financial and audit records; provides whistleblower protection to employees of publicly-traded companies, similar to those currently available to many government employees; and establishes a new bureau within the Department of Justice to prosecute crimes involving securities and pension fraud.

In the wake of the Enron debacle, I believe the time is now ripe to protect American investors once again. The Enron case has established beyond a shadow of a doubt that white collar fraud can be incredibly damaging, in many cases wiping away life savings and costing innocent Americans billions of dollars of their hard earned money. There can be no conceivable justification for shielding corporate wrongdoers from criminal prosecution for their outrageous behavior. I am hopeful that Congress can move quickly to enact this worthwhile and timely legislation.

The following is a section-by-section analysis of the bill:

Section 1. Title. ''Corporate and Criminal Fraud Accountability Act.''

Section 2. Criminal Penalties for Altering, Destroying, or Failing to Maintain Documents—provides two new criminal statutes which would clarify and plug holes in the current criminal laws relating to the destruction or fabrication of evidence, including the shredding of financial and audit records. Currently, those provisions are a patchwork which have been interpreted in often limited ways in federal court. For instance, certain of the current provisions make it a crime to persuade another person to destroy documents, but not a crime to actually destroy the same documents yourself. Other provisions have been narrowly interpreted by courts, including the Supreme Court in United States v. Aquillar, 115 S. Ct. 593 (1995), to apply only to situations where the obstruction of justice can be closely tied to a pending judicial proceeding.

First, this section would create a new 5 year felony which could be effectively used in a wide array of cases where a person destroys or creates evidence with the specific intent to obstruct a federal agency or a criminal investigation. Second, the section creates another 5 year felony which applies specifically to the willful failure to preserve audit papers of companies that issue securities.

Section 3. Criminal Penalties for Defrauding Shareholders of Publicly Traded Companies—creates a new 10 year felony for defrauding shareholders of publicly traded companies. The provision would supplement the patchwork of existing technical securities law violations with a more general and less technical provision, comparable to the bank fraud and health care fraud statutes. The provision would be more accessible to investigators and prosecutors and would provide needed enforcement flexibility and, in the context of publicly traded companies, protection against all the types schemes and frauds which inventive criminals may devise in the future.

Section 4. Review of Federal Sentencing Guidelines for Obstruction of Justice and Extensive Criminal Fraud—requires the United States Sentencing Commission (''Commission'') to consider enhancing criminal penalties in cases involving the actual destruction or fabrication of evidence or in fraud cases in which a large number of victims are injured or when the injury to the victims is particularly grave—i.e. they face financial ruin.

This provision first requires the Commission to consider sentencing enhancements in obstruction of justice cases where physical evidence was actually destroyed. The provision, in subsections (3) and (4), also requires the Commission to consider sentencing enhancements for fraud cases which are particularly extensive or serious. Specifically, once there are more than 50 victims, the current guidelines do not require any further enhancement of the sentence, so that a case with 51 victims may be treated the same as a case with 5,000 victims. In addition, current guidelines allow only very limited consideration of the extent of financial devastation that a fraud offense causes to private victims. This section corrects both these problems.

Section 5. Debts Non-dischargeable if Incurred in Violation of Securities Fraud Laws—amends the federal bankruptcy code to make judgments and settlements arising from state and federal securities law violations brought by state or federal regulators and private individuals non dischargeable. Current bankruptcy law may permit wrongdoers to discharge their obligations under court judgments or settlements based on securities fraud and securities law violations. This loophole in the law should be closed to help defrauded investors recoup their losses and to hold accountable those who perpetrate securities fraud.

Section 6. Increased Protection of Employees' Wages Under Chapter 11 Proceedings—increases the amount in unsecured claims (wages, commissions, etc.) an individual could claim in bankruptcy proceedings from $4,300 to $10,000. This change would aid employees who are usually only paid their priority wage claims early in the case. The rest of the employee's wage claim is a general unsecured debt and may not be paid except on a pro rata basis at the end of the case, which could be several years later. In the Enron case, employees were paid only their priority wage claims while certain individuals were given generous ''retention bonuses.'' This change would make it possible for the court in similar cases to provide a more realistic buffer to employees who have been laid off or who have not been paid in the period leading up to the bankruptcy.

Section 7. Statute of Limitations for Securities Fraud—sets the statute of limitations in private securities fraud cases to the earlier of 5 years after the date of the fraud or three years after the fraud was discovered. The current statute of limitations for private securities fraud cases is the earlier of three years from the date of the fraud or one year from the date of discovery. In the Enron state pension fund litigation, the current short statute of limitations has forced some states to forgo claims against Enron based on securities fraud in 1997 and 1998. Victims of securities fraud should have a reasonable time to discover the facts underlying the fraud.

