

Testimony of

The Honorable Patrick Leahy

July 10, 2002

I want to commend Senator Biden for holding this important hearing. As Chairman of the Crime and Drugs Subcommittee of the Judiciary Committee, he has played a leading role in examining many important criminal law issues. The inadequacy of current statutes and sentences available in white collar cases is one of the most important issues facing our country now. Americans must know that criminals - no matter the color of their collar - will be held accountable for their misconduct.

We cannot have a system where a pickpocket who steals \$50 dollars faces more jail time than a CEO who steals \$50 million. The integrity of our judicial system depends on accountability. In addition, the mounting scandals and declining stock market have demonstrated, the integrity of our public markets depends on the same accountability.

Indeed, as Senator Biden holds this hearing, the Senate is debating import reform legislation designed to increase the transparency and accountability of our public markets. The Sarbanes bill represents a major reform effort designed to restore the confidence of the American public in the honesty and integrity of our financial system.

As part of that debate, I have been joined by a bipartisan group of Senators, including Senator McCain, the Majority Leader, and members of the Judiciary Committee from both parties, including Senator Brownback, Senator Durbin, Senator Kennedy, Senator Schumer and Senator Edwards, in introducing the provisions of S. 2010, the "Corporate and Criminal Fraud Accountability Act," as it was unanimously reported out of the Judiciary Committee in April, as an amendment to the Sarbanes bill that is at this moment being debated on the Senate floor. Senator Biden is a cosponsor of both the underlying bill and the Leahy floor amendment, and these hearings are an important part of his continued attention to white collar crime enforcement. We need to examine all of our laws to ensure they are equal to the new challenges facing law enforcement and our markets.

Enron has become a symbol for the torrent of corporate fraud scandals that have hit the front pages and battered our financial markets. Tyco, Xerox, WorldCom, Adelphia, Global Crossings - the list goes on. For those who think we are talking about only a few bad apples, however, it is worth reminding them about what actually happened at Enron.

The things that happened at Enron did not happen by mistake. They were not the result of one or two "bad apples." Senior management at Enron, assisted by an army of accountants and lawyers spun an intricate web of deceit. Setting up partnerships with names like "Chewco" and "Jedi" and "Rawhide," they engaged in a systematic fraud that allowed them to secretly take hundreds of millions of dollars out of the company.

This kind of fraud is not the work of a lone fraud artist. Rather, it is symptomatic of a corporate culture where greed has been inflated and honesty devalued.

Unfortunately, as I have said and as the experts warned at our February 6 hearing, Enron does not appear to have been alone. Each week we read of corporation after corporation that has engaged in misconduct - and these are not small or marginal corporations. These are major mainstays of corporate America. The web of deceit woven by such publicly traded companies ensnares and victimizes the entire investing public who depend on the transparency and integrity of our markets for everything from their retirement nest eggs to their children's college funds. That is why comprehensive and systemic reform is urgently needed to restore accountability in our markets.

The Leahy-McCain amendment pending on the Senate floor, which is identical to S.2010 as unanimously reported out of the Judiciary Committee in April, provides just such accountability. The Corporate and Criminal Fraud Accountability Act provides tough new criminal penalties to restore accountability and transparency in our markets. It accomplishes this in three ways:

1. Punishing criminals who commit fraud,
2. Preserving evidence to prove fraud, and
3. Protecting victims of fraud.

Here are some of its major provisions:

- ? It establishes a new crime of securities fraud, with a tough ten year jail sentence.
- ? It breaks the "corporate code of silence" by providing, for the first time, federal protection for corporate whistleblowers who report fraud to the authorities or testify at trial.
- ? It closes loopholes and toughens penalties for shredding documents as we learned had occurred at Arthur Andersen.
- ? It requires audit documents to be preserved for 5 years and provides tough criminal penalties for their destruction.
- ? It protects victims the right to recoup their losses by preventing fraud artists from hiding in bankruptcy or concealing their crime and using an unfair statute of limitations to hide.

