He took pleasure in the irony that, 60 years earlier, our grandfather had managed the huge open pit copper mine in Morenci, Arizona, that had fed those two same smelters.

Beyond love and scholarship and his wide-ranging, enthusiastic curiosity, John was driven all his life by a gnawing desire to reconnect with the life that had been shattered for him during a short six months in 1943 when he was only six years old.

In that period, illness took our father, the Manhattan project took our home in Los Alamos, and, when we had to move away, the army took John's beloved collie, Tor, to serve in the war effort.

Separately, those were terrible losses for a child to suffer. They drove him and throughout his life as he has worked to try to understand, to put the pieces back together.

Only two days ago I found a short piece that John had written about the weight of those early years—one including even the loss of his birthplace, Dawson, New Mexico (in 1936, when John was born, Dawson was a vibrant coal mining community, now it is a ghost town.)

Writing about his childhood, he said, ''Thus, by age 8, I had already developed a keen sense of life's contingencies. Displaced by the war, single parented, and with a birth certificate from nowhere, I felt the pull and the need for historical explanation.''

John's ''pull and need'' were scholarly.

But his curiosity fed a steadily expanding drive to apply his knowledge, and to stimulate inquiry by others, beyond the lecture hall, beyond the campus and into the messy realities of public policy.

His curiosity led him to see, for instance, the connections between environmental history, which he taught with his heart as well as his intellect, and the immediate pressures on the environment of the Southwest—which he worked to alleviate.

Curiosity also fired his perception of our continent as a single region—well before most policymakers even thought of it as a single market.

His thirst to make sense of history fed his skill as a teacher and his vision as a citizen.

If you, as his grandchildren, take some measure of his curiosity out the door with you every day, your lives will surely have the richness and satisfaction that his had.

His last, great gift to you is actually one he inherited, lost and regained.

It is his sense of this place to which he so deeply belonged, to the Southwest, to New Mexico, to Santa Fe.

His mind traveled far and wide, but his heart was always here. Born in New Mexico, John spent much of his childhood in Colorado.

For education he went east. He started his school years in New England as a scholarship student at Putney School to which he returned as a teacher, then a trustee, father of three Putney students, and then chairman of the board. The help he got from Putney, and the help he in turn gave to make it an even better school, became a major part of his life.

But one other school, a school that no longer exists, was probably even more important to him. It was called the Los Alamos Ranch School. Our father, Cecil Wirth, taught there.

As Bill Carson has reminded us, John's earliest memories were of that oasis on the edge of the beautiful New Mexico desert. His last book, which will be published this fall by the University of New Mexico Press, is a history of this school.

When some day you read it, you will find your grandfather in its pages. When his childhood ended, your grandfather was younger than Alex is today. Loss upon loss sent him out to find why the world worked the way it did and how to fit it all together.

In that world, in fact in this church, 42 years ago last week, he married your grandmother. She gave him a wonderful, warm, sustaining love that helped him search, filled so many vacuums, and was his partner in every way. Nancy molded and softened the man whose death we mourn today.

So, as we grieve, we thank John too for his strong will, exemplary focus and vision, for his energy and legendary enthusiasms, and for his optimism.

He gave us much and left his own legacy, broad and deep.

Thank You.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

THE NEED TO ENACT ACCOUNTING AND CORPORATE REFORMS

Mr. LEVIN. Madam President, this week we will hopefully act with strength and unity to help bring confidence back to the investing public. The last 18 months have shaken the foundation of the public's belief in the accuracy of the financial statements of our major U.S. corporations, beginning with the precipitous fall of Enron last year. The Public Company Accounting Reform and Investor Protection Act sponsored by Senator SARBANES and reported last month by the Banking Committee, will make significant headway in restoring the needed confidence in our financial markets, and I strongly support it. Senator SARBANES and the supporters of this bill on the Banking Committee have shown vision and leadership in tackling the tough issues of corporate and auditor misconduct, and the Congress needs to enact this legislation as quickly as possible.

On Monday, July 8, in my role as chairman of the Permanent Subcommittee on Investigations, I released an official Subcommittee report on the role of the Board of Directors in Enron's collapse. This bipartisan report found that much of what was wrong with Enron—from its use of high risk accounting, extensive undisclosed off-the-books activity, conflict of interest transactions and excessive executive compensation—was not hidden from the company's directors but was known and permitted to happen. The report also found that Enron board members refused to admit any missteps, mistakes, or responsibility for the company's demise. The refusal of the Board to accept any share of blame for Enron's fall is emblematic of a broader failure in Corporate America to acknowledge the ongoing, widespread problems with misleading accounting, weak corporate governance, conflicts of interest, and excessive executive compensation. Corporate misconduct is not only fueling a loss in investors confidence, but also threatens to derail the recovery of the American economy.

The plain truth is that the system of checks and balances in the marketplace designed to prevent, expose, and punish corporate misconduct is broken and needs to be repaired. Action is critically needed on a number of fronts to restore these checks and balances.

American business success is a vital part of the American dream. That dream is that any person in this country who works hard, saves, and invests can be a financial success. If that person sets up a company, that company's success can be magnified through our capitalist system which allows other investors to buy company stock, invest in the company's future, and share in the company's financial rewards.

The American stock market is part of that American dream. In recent years it has been the biggest and most successful stock market in the world, an engine of growth and prosperity. It has not only brought capital to a company so they can set up new businesses and employ more people, it has brought financial rewards to individual investors who put their money in the market.

