

legislative and regulatory changes that follow a scandal can help build a strong foundation for economic growth.

If you hoped that the Enron/Anderson scandal would provide an opportunity for just those sort of farsighted regulatory improvements, start worrying. There are signs that the Bush Administration, under pressure from the accounting lobby and business groups such as the U.S. Chamber of Commerce, is willing to support only mild changes in the current system. And there's a danger that Congress will acquiesce. The House of Representatives has already passed a very watered-down bill.

That's wrong. Halfhearted reform is bad for the public, bad for economy, and even bad for the accounting industry, which needs to reestablish its credibility. Instead, we think the best for strong accounting and financial reform is the legislation proposed by Senator Paul S. Sarbanes (D-Md.), chairman of the Senate Banking Committee.

Sarbanes' draft legislation—which is opposed by Senator Phil Gramm (R-Tex.), the ranking GOP member of the Banking Committee, and the Bush Administration—would set up a strong private-sector board to oversee public-company accounting. It would severely limit consulting services that accounting firms can offer the companies they audit. And, not the least, the bill would require CEOs and CFOs to sign their company's audit reports and forfeit a year's worth of bonuses, incentive-based pay, and profits on stock sales if the company has to materially restate its earnings. That would reduce the aggravating sight of CEOs claiming they had no idea what kind of wrongdoing their company was engaged in.

Equally important, the Sarbanes bill would authorize more money for the Securities & Exchange Commission and permit the agency to hire at least twice as many professionals as the Bush Administration is willing to fund. These additional resources are essential for the SEC to do its regulatory duty. According to a report from the General Accounting Office, the SEC's workload increased by 80% in the 1990s, but its staffing rose only 20%. In 2001, for example, the SEC reviewed only 16% of all annual reports—way below the desirable level.

No business or profession likes closer oversight. But finding the right balance between markets and regulation is essential for a well-functioning economy. Reform is never easy—but history suggest that it's essential.

EXHIBIT 3

[From Business Week, June 3, 2002]

A THREE-POINT PLAN FOR SEC REFORM

(By Robert Barker)

A specter is haunting Wall Street—the specter of Main Street retreating from investments and toward savings, going from stocks to CDs. That's why, as the late, lamented bull market nears its 20th anniversary this summer, “we are on the verge of the greatest overhaul of securities regulation since the SEC was created,” Securities & Exchange Commission Chairman Harvey Pitt said recently. “Nothing is off the table.”

Pitt was addressing an Investor Summit that called on May 10 in Washington to air investors' concerns and answer questions. I listened, via the Web, to more than three hours of talk, most of it pertinent (box). Yet some specific investor demands need amplification. Here's a short list of concrete fixes. If Wall Street and its regulators can't deal with this simple stuff, their reform effort will have failed:

FASTER. A CEO today can dump a ton of his company's stock on the first day of the month and need not report it until the 10th

day of the next month. Not only should that disclosure be made much sooner—within a day or two of the sale, as now is being discussed—but such insider trades should be disclosed for free via the SEC's Web site, which is not the case today.

QUARTERLY AND ANNUAL CORPORATE REPORTS, now required 45 and 90 days, respectively, after each period, will likely be accelerated to 30 and 60 days. That's good, but faster filing should not end there. Mutual-fund holdings should be disclosed at least quarterly instead of every six months, the current rule. Opponents say faster disclosure will make it harder for funds to trade without tipping their hand and ultimately hurting investors. But companies that manage \$100 million or more—including most fund advisory firms—already must disclose portfolio holdings 45 days after the close of each quarter. Cut that to 30 days, tops. Short positions, now exempt should be required as well as longs.

FAIRER. The SEC's regulation FD, or Fair Disclosure, seems to have helped put individual investors on a more equal footing with professionals when companies disclose potentially market-moving information. Before its adoption in August, 2000, the public routinely was barred from management's conferencecalls with stock analysts. Not so now. There remains, however, a forbidden zone—the “road shows” put on for institutional investors by companies preparing to sell securities, particularly initial public offerings of stock. Just as the SEC was able to invite the public via the Internet to its own recent Investor Summit, investors small as well as large should be asked to attend and pose questions at these pre-IPO presentations. It's one thing to read a prospectus laden with legalese; it's better to hear how management discusses what's in the prospectus.

PLAINER. Speaking of legalese, regulators have long encouraged the use of “plain English” in securities filing. A charitable assessment of this initiative would be to say it has achieved limited success. To any who doubt this, I point to the 749-page proxy statement (including Annexes A through N) filed recently by AT&T. If you own AT&T, you're supposed to use this to decide how you'll vote by July 10 on the company's plan to restructure and merge its cable unit with Comcast. Meanwhile, regulators—while trying to make investor communications clear to more than just the securities bar—might also try setting a good example. In SEC lingo, the AT&T proxy is a “DEFM14A.” A mutual fund's annual report is an “N-SAR.” A tender offer may be a “13E-4” or a “14D-1.” Our government can do much better.

