

diminishes the quality of justice within a Circuit.

Last, former U.S. Senator Mark O. Hatfield, State of Oregon:

The increased likelihood of intracircuit conflicts is an important justification for splitting the court.

These are gentlemen who have reviewed this issue and evaluated it objectively on its merits.

We see here the Supreme Court agrees that reform is needed. Here is a quote from Justice Scalia:

The disproportionate segment of this court's discretionary docket that is consistently devoted to reviewing ninth circuit judgments, and reversing them by lop-sided margins, suggests that this error-reduction function is not being performed effectively.

That is a pretty strong statement on the manner in which the Ninth Circuit has been conducting itself. As the reference is from Justice Scalia, he cites a disproportionate segment of the Supreme Court's discretionary docket that is devoted to reviewing Ninth Circuit judgments reversing them by lop-sided margins. That is certainly a critique against the Ninth Circuit's performance.

Supreme Court Justice Sandra Day O'Connor:

With respect to the ninth circuit in particular, in my view the circuit is simply too large.

Finally, Supreme Court Justice John Paul Stevens:

In my opinion, the arguments in favor of dividing the circuit into either two or three smaller circuits overwhelmingly outweigh the single serious objection to such a change.

So there you have three Justices indicating that in their opinion the court is too large, there have been too many reversals coming to the Supreme Court. It is the criticism of the function of the court.

Let me continue because I think it is important to reflect on just what these figures are, relative to the filings and the increase. The number of filings continues to increase in the Ninth, from 8,415 in 1995 to 9,070 in 1998, and now 10,342 in the year 2001. We have seen the chart with the caseloads increasing. Here is a vivid comparison of the years, as this caseload jumps, particularly from 2000 to 2001, as one can see, in the red.

The ever increasing, expanding docket in the Ninth Circuit creates an inherent difficulty in keeping abreast of legal developments within its own jurisdiction, rendering inconsistency in constitutional interpretation within the court. Interestingly, the statistical opportunities for inconsistency on a 28-panel court calculate out to about 3,276 combinations of panels that could resolve any given issue.

I have had conversations with judges on the Ninth Circuit who have indicated the caseload is such that it is impossible for them to communicate among themselves on the activities going on within the court, as opposed to the usual process of judges having an opportunity to review other judges'

opinions. As a consequence, the caseload is simply too big to allow, not for leisure, but it is a necessity, given the manner in which judges reflect upon their observation.

I would like to point out to my colleagues an article from the June 30 New York Times entitled "Court That Ruled on Pledge Often Runs Afoul of Justices." I would like to read highlights. Obviously, there is too much material in it, but specifically I quote: . . . judges on the court said that they did not have time to read all of the decisions it issued.

According to the commission's 1998 report, 57 percent of judges in the Ninth Circuit, compared with 86 percent of federal appeals court judges elsewhere, said they read most or all of their court's decisions.

That does not take place in the Ninth Circuit.

Critics say the Ninth Circuit's procedure for full-court review accounts for much of the reversal rate. All other circuits sit as one to hear full-court, or en banc, cases. The Ninth Circuit sits in panels of 11.

The procedure injects randomness into decisions. If a case is decided 6 to 5, there is no reason to think it represents the views of the majority of the court's 23 active members.

Critics say the Ninth Circuit's procedure for full-court review accounts for much of the reversal rate. All other circuits sit as one to hear full-court, or en banc, cases. The Ninth Circuit sits in panels of 11.

The procedure injects randomness into decisions. If a case is decided 6 to 5, there is no reason to think it represents the views of the majority of the court's 23 active members.

One only needs to review the appallingly high reversal rate of Ninth Circuit cases to appreciate the severity of the problem.

During the 1995-1996 session, the Supreme Court overturned an astounding 83 percent of the cases heard from the Ninth Circuit—83 percent, Mr. President, a figure which is 30 percent higher than the national average reversal rate.

In the 1996-97 session alone, an astounding 95 percent of its cases reviewed by the Supreme Court were overturned. This number should raise more than a few eyebrows.

A split in the circuit would enable a more complete and sound review, thereby reducing the circuit's rate of reversal before the Supreme Court.

The uniqueness of the Northwest cannot be overstated. An effective appellate process demands mastery of State law and State issues relative to geographic land mass, population, native cultures that are unique to the relevant region, and particularly public land issues.

Presently, California is responsible for almost 50 percent of the appellate court's filings, which means that California judges and California judicial philosophy dominate judicial decisions on issues that are fundamentally unique to the Pacific Northwest.

Let me show on this chart the specifics of where all the cases come from. Nearly half of them—46 percent—come from California; Arizona, 7 percent; Alaska 1.3 percent; Hawaii, 1.9 percent; Idaho, Montana, Nevada, 5.6 percent.