Over the years, the Government has developed checks and balances on the marketplace to put cops on the beat to try to make sure that people who are using other investors' money play by the rules. That is why we have the Securities and Exchange Commission, the Commodity Futures Trading Commission, and banking regulators. That is why we have rules requiring publicly traded companies to issue financial statements and why we have accounting standards to make those financial statements understandable and honest. That is why we require companies to submit their books to auditors and why auditors certify whether the financial statements fairly present the company's financial activity.

Today we are in the middle of another ugly episode. In the aftermath of the go-go 1990s where American business grew at breakneck strength, the famed high-tech bubble inflated stock prices and the stock market got tagged with the strange new phrase ''irrational exuberance.'' Company after company, especially in the high-tech sector, announced profits that increased by huge percentages year after year. Mergers and acquisitions proliferated, and corporate fees went through the roof. Executive pay skyrocketed. The highest paid executives made as much as $700 million in a single year. By 2000, average CEO pay at the top 350 publicly traded companies topped $13 million per executive CEO, while the workplace pay gap deepened. In 1989, CEO pay was 100 times the average worker pay. By the year 2000, it was 500 times.

Some pointed to this alleged prosperity during the 1990s as a justification for deregulating business, weakening regulators, and making it harder

to seek corporate insiders and advisers. But now we are learning that some portion of the success and profits claimed by the companies during the 1990s—we still don't know how much—were based on corporate misconduct.

Lies about income and profits, hidden debt, improper insider trading, tax evasion, conflicts of interest—the list of recent corporate malfeasance is an alphabet of woe.

Adelphia Communications. This is a publicly traded company, but the company founders, the Rigas family, are accused of using the company treasury as if it were the family piggy bank. The allegation is that the family borrowed from the company over $2 billion—yes, billion—and has yet to pay it back. The company recently declared bankruptcy under Chapter 11.

Dynegy. This high tech energy firm is under SEC investigation for possibly inflated earnings and hidden debt. The questions include how it valued its energy derivatives, whether it booked imaginary income from capacity swaps with other companies, and whether it manipulated the California energy market. Senior executives, including CEO Chuck Watson, have recently been forced out.

Enron. This high tech company epitomizes much of the corporate misconduct hurting American business today, from deceptive financial statements to excessive executive pay. Its executives, directors, auditors and lawyers all failed to prevent the abuses, and many profited from them.

Global Crossing. This is another high tech corporate failure with outrageous facts. Less than 5 years old, Global Crossing was founded in 1997 by Chairman of the Board Gary Winnick. In 1998, the company went public, touting its plans to establish a worldwide fiber optic network. Global Crossing gave Mr. Winnick millions of dollars in pay, plus millions more in stock and stock options. In the 4 years the company traded on the stock market. Mr. Winnick cashed in company stock for more than $735 million. Other company insiders sold almost $4 billion in company stock. Then questions began to arise about inflated earnings, related party transactions, insider dealing, and board of director conflicts. In January 2002, the company suddenly declared bankruptcy. The company's shareholders and creditors have lost almost everything, while corporate insiders have so far walked away with their billions intact.

Halliburton. The question here is whether this construction company improperly booked income from contract cost overruns on construction jobs, before the company actually received the income. The company is under SEC investigation.

IBM. This all-American company, once a model of American know-how and can-do, has recently acknowledged misreporting about $6 billion in revenue and restated its earnings by more than $2 billion. Another high tech disaster for investors and American business.

ImClone. ImClone's CEO, Samuel Waksal, has been indicted for insider trading. The company produced a new drug whose effectiveness is still in question and whose developer, Dr. John Mendelsohn, was not only an ImClone board member but also the President of M.D. Andersen Cancer Center in Texas. Dr. Mendelsohn arranged for the Center to conduct tests on the drug without telling patients that the Center's President had a direct economic interest in the drug's success. Dr. Mendelsohn was also a board member at Enron.

Kmart. This once successful company, headquartered in my home state of Michigan, is now bankrupt and under scrutiny by the SEC for possible accounting fraud. The pain of the employees who lost their jobs and the investors who lost their savings is ongoing, not only in Michigan but across the country.

Merrill Lynch. Once a highly respected investment advisor, this company has become a poster child for financial advisors who mislead their investors, telling them to buy the stock of companies the advisers privately think are losers. Merrill Lynch recently paid $100 million and agreed to change how its financial analysts and investment bankers operate to settle a suit filed by New York Attorney General Elliot Spitzer.

Qwest Communications. This is another high tech company under SEC investigation. Questions include whether it inflated revenues for 2000 and 2001 due to capacity swaps and equipment sales. Qwest's CEO Joe Nacchio, made $232 million in stock options in 3 years before the stock price dropped, leaving investors high and dry. Its Chairman Philip Anschutz made $1.9 billion.

Rite Aid. Last month, three former top executives of Rite Aid Corporation, a nationwide drugstore chain, were indicted for an illegal accounting scheme that briefly—until WorldCom—qualified as the largest corporate earnings restatement in U.S. business history. The restatement involved $1.6 billion. The indictment alleges that the company used brazen accounting gimmicks to overstate its earnings during the late 1990s, and when investigators came after them, made false statements and obstructed justice.

Stanley Works. This company is a leading example of U.S. corporations that have pretended to move their headquarters to Bermuda to avoid paying U.S. taxes. It joins a growing number of companies that want to go on enjoying US banks, US laws, and US workers, but do not want to pay their fair share of the costs that make this country work from the costs of public education, to police and the courts, to environmental protection laws. To me, these companies are not just minimizing their taxes, they are demeaning their citizenship. They are taking advantage of this country by enjoying its fruits without giving anything back. No company ought to be allowed to get away with this fiction and throw their tax burden on the backs of other US taxpayers.