Only a fool would expect Washington to solve every problem in today's stock market. As SEC Commissioner Isaac Hunt put it: “The burden rests with individual investors to research the information and make intelligent investment decisions on their own.” Fair enough. At the same time, investors don't have to buy what Wall Street is selling. So the burden is equally on Wall Street to show honestly that what it's offering is worth buying. Otherwise, I'd say the intelligent investment decision is a bank CD.

THE PRESIDING OFFICER. The Senator from Hawaii is recognized.

Mr. AKAKA. Mr. President, I ask unanimous consent to speak in morning business for 10 minutes.

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

KAHO'OLAWE; REBIRTH OF A SACRED HAWAIIAN ISLAND

Mr. AKAKA. Mr. President, I rise today to call my colleagues' attention

to an excellent exhibit that opened last week at the Smithsonian Institution's Arts and Industries Building, entitled, “Kaho'olawe; Rebirth of a Sacred Hawaiian Island.” The exhibit chronicles the rich history of the island of Kaho'olawe from its mythical beginnings to current efforts towards its protection and revitalization. The exhibit is a project of the Bishop Museum Native Hawaiian Culture and Arts Program, and is sponsored by the Smithsonian Asian Pacific American Program, Bernice Pauahi Bishop Museum, Community Development Pacific, and Protect Kaho'olawe 'Ohana/Fund.

I was deeply moved by the exhibit and its eloquent reflection of the Hawaiian value of “aloha aina,” which means love for the land, which serves as a foundation for the culture of Hawaii's indigenous peoples; the Native Hawaiians. The profound appreciation for Hawaiian culture and its values is reflected in Hawaii's state motto, “Ua mau ke'ea 'o ka 'aina 'i ka pono, “the life of the land is perpetuated in its righteousness.” The exhibition celebrates Hawaii's culture and people in telling the story of Kaho'olawe.

Ancient chants—plaintive and poetic oral histories of Hawaii—along with archaeological evidence indicate that Kaho'olawe was inhabited by Native Hawaiians who fished and farmed in coastal and upland settlements scattered across the island. In ancient times, the island was referred to as Kanaloa for the god of the ocean and the foundations of the earth.

From 1941 to 1994, Kaho'olawe and its surrounding waters were under the control of the United States Navy. Both the island and the waters of Kaho'olawe were used as a live-fire training range. In 1990, President George Bush directed the Department of Defense to cease using the island of Kaho'olawe as a training range. In 1993, Congress enacted legislation that recognized the cultural significance of Kaho'olawe, required its return to the State of Hawaii, and directed the Navy to conduct unexploded ordnance cleanup and environmental restoration in partnership with the State of Hawaii. Congress authorized Federal funding through 2003 for the cleanup of Kaho'olawe. We continue to work with the Navy to ensure that this funding is utilized for maximum cleanup of the island before access is turned over to the State of Hawaii in late 2003.

The restoration of Kaho'olawe is more than the cleanup of ordnance. Native Hawaiians also referred to Kaho'olawe as “Ko Hema Lamalama,” the Southern Beacon, in reference to the island's use as a navigational aid, or shining beacon, for long-distance voyagers returning to Hawaii. For many Hawaiians, the vision of a fully restored Kaho'olawe serves as a guiding light to the revitalization of Native Hawaiian culture.

I encourage all of my colleagues and their staff to visit this exhibit at the Smithsonian Institution's Arts and Industries Building. I always welcome

the opportunity to share the true essence of Hawaii with my colleagues and our fellow citizens on the U.S. mainland. We have the honor and privilege of showing you a bit of Hawaii in Washington, DC, until September 2, 2002, and I invite you to share in this wonderful experience.

Mr. President, I yield the floor.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is now closed.

LOCAL LAW ENFORCEMENT ACT OF 2001

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of S. 625, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 625) to provide Federal assistance to States and local jurisdictions to prosecute hate crimes, and for other purposes.

Pending:

Reid (for Biden) amendment No. 3807, to provide reliable officers, technology, education, community prosecutors, and training in our neighborhoods.

The PRESIDING OFFICER. The Senator from Utah is recognized.

Mr. HATCH. Mr. President, let me begin on a point of common ground. We can—each and every one of us—agree that the actions constituting hate crimes are wrong in all respects. Let me state, unequivocally, that as much as we condemn all crimes, a hate crime can be more sinister than a non-hate crime. And let me state, with equal conviction and clarity, that I care about stamping out hate crimes as much as any member of this body. I think everybody know that.

A crime committed not just to harm an individual, but in order to send a message of hatred to an entire community is appropriately punished more harshly, or in a different manner, than other crimes. This is especially true when the targeted community is defined on the basis of immutable traits. The brutal murders of James Byrd in Jasper, TX, and Matthew Shepard, in Laramie, WY, among others, remain seared into our Nation's conscience because of the savagery they suffered solely because of their attackers' irrational and hateful prejudice. The worse a criminal's motive, the worse the crime, and a unanimous Supreme Court recognized as much in upholding Wisconsin's sentencing enhancement for hate crimes. These same considerations also prompted the U.S. Sentencing Commission to establish a sentencing guideline that provides an enhanced sentence for a Federal defendant whose crime was motivated by hate. These decisions are ones we can all applaud.

