Testimony of

The Honorable Orrin Hatch

April 25, 2002

S. 1974, "The FBI Reform Act of 2002"

Mr. Chairman, as I have said on numerous occasions, I believe that the FBI is one of the world's premier law enforcement agencies.

I have an infinite regard for the skill and dedication of the thousands of agents at the FBI, who work so diligently, largely outside the public eye, to keep us safe from those who would do us harm.

I also have great confidence that, under the leadership of Director Mueller, the FBI is moving in the right direction, and that it is increasingly becoming a more open, a more efficient, and a more effective institution. Indeed, a good number of the provisions of the FBI Reform bill that we are considering today have already been implemented, unilaterally, by Director Mueller and the Department of Justice.

I am happy to give my support to this bill. Sen. Grassley and the Chairman have long been interested in this topic, and I applaud their leadership on this issue. This bill, which is the culmination of their efforts in this area, makes many worthwhile reforms, helping to ensure that the FBI will maintain the forward momentum that it has developed in reforming itself.

I do have reservations about several sections of the bill, and I hope that I will have an opportunity to work with both Sen. Grassley and the Chairman to make the bill even better. I will certainly vote for the bill today, and will work diligently with Sen. Grassley and the Chairman to ensure the enactment of this important legislation.

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On S. 2010 the "Corporate and Criminal Fraud Accountability Act"

I want to thank Chairman Leahy and Senators Sessions, Feinstein and Grassley for their efforts to alleviate some of the concerns I had with previous versions of this bill. These are complicated issues that cannot be addressed easily. The Justice Department and the Securities Exchange Commission have been aggressive in investigating and bringing charges against the offending parties. I believe any legislative response needs to be deliberate and measured so that our economy is not adversely affected.

I am pleased that the Chairman and I have reached an agreement on some improvements to S. 2010. Together, we have increased the maximum penalty that applies to S. 2010's new document destruction offense, and strengthened the Sentencing Commission directive. In addition to

agreeing that the Commission review a host of additional guidelines that apply to obstruction of justice and fraud offenses, we have also agreed to ask the Commission to revisit the guidelines that apply to corporate misconduct. I believe that tougher penalties, coupled with new criminal offenses, will enhance the ability of prosecutors to punish and deter egregious acts involving obstruction and fraud.

As I stated last week, I could not support S. 2010 in its original form. I had grave concerns about its scope. In my view, for example, a broad federal mandate requiring accountants of publicly traded companies to retain all documents sent, received or created in connection with any audit, review or other similar engagement, would have been unworkable. In short, it would have required auditors to retain warehouses of documents, including those immaterial to an audit's conclusions.

As revised by the Hatch-Leahy-Schumer amendment, the document retention provision strikes a better balance between the legitimate needs of investigators and the accounting industry. While I still have concerns that such legislation could be used to impose unreasonable burdens on the accounting industry, I anticipate that the SEC will exercise its expertise and discretion prudently to promulgate only those rules and regulations that are necessary to ensure that documents which are material to an audit or review, as well as any future investigation, are retained.
I am also pleased that we were able to work to improve many of the civil provisions that were originally included in S. 2010. You are aware of the strong concerns I had, some of which were shared by members on both sides. As originally drafted, I believe such provisions would have been a trial lawyer's dream, would have done little, if anything, for consumers, and would have likely had a major negative impact on our economic markets.

First of all, I had serious concerns about granting the SEC and the 50 State Attorneys General automatic standing to bring suit under the civil provision of the Racketeer Influenced and Corrupt Organizations (RICO) Act. I believe this would have been an unwise and unwarranted extension. To allow all 50 State Attorneys General and the SEC to bring multiple and duplicative civil RICO actions would have resulted in inconsistent applications of the statute and undermined DOJ's proper role in this area. I know other members of this committee, on both sides, shared similar concerns. I am pleased that we were able to remove this section from the bill before us.

In addition, I felt that the original whistleblower provision in S. 2010 was so broadly worded that it would have encouraged frivolous claims which would have flooded our courts and abused the protections we seek to bestow. It also provided for expansive damage awards, again a trial lawyer's dream. I do not see any justification for treating private employees differently than we currently treat federal employees and aviation employees. There is no reason to do so other than to line the pockets of trial lawyers. I believe the alternative language that Senator Grassley proposes more appropriately tracks current law in this area and, at the same time, expands the class of people that can access its protections - which should be the goal here. While I still have some concerns about the amendment, I believe it is a marked improvement.

Finally, my serious concerns about the statute of limitations provision remain. I believe current law provides an adequate length of time in which people who have been defrauded can file suit - one year after an individual knows he or she has been defrauded or three years after the date of

the fraud. This period mirrors legislatively enacted limitations that apply to statutory claims that are most analogous to those contemplated here. Such statutes of limitations provide for certainty in the markets and adequately protect genuinely aggrieved consumers. Since 1991, when the Supreme Court determined the existing limitations period, technological advances have made it easier, not harder, to file legitimate fraud claims in a timely manner. I understand that the number of shareholder suits has increased in recent years. By extending the statute of limitations period as S. 2010 proposes, I believe we will flood our courts with frivolous shake-down claims that will do nothing but hamper technological innovation and adversely impact our economy.

While none of us wants to witness another Enron-type disaster, we must be measured and not reactionary in our legislative approach. The reforms we enact must give government agencies the tools they need to punish those at fault and to protect the real victims of corporate and accounting fraud. Such reforms should not fuel the ever-powerful trial lawyers' bar. That simply is not the answer. I sincerely hope that my colleagues on both sides, and in both houses, will work hard to ensure that this does not occur, and that this Congress enacts appropriate legislation that addresses legitimate concerns highlighted by recent accounting debacles.

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