Tyco International. Last month, the CEO of Tyco, Dennis Kozlowski, was indicted in New York for failing to pay sales tax due on millions of dollars of artwork. The allegation is that Mr. Kozlowski shipped empty boxes to New Hampshire in a scam to show that $13 million worth of artwork was sent out of state and exempt from sales tax when, in fact, the artwork never left New York. This is a millionaire, many times over, who could have easily afforded the tax bill but engaged in a sham to avoid paying it. The question is whether he ran his company the same way he ran his own affairs.

Tyco is one of those companies that has allegedly moved its headquarters to Bermuda. It has numerous offshore subsidiaries, including more than 150 in Barbados, the Cayman Islands and Jersey. The company's U.S. tax payments have apparently dropped dramatically. Allegations of corporate misconduct by insiders have also emerged. There was a $20 million payment made to one of the company's directors and another $35 million in compensation and loans paid to the company's former legal counsel. That's $55 million paid to two corporate insiders, allegedly without the knowledge of the Board of Directors. Added to that is an ongoing SEC investigation allegedly examining whether a Tyco subsidiary paid bribes to win a contract in Venezuela.

WorldCom. WorldCom is the latest in this list of corporate embarrassments. It built a glowing earnings record through the acquisition of high tech companies like MCI and UUNet. It became a favorite investment for pension companies, mutual funds and average investors. Then we learn that the longtime CEO Bernard Ebbers borrowed over $366 million in company funds and has yet to pay it back. After he's forced out and a new CEO takes over, we learn that the company booked ordinary expenses as if they were capital investments in order to string out the expenses over several years and make the current bottom line look great. The result was $3.8 billion that had been conveniently left off the books—more than enough to wipe out the company's entire earnings for last year; more than enough for 17,000 workers to lose their jobs; more than enough to wipe out billions in investments across the country. Just one example in Michigan is the Municipal Employee's Retirement System which lost $116 million that supported workers' pensions. At the same time, we're told that Mr. Ebbers has a corporate pension that will pay him over $1 million per year for life.

Xerox. This all-American company has already paid $10 million to settle an SEC complaint that, for four years, the company used fraudulent accounting to improve its financial results. As

part of the settlement, Xerox agreed to restate its earnings after allegedly recording over $3 billion in phony revenues between 1997 and 2000.

This list is painful in part because it includes some icons of American business, symbols of what was right about the American dream. Now they symbolize corporate misconduct damaging to the entire country. The S&P index has plunged. The Nasdaq has been down 20% and even 30%. Mutual funds, the equity of choice for average investors, have dropped in value by more than 10%. The average daily trading volume at Charles Schwab & Co.—a measure of average investor activity—is down 54% from the height of the bull market, according to Fortune Magazine. Investor confidence in the U.S. stock market has dramatically declined. Foreign investment is fleeing.

There are many explanations for the corporate misconduct now tainting American business. One key factor is the terrible performance of too many in the accounting profession.

Auditors play an essential role in the checks and balances on the corporate marketplace. Under current law, a publicly traded company is not allowed to participate in the stock market unless its financial statements have been audited and found by an independent public accounting firm to be fair and honest. Auditors are supposed to be the first line of defense against companies cheating on their books.

The Supreme Court put it this way in United States v. Arthur Young, 465 U.S. 805, 1984, a case that contrasts the role of auditors with the role of lawyers. The Court noted that a lawyer is supposed to be a client's confidential advisor, but the:

> . . . independent certified public accountant performs a different role. By certifying the public reports that collectively depict a corporation's financial status, the independent auditor assumes a public responsibility transcending any employment relationship with the client . . . [and] owes ultimate allegiance to the corporation's creditors and stockholders, as well as to the investing public. . . . This 'public watchdog' function demands that the accountant maintain total independence from the client at all times and requires complete fidelity to the public trust.

But that's not what has happened recently.

In Adelphia, the auditors, Deloitte Touche, allegedly missed the fact that the Rigas family borrowed company funds totaling $2 billion.

At WorldCom, Andersen allegedly never knew that $3.8 billion in expenses had been incorrectly accounted for as capital investments.

At Xerox, KPMG allegedly missed errors involving $6 billion in revenue and $2 billion in earnings.

These are not marginal amounts; they involve billions. How did the auditors miss the accounting errors and dishonest financial reports? Or are these cases like Enron, where the auditor didn't miss the problems—they knew of them, had misgivings about the accounting, but allowed questionable transactions and financial statements to go forward anyway?

And there are many more cases than the high profile scandals I just described. In the last few years, there has been a surge in corporate restatements—financial filings in which a publicly traded company admits that a prior financial statement was inaccurate and corrects the earlier information. From 1990 through 1997, publicly traded companies averaged 49 of these restatements per year. In 1999 and 2000, that number tripled—publicly traded companies filed about 150 each year.

These restatements go beyond the list of companies I started with, reaching much deeper into corporate America. In addition to those already reported in the media over the last few years, I asked the Congressional Research Service to look at the most recent corporate restatements, those filed since January of this year. On June 17th, CRS issued a report listing over 100 completed and expected restatements in the first six months of 2002, and predicted that the total number of restatements in 2002 may exceed 200. A smattering of these restatements, another alphabet of corporate woe, include the following.

American Physicians Service Group. This health services company restated its 2000 and 2001 earnings due to a revaluation of a private stock investment.

CMS Energy Corporation. This energy company, which has operations in Michigan, has restated its 2000 and 2001 financial statements to include $4.4 billion in revenues attributable to ''wash trades'' with other companies involving energy commodities.