Not only are the offenses themselves worse, but hate crimes also are more likely to provoke retaliatory crimes. They inflict deep, lasting and distinct

injuries—some of which never heal—on victims and their family members. They incite community unrest. And, at bottom, they are downright un-American. The melting pot of America is the most successful multiethnic, multiracial, and multifaith country in all of recorded history. We should keep our proud heritage of diversity in mind as we consider the atrocities routinely sanctioned in other countries committed against persons entirely on the basis of their racial, ethnic, or religious identity.

So we all should be able to agree that the battle against hate crimes is and must be America's fight. And despite the often contentious partisan rhetoric surrounding the issue of Federal hate crimes legislation, there exists widespread agreement on these fundamental points: Hate crimes are insidiously harmful, they should be vigorously prosecuted, and the Federal Government has a role to play in reducing the incidence of these crimes in our Nation. The dispute, then, centers not on whether Congress should act in this area, but rather on what should be done at the national level.

There is no dispute that hate crimes themselves often involve particularly horrific facts. They rivet our attention and move us to consider almost any measure that would appear to check such bigotry. But the proposed legislation introduced by my good friend from Massachusetts, S. 625, also brings us face to face with the foundations of our constitutional structure—namely, bedrock principles of Federalism that, for more than 2 centuries, have vested States with the primary responsibility for prosecuting violent crimes committed within their boundaries. And on this point we must be crystal clear: every hate crime—every bit of criminal conduct that S. 625 proposes to federalize—is, and always has been, a crime in every jurisdiction throughout our Nation. The question is not whether these crimes can be prosecuted, but who should prosecute them under our constitutional framework.

In other words, S. 625 brings us to a difficult intersection between our well-intentioned desire to investigate, prosecute, and, hopefully, end these vicious crimes, and our unequivocal duty to respect the constitutional boundaries governing any legislative action that we take. We, who are trusted with the awesome responsibility of making our Nation's laws, must scrupulously abide by the rule of law in this process. Congress has a duty to make sure that the legislation it enacts is constitutional. To shrug off that duty is more than just negligent; it invites trouble and may even solicit scorn. A Supreme Court Justice for whom I have the greatest respect, Justice Scalia, said the following just a few years ago:

My court is fond of saying that acts of Congress come to the court with a presumption of constitutionality. But if Congress is going to take the attitude that it will do anything it can get away with, and let the Supreme

Court worry about the Constitution, perhaps the presumption is unwarranted.

So, while all of us would agree that hate crimes are a problem with which Congress must deal, our focus must be on the appropriate and constitutional means to best accomplish that objective.

In the face of some of the recent hate crimes that have riveted public attention—and have unfortunately made the name James Byrd synonymous with Jasper, TX; and the name Matthew Shepard synonymous with Laramie, WY—I am committed in my view that the Senate must speak out and act against hate crimes.

I have long been on record with my view that the Federal Government can play a valuable role in responding to hate crime. In fact, I sponsored the Hate Crime Statistics Act of 1990. But any Federal response—to be a meaningful and lasting one—must abide by the constitutional limitations imposed on Congress, and be cognizant of the limitations on Congress's enumerated powers that are routinely enforced by the courts. I was a prime sponsor of that bill, and I am proud that I was. It was a bill with a lot of controversy at the time. This is more true today than it would have been even a mere decade ago—ever since the U.S. Supreme Court revisited the Federalism doctrine in a string of decisions beginning in 1992.

Having consistently checked the expansion of Federal jurisdiction in areas traditionally reserved to the States over the past decade, the Supreme Court has cast grave doubt over the legitimacy of S. 625. I am not alone in believing that this bill, if passed into law, will be struck down as an unconstitutional invasion into States' rights. I take no pleasure in holding this view. In fact, I was the primary co-sponsor of the Violence Against Women Act of 1994—a law that created Federal jurisdiction over certain serious acts of violence directed at women. Senator BIDEN was a prime sponsor as well and deserves an awful lot of the credit for that particular bill. I felt strongly about that legislation, and I certainly was not happy to see the Supreme Court strike down a portion of that law as unconstitutional. But I respect, as we all must, the Supreme Court's ruling, and we have a duty to take its lesson to heart—whether or not we personally like them.

So there is a serious constitutional concern with S. 625. But, in the frightening climate of terrorism that we live in today, there is a practical consideration that we also cannot ignore. We must ask ourselves what role our Federal law enforcement agencies should play in violent crimes that historically have been prosecuted by State and local officials. The Federal Bureau of Investigation recently has committed a large number of its agents to work exclusively on terrorism cases. The FBI has shifted its focus away from the investigation of general crimes to the