Clearly, you see the significant overwhelming evidence that most of the cases, of course, are from California.

As a consequence, this need for greater regional representation is demonstrated by the fact that the east coast of the United States is composed of five Federal circuits. I wonder what the justification for that was. Clearly, it was justified in the sense of good judicial decision. But here we have on the west coast one court. The division of the Ninth Circuit would enable judges, lawyers, and parties to master a more manageable and predictable universe of relevant case law.

Establishing a circuit comprised solely of States in the West would adhere certainly to congressional intent. Alaska, Washington, Oregon, Hawaii, Idaho, and perhaps Nevada—although I understand Nevada, in the minds of some, is in the State of California. In any event, we share similar land-based populations and economics. Each State contains a high percentage of public land, a fairly comparable population, is financially dependent on tourism and is blessed with an abundance of natural resources.

In conclusion, while I may believe even more sweeping changes are in order, I strongly urge that this body address the crisis in our judiciary system. It is the 54 million residents of the Ninth Circuit who suffer from our inaction. These Americans wait years before their cases are heard, and, after those unreasonable delays, justice may not even be served by an overstretched and out of touch judiciary.

Congress has known about the problem in the Ninth Circuit for a long time. Justice has been delayed too long. The time for reform has come. I urge action on this legislation. I will be offering it on every bill until we obtain a vote on this issue.

I thank the Chair. I yield the floor.

The PRESIDING OFFICER. The Senator from New Jersey is recognized.

Mr. CORZINE. Thank you, Mr. President.

#### ECONOMIC SECURITY FOR ALL AMERICANS

Mr. CORZINE. Mr. President, today I want to talk about the corporate scandals and financial problems we have been experiencing, and discuss how these problems highlight the importance of keeping the "security" in Social Security.

Last week, American financial markets plunged dramatically in response to the ongoing litany of corporate scandal and earnings restatements. The New York Times called the current 2½-year slide in the stock market the "worst bear market in a generation." For ordinary investors, retirees, and near-retirees—last week, and certainly the year—the post-bubble environment has been a financial nightmare. What felt like a hard-earned, secure retirement for many became an open question filled with uncertainty for many

Americans. People are feeling compelled to go back to work and evaluate when they will retire, continue their careers, or cut back on their standard of living. They are experiencing a real sense of economic insecurity.

U.S. equity markets have lost nearly \$7.5 trillion since the peak of the market—that is a mind-boggling number, frankly—and roughly \$2.5 trillion in market value has been lost this year alone.

That loss has created a profound sense of insecurity among American families. We are seeing it in the real economy, we are seeing it in consumer confidence, and in a whole series of measures.

Trees don't grow to the sky. We sometimes lost track of that in the 1990s. Markets will not fall to zero either. But markets pose real risk and real challenges to the economic security of all Americans. That is, of course, why we must pass the accounting reform measure before the Senate, the Investor Protection Act. I hope we will do that today. We must also stand firm on the principles and elements of this legislation as we continue in the conference committee, which will try to piece together this strong piece of reform legislation with a fairly weak and tepid response in the House.

Obviously, investors are deeply affected by the wave of corporate scandals and financial restatements that infect too much of the corporate world: The so-called Enron Syndrome, WorldCom, Global Crossing, to Adelphia—the litany goes on, and, unfortunately, appears to be lengthening. I think we may just be at the head of this wave.

What we have is not merely a few bad apples but a systemic breakdown—a breakdown in our accounting system, a breakdown in our auditing structures, and, more fundamentally, a breakdown in the trust that is the foundation of our entire market-based economic system—trust in our corporate leadership and trust in the truthfulness of their word.

As a former businessman and a CEO, I must say I am ashamed of this wave of corporate corruption. As a Senator, I am appalled at the continuing attempt of some lobbyists and too many in public office to substitute a token response for a strong and effective governmental response.

Frankly, I was disappointed with President Bush's response last week, which was long on rhetoric and short on reform. Nothing was really said about the accounting industry conflicts, the conflicts with regard to research in investment banks, as Attorney General Spitzer has brought to light, the expensing of options, or about many other serious steps that will be needed to restore public confidence.

The President also failed to face up to the urgent need for major strengthening of the SEC, which today is drastically outgunned in the battle against

corporate fraud. We need not define the SEC by who is leading the SEC, but we need to make sure we speak to the scope of the resources they have and the tools they have to deal with the issues that are involved in problems that have led to the crisis of consumer confidence that we have today.

Many of my colleagues have expressed similar concerns in recent days, and I believe the American people are watching us closely today, and will see how this process unfolds as the 107th Congress proceeds to completion, and whether we can put this strong reform legislation on the President's desk not only by passing a strong bill in the Senate but by making sure that when we get to conference, we put the public's interest ahead of special interests.