Dollar General Corporation. This company has restated its financial results for three years, 1998 through 2000.

Hanover Compression. This company has restated its earnings for seven quarters in a row, ending September 2001.

Microsoft. Following an SEC investigation, the flagship American company agreed to restate its earnings for 1995 through 1998, when it used accounting devices to ''smooth'' its reported earnings.

PNC Financial services. This financial services company has restated its financial results for 2001 after questionable accounting under investigation by the Federal Reserve and SEC involving the sale of over $700 million in problem loans and other non-performing assets to three companies it set up with the insurance conglomerate, American International Group.

Pacific Gas & Electric. This energy company has announced that it will restate its earnings back to 1999 to account for off-the-books ''synthetic leases'' involving about $1 billion in financing for several power plants.

Peregrine Systems. This company announced it would restate earnings for 2000, 2001, and 2002, and that an SEC investigation was in progress.

Stillwater Mining Co. This company announced that the SEC had criticized its accounting practices and a restatement of earnings would be issued.

There are many more examples. What is happening that more and more financial results have to be restated, erasing more and more questions about the reliability of the original financial reports? Why this surge in corporate restatements?

Part of the answer is that too many accounting firms apparently no longer value in their watchdog role. Today, they celebrate instead the earnings they receive as tax advisers and business consultants.

During the 1990s, all the major accounting firms dramatically increased the non-audit services they provided to their audit clients. By 1999, 50% of firm revenues at the big five accounting firms came from consulting, while only 34% came from auditing. A few years later, the data indicates that almost 75 percent of the fees earned by the big five accounting firms came from non-audit services. Specific company proxy statements show that many publicly traded companies now pay millions more for consulting than they do for auditing, including such companies as Raytheon, Apple Computer, Nike, International Paper, At&T, Honeywell and Coca-Cola. A January 2002 Harvard Business School publication raising questions about auditor independence cited anecdotal evidence that accounting firms were using their positions as auditors to obtain consulting work, including by ''lowballing'' audit fees if a company simultaneous agreed to a consulting contract. The work done by the Permanent Subcommittee on Investigations, which I chair, includes evidence that accounting firms are shopping around to publicly traded companies, including their audit clients, complex accounting arrangements that they say will improve a company's financial results and pending complex tax strategies that will lower its tax bills.

The role of Arthur Andersen at Enron illustrate the profession's movement from auditor to moneymaker, Andersen was Enron's outside auditor from the company's inception in 1985. As Enron grew, Andersen's role at the company grew, with more and more of Andersen's time spent on financial services other than auditing.

Andersen began to offer Enron business and tax consulting services which included assistance in designing special purpose entities, offshore affiliates, and complex structured finance transactions. For example, Andersen was paid about $5.7 million to help Enron design the LJM and Chewco partnerships and engage in a series of purported asset sales to these entities. Andersen was paid more than $1.3 million to help Enron set up the Raptors, a series of four complex transactions that were an improper attempt by Enron to use the value of its own stock to offset losses in its investment portfolio. Andersen also helped Enron engage in

ever more exotic and complex transactions, such as prepaid forward contracts, swaps, and merchant asset sales. For two years, Andersen even acted an Enron's internal auditor while also serving an Enron's outside auditor.

By 1999, Andersen was earning more for its non-audit services than for its audit services at Enron. By then, Andersen had set up its own offices at the company site to enable it to work with Enron employees on a daily basis. A number of Andersen employees switched to Enron's payroll. Enron became one of Andersen's largest clients, In 2000, Andersen was paid $1 million per week for the many services it was providing Enron. Andersen partners handling the Enron account earned millions in bonuses and partnership income.

Common sense tells us that as Andersen's joint efforts with Enron management increased, it became tougher and tougher for Andersen auditors to challenge Enron transactions—after all, these transactions had been set up with Andersen's assistance at the cost of millions of dollars. How could Andersen auditors say that Andersen consultants were wrong? And in many cases the same Andersen employee served as both consultant and auditor, essentially auditing his or her own work. We now know that internal Andersen documents demonstrate serious misgivings up and down the Andersen chain of command with respect to Enron's transactions or accounting. To the contrary, one of the few Andersen senior partners to raise gentle objections to some Enron transactions was, at Enron's request, removed from the Enron account. In the end, Andersen approved questionable transactions and financial statements that made Enron's financial condition appear better than it was.

Andersen once had a proud tradition that stressed its commitment to the public trust to ensure accurate financial reporting and honest accounting. But that tradition gave way in the Enron case. And it give way in other recent cases of corporate misconduct as well, from Sunbeam to Waste Management to the Baptist Foundation of America.

Worse, Andersen was not alone. Media reports are filled with tales of auditors going along with questionable transactions and financial reporting. PricewaterhouseCoopers and Microstrategy. Ernst & Young and PNC Financial. Deloitte Touche and Adelphia. KPMG and Xerox.

The conflicts of interest inherent in auditors performing consulting services for their audit clients have been building for years and were not lost on those concerned about accurate financial reporting by U.S. companies. In 2000, SEC Chairman Arthur Levitt waged a highly visible campaign to rein in auditor conflicts of interest and restore auditor independence. In July 2000, under his leadership, the SEC proposed regulations to stop auditors from providing certain non-audit services to their audit clients. The rules proposed four principles to determine whether, in fact and in appearance, an accountant was independent of its audit client. The proposed regulations stated that an accountant would not be considered independent if the accountant: (1) had a mutual or conflicting interest with the audit client; (2) audited the accountant's own work; (3) functioned as an employee of the audit client; or (4) acted as an advocate for the audit client. Using these four principles, the regulations proposed a ban on audit firms performing certain non-audit services for their audit clients.