The Supreme Court, in *Lampf v. Gilbertson*, 501 U.S. 350 (1991), endorsed the current short statute of limitations for securities fraud in a 5–4 decision. Justices O'Connor and Kennedy wrote in their dissent in the *Lampf* decision: ''By adopting a 3-year period of repose, the Court makes a §10(b) action all but a dead letter for injured investors who by no conceivable standard of fairness or practicality can be expected to file suit within three years after the violation occurred. In so doing, the Court also turns its back on the almost uniform rule rejecting short periods of repose for fraud-based actions.''

Section 8. Whistleblower Protection for Employees of Publicly Traded Companies who Provide Evidence of Fraud—provides whistleblower protection to employees of publicly traded companies, similar to those currently available to many government employees. It specifically protects them when they take lawful acts to disclose information or otherwise assist criminal investigators, federal regulators, Congress, supervisors (or other proper people within a corporation), or parties in a judicial proceeding in detecting and stopping fraud. Since the bill's provisions only apply to ''lawful'' actions by an employee, it does not protect employees from improper and unlawful disclosure of trade secrets. In addition, a reasonableness test is also set forth under the information providing subsection of this section, which is intended to impose the normal reasonable person standard used and interpreted in a wide variety of legal contexts. *See generally Passaic Valley Sewerage Commissioners v. Department of Labor*, 992 F. 2d 474, 478. Certainly, although not exclusively, any type of corporate or agency action taken based on the information, or the information constituting or leading to admissible evidence would be strong indicia that it could support of such a reasonable belief. If the employer does take illegal action in retaliation for lawful and protected conduct, subsection (b) allows the employee to elect to file an administrative complaint or to bring a case in federal court, with a jury trial available in cases where the case is an action at law. *See* United States Constitution, Amendment VII; Title 42 United States Code, Section 1983. Subsection (c) would require both reinstatement of the whistleblower, double backpay, compensatory damages to make a victim whole, and would allow punitive damages in extreme cases where the public's health, safety or welfare was at risk.

Section 9. Establishment of a Retirement Security Fraud Bureau—establishes a Bureau within DOJ that, among other things, will advise the Assistant Attorney General of the Criminal Division on matters pertaining to pension and securities fraud, and assist federal, state and local law enforcement authorities in combating pension and securities fraud-related activities.

JOHN BRADEMAS ON SCIENCE ADVICE TO CONGRESS

HON. TIM ROEMER

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, April 9, 2002

Mr. ROEMER. Mr. Speaker, one of my distinguished predecessors in Congress was the Honorable John Brademas, who represented Indiana's Third Congressional District in the House for 22 years from 1959–81. During his service here, John established himself as one of our leading experts in the fields of education, the arts and humanities, and serving the needs of our nation's children, the elderly and the disabled.

From 1981–92, John served as President of New York University, our nation's largest private university. He is the former chairman of the President's Committee on the Arts and Humanities and the National Endowment for Democracy. John also served as a member of the Carnegie Commission on Science, Technology and Government and chaired the Commission's Committee on Congress.

John recently wrote a very interesting and provocative article entitled: ''The Provision of Science Advice to Policymakers: a US Perspective,'' which appears in the December 2001 issue of The EPTS Report, a publication of The Institute for Prospective Technological Studies, published by the Joint Research Center of The European Commission. I am pleased to offer this article for your review and consideration.

THE PROVISION OF SCIENCE ADVICE TO POLICYMAKERS: A U.S. PERSPECTIVE

(By John Brademas, President Emeritus of New York University)

The horrific attacks of September 11, 2001, on the World Trade Center in New York City and the Pentagon outside Washington, D.C., demonstrated how products of Western science and technology—Jet aircraft and avionics—could be employed to assault citadels of American economic and military power.

Clearly, the consequences of September 11 for makers of U.S. policy—economic, foreign and military—are deep and wide-ranging. The nation's intelligence and law enforcement agencies, for example, have come under criticism for weaknesses in tracking the September terrorists, who were obviously not technologically illiterate.