With that said, there is another very important question that is reinforced by these events. It is really where the dots connect and what I will focus on today. That is something I have been speaking about often here on the floor—the implications of a market meltdown and the President's drive to move toward the privatization of Social Security.

For anyone who has any doubt about the importance of providing a guaranteed safety net—a bedrock safety net—for America's retirees, recent events prove how that is absolutely necessary.

In just the past week, millions of Americans have seen the value of their 401(k)s plunge dramatically. For some, this decline will mean their retirement will have to be delayed. For others already retired, it will bring a real decline in their standard of living. I have read about and talked to people who will have to return to work. And for millions of Americans, recent events have highlighted the risk of relying on the stock market as the primary guarantor of retirement security.

We have always talked in this Nation about a three-legged stool to support people in their retirement: Certainly, individual savings, and some of that undoubtedly is well spent in the stock market; then there are pension benefits that are provided by employers; and then there has always been this bedrock of Social Security. That is the three-legged stool.

I think we need to make sure we reinforce that fundamental leg, Social Security. The purpose of Social Security is to ensure, despite the inherent uncertainties of the marketplace, that retirees who have contributed to our Nation will be guaranteed a basic level of retirement income. In other words, the Social Security system guarantees a degree of certainty, a certainty that will give people that sense of security.

Privatizing the program, as the Bush Social Security Commission has proposed, will undermine that security and tear apart a program that has been successful—enormously successful—for the American people for over 70 years. In fact, we have gone from where we had more than 50 percent of the Amer-

ican population retired and living in poverty down to almost 10 percent in recent years. In my view, moving away from that would be a mistake.

For 50 percent of working Americans, the whole of their retirement security is Social Security; they have no other means of retirement security. And for about 70 percent, the primary means of their retirement security is Social Security. So we are really talking about putting at risk something that I think is very vital for most Americans.

Ever since Franklin Roosevelt signed it into law, Social Security has been critically important for our Nation's seniors. Its importance has grown even more in recent years. That is because fewer and fewer Americans now have access to traditional defined-benefit pension plans. Those plans have declined from 175,000 programs in 1983 to just about 50,000 programs today. There has been a dramatic decline in these defined-benefit programs—ones that were secure. Increasingly, companies have switched from traditional plans, under which the company bears the investment risks, to defined-contribution plans, under which workers and retirees are themselves the risk takers—market risk takers.

Proponents of privatizing Social Security would compound those defined-contribution or 401(k) market risks by making Social Security benefits equally dependent on the uncertainties of the stock market. In my view, that would be a cruel betrayal of America's senior citizens and a denial of the promise of Social Security.

Consider what has happened to the employees at MCI. MCI is another telecommunications company that was merged into WorldCom about 2½ years ago. Before the takeover by WorldCom, MCI maintained a traditional defined-benefit plan; that is, the retirement security risks were borne by MCI and guaranteed by a Government institution called the Pension Benefit Guaranty Corporation. But that plan was abolished after WorldCom merged, except, by the way, for senior management; they continued to have defined-benefit programs for their retirements. Instead, MCI employees, as most WorldCom employees, were offered only one type of retirement program, a 401(k) plan.

I am not against 401(k) plans. They are a great idea for an additional element, on top of Social Security, a guaranteed benefit. But I think when we mix apples and oranges, we undermine economic security for Americans.

By the end of 1999, over 103,000 workers and retirees participated in this WorldCom 401(k) program. Their accounts at that time held more than \$1.1 billion of WorldCom stock, about one-third of the plan's assets. At that time, the stock was worth \$54 a share.

Today, that stock and their retirement funds are almost worthless. And we read in the paper today that WorldCom is about to file its bankruptcy petitions. After WorldCom's

massive accounting scam, the stock is not at \$54 a share but 3 cents a share. The WorldCom stock in WorldCom 401(k) plans is not worth \$1.1 billion, but it is now worth \$20 million.

By the way, the 401(k) plan isn't guaranteed by the Pension Benefit Guaranty Corporation. It is actually imposing a cruel reduction in the security of all those 104,000 folks. I say, as an aside, this situation certainly argues for diversification in pension plans as well. The WorldCom plan started with about one-third concentration in WorldCom stock. It now has less than 1 percent in the WorldCom stock, but that is just because of the loss of value. It is really a very difficult situation for a lot of working Americans.

These are not just numbers or abstract entries on a corporate balance sheet or somebody's notification of what their 401(k) plan returns are, they represent the destruction of people's hopes and dreams for a secure retirement life, after working responsibly and contributing responsibly to their retirement.

Last week we had one WorldCom employee say:

I put all my money in WorldCom stock, and I'm pretty sure I've lost everything. I knew what happened at Enron, but I thought we [at WorldCom] were different.