The reaction of the accounting profession was to fight the proposal tooth and nail. The proposed regulations were also pummeled by the corporate community, which lost sight of how important reliable financial statements and reliable auditors are to the viability of American business and investment.

In the end, the proposed Levitt regulations were gutted. Instead of eliminating auditor conflicts, a compromise emerged that simply increased disclosure of the scope of the conflicts and the extent to which auditors were auditing their own work. That was the wrong result, which I hope the Senate will remedy through enactment of the Sarbanes bill.

What happened to the board?

In U.S. corporations, Boards of Directors are at the top of a company's governing structure. According to the Business Roundtable, the Board's ''paramount duty'' is to safeguard the interests of a company's shareholders. Persons who serve on corporate boards are required by state law to serve as fiduciaries to the shareholders and employees of the corporation for which they serve. As the Fifth Circuit said in 1984:

> Three broad duties stem from the fiduciary status of corporate directors: namely, the duties of obedience, loyalty and due care. The duty of obedience requires a director to avoid committing . . . acts beyond the scope of the powers of a corporation as defined by its charter or the laws of the state of incorporation. . . . The duty of loyalty dictates that a director must not allow his personal interest to prevail over the interests of the corporation. . . . [T]he duty of care requires a director to be diligent and prudent in managing the corporation's affairs.

One of the most important duties of the Board—along with corporate officers and company auditors—is to make sure that the financial statements are in fair representation of the company's financial condition. It requires more than technical compliance; it requires, as the Second Circuit Court of Appeals said in 1969, that the Board ensure that the financial statement ''as a whole fairly present[s] the financial position'' of the company.

The key committee of a board in carrying out that function is the Audit Committee, and a Blue Ribbon Commission in 2000 issued a report on what Audit Committees should do to meet their obligation to the shareholders. Among the responsibilities the Audit Committee should meet are: ensuring that the auditor is independent and objective; assessing the quality, not just the acceptability, of an auditor's work; discussing with the auditor significant auditing issues; and making sure that the financial statement are ''in conformity with generally accepted accounting principles.''

As I mentioned at the beginning of this statement, the Permanent Subcommittee on Investigations, which I chair, looked in depth at the actions of the Board of Directors on the Enron Corporation in light of its sudden collapse and bankruptcy. The Subcommittee on a bipartisan basis found that the Enron Board failed to safeguard Enron shareholders and contributed to Enron's collapse. If failed, we found, because the Board allowed Enron to engage in high risk accounting, inappropriate conflict of interest transactions, extensive undisclosed off-the-books activities, and excessive executive compensation. Based on review of the hundreds of thousands of Enron-related documents by the PSI staff and dozens of interviews, the Subcommittee concluded that the Board knew about numerous questionable practices by Enron management over several years, but it chose to ignore these red flags to the detriment of Enron shareholders, employees, and business associates. In short, the Enron Board failed to meet its fiduciary responsibility to the shareholders and employees of Enron.

When pressed to explain their conduct at a PSI hearing, the Board accepted no responsibility for Enron's failure. The Board members claimed they didn't know what was going on in the company—that management didn't tell them, and that the auditor, Arthur Andersen, told them everything was OK. The Subcommittee didn't accept that answer, because a review of the documents, the Board meetings, the Audit and Finance Committee meetings, and interviews with the Board members revealed that the Board Members did know what was happening at Enron and went along with it.

The Board failed with respect to the Enron Corporation, and my guess is that the boards of the other corporations now under investigation for investor fraud and auditing misconduct will fare little better. Although the performance of corporate boards in American corporations must be addressed by the corporations themselves, Congress must also do everything it can to ensure that this important watchdog of corporate governance operates properly in each U.S. company.

What happened to other corporate players?

The auditors and the Boards of Directors are not the only ones with oversight responsibility for corporate conduct who have let down the investing

public. Top-name law firms wrote legal opinions that allowed some of the worst deceptions to go forward. Financial analysts who depend upon large corporations for investment banking business and at the same time promote the stock of those corporations to their clients, operate with clear conflicts of interest. They may know inside information about the financial condition of the companies with which they do business, but keep that information from the investors to whom they are promoting the company stock.

What needs to be done now?

The Sarbanes bill, with additional amendments, will address the duties and failings of their corporate players. After 10 days of hearings, the Banking Committee has reported to the Senate floor a bill that significantly addresses not only the audition failures, but failures of corporate governance and conflicts with financial analysts. I understand there may be an amendment to hold the legal profession accountable as well.

We have got to take action on this legislation now, this Congress. We need to restore the checks and balances on the marketplace, and we need to give our cops on the beat the tools and resources to crack down on corporate misconduct.

We need to change the laws to make it possible to punish corporate and auditor misconduct swiftly and with appropriate penalties. We need to ensure that crime does not pay for corporate executives seeking to profit from corporate misconduct. We need to shake up the auditing industry and remind them that their profession calls for them to be watchdogs, not lapdogs for their clients. We need to give SEC administrative enforcement powers and more funds for investigations and civil enforcement actions. We need to increase investor protections to restore investor confidence.

The Sarbanes bill takes many of the actions needed, and I want to commend the hard work of not only Senator SARBANES who chairs the Banking Committee, but also the many other Senators on that Committee who contributed to this much needed bill. It offers strong medicine, and it is what this country needs.