This bill is going to send wrongdoers to jail and save documents from the shredder, which sends a powerful and clear message to potential wrongdoers - "don=t do it." As a former prosecutor, I have discovered that nothing focuses attention to morality like the prospect of a long prison sentence.

In the Senate, as we have been debating and shaping specific and comprehensive reform proposals, we had been trying for months - unsuccessfully - to get the President's support and input. We have held hearings, like this one, and shaped bipartisan and comprehensive reform proposals. The Administration had stayed on the sidelines during this important debate. In fact, last week the Majority Leader and I wrote to the President asking him to support the Sarbanes and Leahy bills that had received bipartisan support in Committees and were actually about to be debated on the Senate floor.

For whatever reason - perhaps the mounting scandals or the declining market - the President decided yesterday to speak out against corporate fraud. I welcome his participation and hope that he will follow up his speech by supporting real reform.

As the President was speaking, we were acting by considering the Sarbanes bill and the Leahy bill - two measures which provide a comprehensive reform effort designed to restore confidence in our markets. Although I now understand that a White House official reportedly said that they agreed with the "goals" of these reform bills, I was disappointed that the President has not yet voiced his support for these bipartisan measures pending before the Senate.

Supporting the "goals" is a good first step - but it is nonetheless a baby step. For those of us in the Senate, like myself, Senator Sarbanes, Senator McCain, Majority Leader Daschle, Senator Biden and others who have worked hard to come up with specific and bipartisan reform proposals, the "goals" have been clear for a long time. It is now time for comprehensive action. I am quite sure that we could accomplish comprehensive reform without further delay, if only the White House were willing to provide a clear statement of support for the pending, bipartisan Sarbanes and Leahy proposals and communicate this to their Republican colleagues in the Senate and the House of Representatives.

While the President's speech was short on details, some of it did sound familiar to those of us on the Judiciary Committee. Three of the President's proposals are found in the Leahy bill, S. 2010, the Corporate and Criminal Fraud Accountability Act:

1. The President advocates for strengthening the laws punishing document shredding and obstruction of justice. That is in the Leahy bill.
2. The President wants the Sentencing Commission to raise penalties for corporate misconduct. That is in the Leahy bill.
3. The President wants the Sentencing Commission to raise the penalties for the existing fraud laws. That is in the Leahy bill as well.

I am glad the President has adopted three proposals from my bill, even if he will only say that he supports the "goals." Unfortunately, the President's proposal fails to include many of the important provisions in the bipartisan Leahy amendment.

? It fails to create a new crime to punish securities fraud to directly punish people like Ken Lay.
? It fails to provide whistleblowers with protection that will break the corporate code of silence. Remember, you can put whatever criminal laws you want on the books - but unless there are witnesses who are not scared to help prosecutors prove what happened no one will be held accountable.

? It fails to protect victims of fraud recover their losses from a fraud artist who declares bankruptcy.

? It fails to establish a realistic statute of limitations to allow victims to recoup their losses when a fraud artist can manage to conceal his crimes for long enough - a change that has received strong bipartisan support dating back to the SEC under former President Bush.

As I said, I was glad to hear the President finally join this reform debate. Now is not the time, though, for half measures. We need comprehensive action. If the Administration has specific legislative proposals, I am sure we would be glad to consider them, but we need to get them first.

I hope that the President will support such comprehensive reform as is found in the Sarbanes and Leahy bills. I hope that his rhetoric is backed by action and that his generalities are backed with specifics. As he once noted, reform is worth little without "results." The Leahy-McCain amendment provides such "results," as does the Sarbanes bill.

I hope that the President will support the bill's provisions as it moves forward to conference and will appeal to the Republican House members not to water it down. That will be the true test of his resolve to restore accountability to our markets.

It is time for action - decisive and comprehensive action that will restore confidence and accountability in our public markets and for the millions of small investors whose economic security, retirement security and investment security have been threatened and who have lost so much to the corporate accounting and mismanagement scandals that dominate today's headlines. The Leahy-McCain amendment on Corporate and Criminal Fraud Accountability Act, which was reported unanimously by the Judiciary Committee on April 25, provides just such action.

Let's give Americans their markets back.