

Testimony of

The Honorable Joseph R. Biden, Jr.

July 24, 2002

Good morning. I would like to welcome you to the third in a series of hearings I am holding on white collar crime and the adequacy - or should I say, inadequacy - of penalties for these offenses.

Way before the truly mind-boggling events at WorldCom, we were exploring this question of corporate responsibility - and the extent to which a so-called "white collar" offender should be held accountable in the criminal justice system. Embarrassingly, it's a question that has for years evaded this body, the courts, and the overall criminal justice system.

I say "embarrassingly" because the answer to that question strikes me as painfully obvious - of course white collar criminals should be treated as harshly under the law as petty thieves or drug dealers. Yet, our policy prescriptions have been muddled. Indeed, the institutions that oversee crime policy - including the U.S. Congress - have been a bit schizophrenic on the issue.

I have been deeply troubled by recent events in corporate America - and even more disturbed by the impact these scandals have had on investor confidence and this country's economic health. In concert with an already sagging economy, allegations of corporate malfeasance have resulted in plummeting stock prices . . . a drop in consumer confidence and consumer spending . . . and rising unemployment. With about 60% of all American households invested in the stock market, we have become a nation of investors. If we are unable to preserve investor confidence, the markets will continue to plunge - and, with them, the health of our economy.

Today, we will address these questions in light of Congress' ongoing efforts to pass accounting reform legislation and the real-world spiral we are now witnessing.

There are 3 things we must do immediately:

First, we must toughen criminal penalties. Senator Hatch and I secured passage of a bipartisan amendment that would enhance the underlying criminal penalties for fraud, for conspiracies to commit certain white collar offenses, and for violations of pension protection measures.

Most significantly, our amendment also includes a provision that imposes criminal penalties on any chief executive officer, chief financial officer or board chairman that certifies as accurate a company's financial statements that they know to be false.

Seemingly straightforward, right? Should we expect anything less than accurate financial statements from corporate officials? And, if they knowingly lie about the company's financial health, shouldn't they be held responsible? It's a no-brainer, particularly with the SEC's

announcement this morning of federal fraud charges against the former chairman of the board of Adelphia Cable on charges of false statements about the company's financial condition.

As we all know, the "buck stops" in corporate America with the Chairman of the Board and they should be on the hook if they lie about their company's financial condition. For that reason, Federal Reserve Board Chairman Alan Greenspan last week testified that criminal sanctions for corporate officials who knowingly misrepresent the financial health of their company was the key to real reform of corporate wrongdoing.

The second thing we must do is to insist on more transparency. I won't belabor the point given our recent and extensive debate on accounting reform - but suffice it to say that we need truth-in-auditing and truth-in-accounting. Top executives must be compelled to provide investors with clear, accurate financial information - and, if they don't, they should be held accountable.

The third and final thing we need to do is to enable citizen suits. I was one of a handful of Senators to vote against the so-called "Private Securities Litigation Reform Act of 1995," which was ultimately enacted over President Clinton's veto. I opposed this anti-investor bill because it severely restricted the ability of defrauded investors to recover their hard-earned dollars.

What we're seeing today in the form of corporate abuses, in my view, is the quintessential "chicken coming home to roost." I know I won't win many friends by saying this, but we are beginning to see the true consequences of the anti-investor provisions included in that 1995 legislation. And, if we're serious about ensuring corporate responsibility, we need to make sure that defrauded investors are able to bring legitimate suits to hold corporate wrongdoers accountable and to recover their losses.

Finally, I believe the accounting reform legislation sponsored by Senator Sarbanes - which includes the bipartisan Biden-Hatch amendment - is an important step to addressing these problems. I hope that we will soon get a bill that preserves those fundamental reform initiatives to the President for signature.

We have assembled a truly blue-ribbon panel of witnesses, and I am eager to engage them on these very important issues.

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