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.