On corporate misconduct, the bill presents a number of new provisions to deter and punish wrongdoing. For the first time, CEOs and CFOs would be required to certify that company financial statements fairly present the company's financial condition. If a misleading financial statement later resulted in a restatement, the CEO and CFO would have to forfeit and return to the company coffer any bonus, stock or stock option compensation received in the 12 months following the misleading financial report. The bill would also make it an unlawful act for any company officer or director to attempt to mislead or coerce an auditor. It would also require auditors to discuss specific accounting issues with the company's audit committee, which will not only increase the understanding of the company's board of directors, but also prevent directors from later claiming they were not informed about the company's accounting practices. The bill would also enable the SEC to remove unfit officers or directors from office and to bar them from holding any future position at a publicly traded corporation. These are powerful new tools to help prevent and punish corporate misconduct.

The Sarbanes bill takes on another great issue of importance that I've been working on for years, strengthening the independence of the Financial Accounting Standards Board or FASB, which has the task of issuing generally accepted accounting principles or GAAP. Among other important measures, the bill grants statutory recognition to FASB and sets out its obligation to act in the public interest to ensure the accuracy and effectiveness of financial reporting; states that the trustees who select FASB's members must represent investors and the public, not just the accounting industry or corporate interests; and streamlines FASB's operations by requiring it to act by majority vote instead of through a supermajority.

Most important of all, the bill sets up a system that provides FASB with an independent, stable source of funding through fees assessed on publicly traded companies. Once this new system is set up, it will no longer be the case, as it has been for years, that FASB will have to go hat in hand for funds from the very companies and accounting firms that want to affect its decisionmaking. I have no doubt that this conflict of interest has contributed to some of the distortions and weaknesses in current accounting standards. I proposed a similar change in FASB's funding status in my Shareholder Bill of Rights Act, and I appreciate the Committee's including the provision for my bill making it clear that FASB's funding cannot be affected by the congressional appropriations process and the political pressures that can be exerted through it. The point of the bill is to set up an independent, stable source of funding that is insulated from political pressure and funding threats so that FASB can do its work free of such pressures and threats. Once the new funding system is in place, I urge FASB to begin to reassess U.S. accounting standards and to begin to clear up some of the problems that have allowed so many companies to engage in dishonest accounting while claiming to be in compliance with GAAP.

On auditor conflicts of interest, the bill takes concrete action to stop auditors from providing non-audit services to their audit clients. For the first time, the bill specifically prohibits auditors from providing 8 types of non-audit services to their audit clients. The 8 prohibited services are bookeeping services; financial information systems design; appraisal and valuation services and fairness opinions; actuarial service; internal auditing services; management functions and human resource services; broker-dealer, investment adviser of investment banking service; and non-audit legal or expert services. The bill also enables a newly established Public Company Accounting Oversight Board to specify other prohibited services. Any other non-audit service can be provided by an auditor to its audit client only if the client's audit committee specifically authorizes the auditor to undertake the service. While I would have preferred an even stronger provision barring auditors from providing any non-audit services to an audit client, this bill makes a meaningful change in law that would help put an end to auditor conflicts of interest.

Additional work is needed. For example, many of the key terms in the 8 prohibited non-audit services were left undefined after the Banking Committee, as part of the negotiations over the bill, dropped a requirement for the SEC to promulgate the July 2000 Levitt regulations which would have defined many of the terms. If enacted into law, the new Board and the SEC would need to place a priority on further defining the key terms in the 8 prohibited services. That task would be a key test of their willingness to use the bill's authority to eliminate auditor conflicts of interest and restore auditor independence.

Let me give you an example. The bill currently prohibits auditors from providing their audit clients with ''investment banking services'' but does not define this term. Based upon the work of the Permanent Subcommittee on Investigations into the Enron scandal, I believe it is crucial for that term to include prohibiting auditors from working with their audit clients to design special purpose entities and structured finance arrangements, as investment bankers do, and then audit the structures they helped to create. In the case of Enron, Andersen was paid about $7 million to help Enron design the LJM, Chewco and Raptor structures, which Andersen then audited and approved. That never should happen. Auditors should not be auditing their own work. To make sure that this conduct is stopped, the SEC and Board would have to prohibit it either by further defining the term ''investment banking services'' or by specifying another prohibited service. The public companies' audit committees could also accomplish this goal by prohibiting the company's auditor from designing these structures and then auditing its own work.

In addition to defining the key terms in the 8 prohibited services, additional work is needed to clarify how auditors and companies are supposed to treat the issue of ''tax services.'' The bill states explicitly that an auditor may provide ''tax services'' to an audit client if the specific tax services are cleared beforehand by the company's audit committee. There are several

problems with this approach. First, like investment banking services, one danger is that an auditor will end up auditing its own work, which means that a critical check and balance on possible company misconduct will be circumvented. No auditor should assist a company in designing a tax strategy to lower the company's tax bill and then also serve as the auditor approving the accounting for that tax strategy. Two different parties must be involved—one to design the strategy and one to audit it for improper accounting and possible illegal tax evasion. A second problem involves the fees paid for various types of tax services. In the July 2000 regulations proposed by the SEC under former Chairman Levitt, concerns were raised about allowing an auditor to provide an audit client with written opinions related to a tax shelter or other tax strategy to lower the client's tax bill. Providing these opinions, especially for complex or questionable tax strategies, can lead to lucrative fees for an accounting firm and, in so doing, raise the same conflict of interest concerns that have so damaged auditor independence.

These and other non-audit service issues needed to be examined by the Board and the SEC, not only to develop definitions for key terms, but also to determine whether additional non-auditing services should be added to the list of 8 prohibited services now specified in the Senate bill. Audit committees must also confront these issues and take the steps necessary to prohibit the company's auditor from engaging in non-auditing services that raise conflict of interest concerns or lead to an auditor's auditing its own work for the company.