Management told them they were different, and, as most people, employees trusted the executives they worked for and wanted to be proud of their company and its leadership.

The experience of WorldCom employees, and those of hundreds of other companies—some of them, by the way, not falling prey to the whims of fraud but just simply market realities—shows that diversification is an absolute essential in pension reform. I hope we have that debate also on the floor.

When retirees lose all their money through no fault of their own, when nothing is left in their retirement portfolio, one thing, and one thing only, stands in the way of total economic devastation. Social Security. Because no matter the state of the stock market, Social Security is always there—not with enough to live in luxury but enough to make a real difference for millions who have little or no savings on which to rely. Social Security is the ultimate safety net. We must not let the administration shred it.

Privatization schemes would irresponsibly gamble with the guarantee of security for retirees, present and future. The average Social Security benefit last year was only about \$10,000 a year—not the princely sums received by executives who have failed their companies—and not enough in some parts of our country to have a secure retirement. In New Jersey, for instance, \$10,000 a year can only get you so far given the high cost of living in our part of the country.

Yet President Bush's Social Security Commission called for substantial cuts in guaranteed benefits. Cuts for some

workers would amount to 25 percent and future cuts could exceed 45 percent. If anyone wants to apologize for privatization by disputing these numbers, I just encourage them to read the report of the nonpartisan actuaries at the Social Security Administration themselves. For more evidence, let me refer you to the recent economic analysis by Professor Peter Diamond of MIT and Dr. Peter Orszag of the Brookings Institution.

The Bush Commission parades its proposals as promoting choice. But if the Bush privatization plans were ever approved, seniors would have no choice. Their benefits would be cut. They would be cut if they shifted to privatized accounts, and they would be cut if they did not. The only choice is this: If they opted for privatized accounts, their guaranteed benefits would be cut more deeply.

The effective destruction of Social Security's guaranteed benefits recommended by the Bush Commission is bad economics and bad social policy. Fifty Senators have written the President urging him to publicly reject his Commission's proposals. So far, his response has been the same kind of silence we heard for months after the corporate scandals first broke with Enron.

Sometimes facts and reality ought to bring about a change in thinking for individuals, for corporations, and for an administration on important topics of the day.

Cutting guaranteed Social Security may have sounded like a good idea when the stock market was only going up, but now the fallacy of that assumption is clear to everybody. I hope the Bush administration will reconsider its plans to privatize and cut Social Security.

Let's not take the security out of Social Security.

Mr. President, before I leave the floor, I would like to take a few minutes to discuss a different matter but one that I believe is fundamentally important as we seek to address the structural problems facing our economy and what we need to face in the financial world to straighten out some of the problems we have. We need to better account for employee stock options.

This, too, is an issue that regardless of where one may have been historically, facts and reality ought to bring about a change in reasonable folks' thought with regard to options.

While the depth of liquidity and efficiency of our markets is still unrivaled, our markets need to make sure they are based on a presumption of integrity and accuracy in the information provided to the country. Our entire financial system depends on the broad availability of timely, truthful and transparent information. To secure that and restore the confidence of investors, it is absolutely urgent that we address this treatment of employee stock options.

The fact is, in many instances where we continue to allow this without an acknowledgment of what is going on, two things are happening: Earnings are overstated, and there is an enormous amount of dilution going on to the ownership of shares.

People may argue that you can derive this from financial statements and footnotes that are highly complicated even for the most sophisticated investor to read. But I argue that there is no common sense in making it as difficult to understand what the earnings statements of a company state and, more importantly, protecting investors from the dilution that comes from the whole premise of issuing more stock without having an understanding of when that is going to happen. This needs to be put in the context of the asymmetrical incentives it gives management that has undermined confidence in our corporate executives.

To be brief: We have a chance to address this issue in a very serious manner in the next few hours before we take our final vote on this legislation. I compliment Senator LEVIN and all those who stand to straighten out and put into responsible format what needs to be done with option accounting. We should do that not by writing option rules, at which I do not think the Senate has the capacity to be effective, but making sure that an independent body, which we will independently finance, has the ability to deal with a very complicated issue.

I hope with the help of all my colleagues, we can get around to straightening out something that, as we saw today in news reports, even corporate executives understand can lead to misallocation of resources and certainly misunderstanding of the performance of companies. We ought to get to real economic performance being reflected, not accounting performance. I am glad to see Coca-Cola take the steps they did. We need to move firmly and surely by passing the Levin amendment which would facilitate a solution that would make this permanent for everyone.

All three of these are important issues—accounting reform and corporate responsibility, the treatment of stock options, and protecting Social Security and rejecting privatization. The stakes are high for our economy. I hope we will move swiftly and certainly to reform and provide economic security to all Americans.

#### 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 now resume consideration of S. 2673, which the clerk will report.