In Washington, D.C., an envelope containing anthrax was targeted at the Majority Leader of the U.S. Senate, Tom Daschle (D–SD), while in both Florida and New York City, anthrax was apparently aimed at leading television and newspaper journalists, one of whom, Judith Miller, is co-author, with her New York Times colleagues, Stephen Engelberg and William Broad, of a new book, Germs: Biological Weapons and America's Secret War (Simon & Schuster). A recent study by the General Accounting Office found the Federal government as well as state and local health departments unprepared for this latest threat. Meanwhile Senators and Representatives are holding hearings in Washington on the challenge of bioterrorism.

Although in office only a year, President George W. Bush is confronted with decisions he surely did not anticipate. But if reacting effectively to September 11 must now be his overriding concern, there are other judgments the new president and his team must make that are, like making war, also laden with scientific and technological dimensions.

Here is only a partial list of such issues: global warming, missile defense, stem cell research, wireless technology proliferation, energy, AIDS epidemics in Africa and India.

Not only are the policy challenges the Bush Administration must face complex and contentious but to meet them, the President of the United States lacks the decision making authority of a British Prime Minister. For in the American separation-of-powers constitutional system characterized as well, in contrast to European arrangements, by relatively undisciplined political parties, in making national policy, Congress counts! This is a lesson President Bush is learning every day.

All the more is the power of the elected Senators and Representatives in Congress to shape policy made obvious by the current political configuration in Washington, D.C: a Republican in the White House, a Republican majority (narrow) in the House of Representatives, and a Democratic majority (one vote) in the Senate.

INSTRUMENTS OF CONGRESS

In influencing policy, the U.S. Congress has three principal instruments: writing the laws that authorize the activities of the government, appropriating (or not appropriating) funds necessary to carry out the laws, and overseeing their implementation.

Although Senators and Representatives wield great and often decisive authority in setting policy, and despite the ballooning relevance of scientific and technological factors to more and more of the questions on which Congress votes, very few legislators have been educated as scientists or engineers. Given the kinds of persons attracted to campaigning for election to public office, this observation should surprise no one.

Nearly thirty years ago, in 1972, Congress responded to its perceived need for science and technology advice by creating the Office of Technology Assessment (OTA).

Governed by a Technology Assessment Board, consisting of six Senators and six Representatives, evenly divided between Democrats and Republicans, OTA was advised by, in addition to its professional staff, a group of ten experts from the public. During its lifetime, OTA produced evaluations requested by Congress to help the legislature ''understand and plan for the short-and long-term consequences of the applications of technology. . .''

In 1995, however, following the elections of 1994, with Republican victories in both Senate and House of Representatives, Congress, by refusing it funds, killed OTA. Said Lord (Wayland) Kennet, a British leader in technology assessment, ''The Office of Technology Assessment (OTA) was the trailblazer for all the later European institutions. . .''

''The disappearance of OTA has not only been of sad importance to all who work in parliamentary technology assessment in Europe: it has been a bit baffling. That the leading technological state in the world, a democracy like us, should have abolished its own main means of democratic assessment left us aghast. . .''

The demise of OTA has obviously not resolved the question of how Congress gets S&T advice. Indeed, last June, a group of scholars, Congressional staffers and leaders of industry met in Washington to explore prospects for filling the knowledge gap left by the death of OTA.

A NEW OTA?

Suggestions for enabling Congress to obtain S&T advice developed at the June meeting as well as from other quarters are even now under consideration on Capitol Hill. Congressman Amo Houghton (R–NY); John H. Gibbons, former Science Advisor to President Clinton and former director of OTA; and M. Granger Morgan, Professor and head of the Department of Engineering and Public Policy at Carnegie-Mellon University, Pittsburgh, joined recently to propose in effect a new OTA, also bipartisan and bicameral, but in response to criticisms of the old OTA, one with ''strategies'' to perform studies more rapidly, to ensure that the needs of the minority are well served, and to supply technical advice . . . to other congressional support organizations. . .''

Representative Rush D. Holt (D–NJ), one of two physicists in Congress, has introduced legislation to re-establish OTA; since September 11, prospects for action have dimmed. Senator Jeff Bingaman (D–NM), however, is still pressing for $1 million for a technology assessment pilot project in the General Accounting Office.

Given that Members of the House of Representatives serve terms of but two years, some lawmakers had charged that OTA took too much time to complete its studies. Many Republicans also criticized OTA analyses of defense and environmental issues as too ''liberal''.

Conversations with former OTA leaders cast a different light on such complaints. Requests for rapid response reports were, indeed, answered but with caveats. On the allegation of ''liberal'' bias, OTA directors countered that the objections were often to the substance of OTA's conclusions, for example,