On auditor misconduct and oversight of accounting firms, the Sarbanes bill offers fundamental change that is sorely needed. The new Public Company Accounting Oversight Board that the bill would establish is designed to be free of domination by either accounting or corporate interests and would enjoy an independent and stable source of funding. This Board would have several duties including issuing auditing, auditor independence, and auditor ethical standards; inspecting and reporting on the internal controls and operations of registered public accounting firms; and conducting disciplinary proceedings regarding accountants suspected of wrongdoing.

With respect to investigating possible auditor misconduct, the Board will have the authority to subpoena documents, take sworn testimony, and impose meaningful sanctions on individual accountants and accounting firms found to have engaged in wrongdoing. The sanctions include revoking the registration that a firm needs to audit public companies, barring a person from participating in a public company audit, imposing a civil fine on an individual or firm, and issuing a censure. The Board must also disclose its disciplinary proceedings to the public so that we will know what misconduct was involved and what sanction was imposed.

This provision represents significant improvement over existing disciplinary proceedings which are dominated by the accounting industry, secretive, time-consuming, and ineffective. It also has at least two weaknesses. First, although the bill requires the Board to issue a public report on any disciplinary proceeding that results in a sanction on an auditor, the bill is silent on public disclosure of disciplinary proceedings that do not result in a sanction. The bill apparently leaves it to the discretion of the Board on whether to disclose these disciplinary proceedings, but a better approach might have been to direct the Board to disclose such proceedings when doing so would be in the public interest. A second, more serious weakness is that the provision imposes an automatic, unlimited stay on any auditor sanction imposed by the Board if the sanction is appealed to the SEC. Until the SEC lifts the stay, the Board is prohibited from disclosing to the public the name of the auditor, the sanction imposed, or the reasons for the disciplinary action. These provisions are out of line with broker-dealer disciplinary proceedings and only serve to prolong criticisms of auditor disciplinary practices as overly secretive and slow moving.

On the issue of auditing, auditor independence, and auditor ethical standards, I fully support making the Board the final arbiter of these standards. The standard-setting process has for too long been under the direct control of the accounting industry, and one of the most important changes the bill makes is to put an end to this arrangement. Of course, the accounting industry is not and should not be excluded from the Board's standard-setting process; the bill requires the Board to engage in an ongoing dialog with the accounting, corporate and investor communities to take advantage of their expertise. The bill explicitly requires the Board to ''cooperate'' with any designated professional group of accountants or any advisory board convened by the Board to assist its deliberations. The bill also states that the Board must ''respond in a timely fashion'' to any request for a change in the standards if the request is made by a designated professional group or advisory committee. It is important to note, however, that the bill does not grant any preferential status to these groups compared to other participants in the standard-setting process, and participants such as the SEC, state accounting boards, other federal and state agencies and standard-setting bodies, and investors are entitled to receive equal consideration from the Board in its standard-setting deliberations.

On the issue of accounting oversight, the Sarbanes bill again offers vast improvement over the status quo. The newly created Board offers oversight authority that will be more independent, more systematic and more public than the existing system. And, again, one comment. With respect to the inspection reports that the Board is supposed to disclose to the public regarding a registered public accounting firm's operations, the bill states that the Board must develop a procedure to allow the registered public accounting firm that is the subject of the inspection an opportunity to comment on the draft report before it is finalized. I support this process. However, it is also my understanding after consulting with the Committee, that the bill is not intended to require the Board to submit the actual text of its draft report to the subject firm prior to making it public, but rather to inform and discuss the key points with the firm and provide the firm with a meaningful opportunity to comment on the Board's analysis, commit to specific steps to cure any defects in the firm's quality control systems, and commit to other reforms.

Finally, on the issue of increased resources, the Sarbanes bill takes long needed steps to beef up the SEC's enforcement staff through authority to hire new accountants, lawyers, investigators and support personnel. It also increases the SEC's budgetary authority. Once this is enacted into law, it will be up to the Bush Administration and the Appropriations Committees to give the SEC what it needs to respond to the current wave of corporate scandals and help restore investor confidence.

There are many other provisions in the bill that I could comment on, but I will stop here. The bottom line is that the Sarbanes bill is a strong bill. It provides new tools and resources to go after corporate misconduct. It offers fundamental change in the way we oversee the accounting industry and punish auditor wrongdoing. It tackles auditor conflicts of interest by setting up, for the first time, prohibitions on the non-auditing services that an auditor can provide to an audit client. It provides new ways to hold corporate insiders accountable, so the next time a public company erupts in scandal, the senior officers and directors can't claim that they were out of the loop and not responsible.

As strong as it is, the Sarbanes bill would benefit from a number of strengthening measures. This includes the amendment by Senator LEAHY to strengthen criminal penalties for corporate misconduct and to protect corporate whistleblowers, which I am cosponsoring, and an amendment by Senator EDWARDS to require legal counsel to play a more active role in deterring corporate misconduct.

I intend to offer several amendments myself.

Administrative penalties: Senators BILL NELSON, TOM HARKIN, and I will offer an amendment to give new authority to the SEC to impose administrative penalties for corporate wrongdoing. The amendments would allow

the SEC to impose civil monetary penalties on persons who violate the securities laws such as companies, officers, directors, auditors, and lawyers and to bar unfit officers and directors of publicly traded corporations without having to go to court to do so. The amendment would also allow the SEC to subpoena financial records as part of an official SEC investigation without notifying the subject of the records request. This amendment would also increase the maximum civil fines the SEC can impose on securities laws violators under current law and the new authority provided by this amendments. Today's fines of $6,500 to $600,000 per violation would increase to $100,000 to $10 million.

Auditor certification. A second amendment I intend to offer would require that auditors of publicly traded corporation provide a written opinion on whether a client company's financial statements fairly present the financial condition of the company. The Sarbanes bill has a similar provision with respect to CEOs and CFOs. Many think this is already required of auditors of publicly traded companies, but there is no provision in current law that imposes such a requirement; there is only guidance pursuant to SEC regulation.

Auditors communication with board of directors: My third amendment would require that an auditor of a publicly traded corporation discuss with the Audit Committee on the Board of Directors the ''quality, acceptability, clarity, and aggressiveness'' of the company's financial statements and accounting principles. This amendment will eliminate any excuse that the Board of Directors of a company didn't know what the company was doing.

There were many investors and commentators in the 1990's who expressed their awe of the astronomical growth in the stock market by saying it was too good to be true. Well, they were right. It was too good to be true, and now we know that. This bill, particularly with some strengthening amendments will bring credibility and accuracy back to the financial statements of our publicly traded corporations. It will bring reality into the marketplace and make the deceptive practices of the 1990's the true exception rather than the rule.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

DELAYING ACTION ON S. 2673

Mr. NELSON of Florida. Madam President, it is my understanding that what has happened here is that our friend and colleague, the senior Senator from Michigan, has asked for unanimous consent, earlier, and it was denied by the senior Senator from Texas, in order to proceed with the offering of an amendment that would considerably strengthen the underlying bill that we have under consideration.

It is with a heavy heart that I saw the parliamentary tactics—clearly within any Senator's opportunity to utilize—to delay a piece of legislation that would address the issue before us that is resonating in the hearts of every American, that being the subject of corporate greed.

Indeed, what we have seen is that which is obviously resonating because I am told the stock market has gone down almost 300 points today, down to a range of about 8,800. You would think folks would realize that the stock market is a reflection of the confidence of the American people, not only in the economy but in a lot of the engines that drive the economy.

Most of the great corporate structures are very solid financially as well as ethically, but having seen some of the lapses in ethical judgment have led to some of the exposes that we have seen over the course of the last months, I am rather surprised to see these parliamentary delaying tactics by folks from the other side of the aisle when in fact what the American people would like to know is that their Representatives in the U.S. Congress are responding with very tough laws enacted to address the problems of corporate greed.

We can talk about the Enrons. We can talk about the WorldComs. We can talk about whatever. Lord knows what is going to be next. But that is why Senator LEVIN and I will be coming to the floor after being denied, tonight, the opportunity to offer an amendment that will strengthen the underlying bill. We will come to offer reforms aimed at preventing corporate fraud and punishing its perpetrators.

The senior Senator from Michigan, as the Chairman of the Armed Services Committee, lends an expertise to this body in matters of defense. He has a perspective that, to keep America strong from a military standpoint, we have to be economically strong and we have to be morally strong. So that is getting right to the heart of what we are doing, trying to enact a law preventing the perpetrating of corporate fraud or then seeing that the perpetrators are punished.

There were at WorldCom 17,000 workers who received pink slips. While it was realizing $1.1 billion in losses in the retirement funds of those employees, and while those 17,000 employees were getting those pink slips, the corporate executives were attending a retreat in Hawaii. One of them was putting the finishing touches on a new $15 million mansion. I am not absolutely sure, but I think that person is one and the same person whose $15 million mansion is in my State.

Then late last year, Global Crossing laid off 1,200 people, giving them no severance package, while the CEO there walked away with hundreds of millions of dollars. Is there something wrong with this picture? Yes, there is. And the American people are feeling it. Part of that is what we are seeing resonating in the plunge of America's stock markets.

So last summer, while Enron executives were selling their shares for hundreds of millions of dollars and protecting their portfolios, their employees and their retirees lost more than $1.2 billion in retirement savings.

Sadly, that includes Janice Farmer, a former Enron employee who is now a retiree. She lives in Orlando. Janice Farmer lost her whole savings—$700,000—in her retirement plan with Enron.

Then, if you will recall, the pension fund of the State of Florida lost $335 million—more losses than any other State—from Enron stock purchases.

When we had a hearing in the Commerce Committee with the managers of Florida's pension fund, which covers all of our public employees in Florida, the testimony came out that the money managers of that fund were buying Enron shares based on the management's and the company's assertions that everything was OK. But it wasn't. The stock was dropping like a rock, but, oh, by the way, not before company executives had unloaded their shares.

In the last 18 months alone, we have seen corporate abuses of monumental proportions. People have had it. Their representatives in Congress, I hope, have had it. I can tell you I have had it. So has my colleague, Senator LEVIN. Eventually, after we have to go through all the parliamentary rankling, we will be allowed to offer our amendment.

We must act now to protect taxpayers and employees and investors. We must prevent huge losses for public institutional investors.

Now we are looking sadly as thousands of layoffs, earnings and restatements by more than 300 companies with billions of dollars lost by ordinary people. The victims are the ones demanding the reforms that we are talking about today. Unfortunately, because of the objections rendered by that side of the aisle, we are not able to take that up today.

Those victims and the American people who believe in a strong economy want us to act strongly and swiftly to punish such corporate abuse and to prevent corporate abuse. That is why Senator LEVIN and I want to introduce stronger enforcement measures.

We have a package of three amendments. They complement the Sarbanes bill by streamlining and strengthening procedures to punish corporate and auditor misconduct.

There is a glaring shortcoming of our current statutes. The Securities and Exchange Commission is essentially powerless today, even after conducting an investigation and even after finding