

this Congress is an accessory to that crime.

I believe the bill I am a cosponsor of, along with Senator GRAHAM and Senator KENNEDY and Senator DASCHLE and the senior Senator from Georgia who is presiding, and about 30 other Senators, fulfills our promise to all seniors and offers the most for our neediest seniors.

Our bill gives our neediest seniors their medicine for free. For those who earn less than \$11,900 a year—and that is about 12 million seniors out there—there is no premium, there is no copayment. They receive 100-percent coverage from the first prescription filled.

To that widow with trembling hands who is trying to cut that pill in half so her medicine will last a little longer, I hope the Senate will send a message to her that help is on the way. To that old man, proud and self-sufficient all his life, who has to whisper to his pharmacist that he doesn't have quite enough in his checking account and he will have to come back later, I hope the Senate will send the message to him that help is on the way.

I look forward to debating this provision of our bill and many others when we take up the prescription drug legislation next week. I urge my colleagues in both Houses and in both parties to keep this in mind: Our duty to seniors is not to just debate an issue. They have heard all that before. Our duty is to pass a bill, a meaningful bill.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. GRAHAM. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

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

Mr. GRAHAM. Mr. President, I am pleased to join my colleagues today in the discussion of pending legislation, as of next week, which will relate to the long-held desire of senior Americans to have within the Medicare Program a prescription drug benefit.

One of the key issues in the debate we will begin next week will be, How will this benefit be administered? As we answer that question, we need to ask some questions about what do older Americans want. Older Americans want a plan that is straightforward, simple, a plan with which they are familiar. Even more important, they want a plan that actually works, that they can take to the local pharmacy or, if they use a mail order pharmacy, that they can take to the post office box and get their drugs.

That is why the Senate Democratic bill, which I am sponsoring with Senator MILLER, Senator KENNEDY, and others, including the Presiding Officer, uses the exact same system that America's private insurance companies use. As an example, this happens to be the Blue Cross Blue Shield service benefit

plan, a plan which many of us as Federal employees utilize. If you turn to page 119, you will see the outline of what Blue Cross Blue Shield provides and how they provide it. It is exactly the same structure we are proposing in our plan. It is a structure with which older Americans, most Americans, are extremely familiar. It is the same system that predominates in not only Blue Cross Blue Shield but virtually every other major private insurance plan.

These plans are based on the concept of using a pharmacy benefit manager, or PBM, as the intermediary between the beneficiary and the pharmaceutical companies.

What do these PBMs do? They negotiate directly with the pharmaceutical companies in order to achieve the lowest prices. They are held accountable for containing costs and providing quality care and service. If they fail to do so, their payments are reduced or can be eliminated.

To America's seniors, this plan would be like a pair of comfortable old shoes, shoes they have been wearing for most of their lives. Would it be fair to ask Medicare beneficiaries at the time of retirement to suddenly change shoes? Even more significant, would it be appropriate to ask them to put on shoes that don't fit very well? But even more than that, is it fair to ask them to put on shoes of a design which has never been worn by another American anywhere, any time?

That is what the House Republican plan runs on: An untried, untested delivery system that would force our seniors to be the guinea pigs for a social experiment.

Their plan would give to a different set of insurance companies taxpayers' dollars as a subsidy to lure them into the market since insurers have already said they don't intend to offer this benefit. They do not believe it is an appropriate use of the insurance system.

Our plan would be easy and familiar. Let me briefly mention some of the features of our plan. It would ask seniors who voluntarily elect to participate—no senior would be required to participate unless they chose to do so—to pay a \$25 monthly premium. There is no deductible. There will be coverage from the first pill purchased after you sign up. There would be a copayment of \$10 for generics, \$40 for formulary necessary drugs, and \$60 for other drugs. There would be a maximum payment out of pocket of \$4,000 per year. Beyond that, there would be no more copayments.

The plan says what it means and it means what it says for all seniors all over America. Seniors with incomes below 135 percent of the poverty level would not pay premiums or copayments. Beneficiaries with incomes between 135 and 150 percent of poverty would pay reduced premiums. That is the plan.

We would allow all seniors a choice of which PBM to use. It would be required

that there be multiple PBMs within every section of the country. Those of you who live in Georgia would have a choice. Those of us in Florida would have a choice. Those in North Dakota and Vermont would have a choice.

The PBMs would be accountable to the Medicare Program, would be required to prove their ability to contain costs, or else they wouldn't be awarded a contract to participate. In fact, they would not even get paid if they were unable to contain costs and provide the high-quality service which our older Americans deserve. That is in the language of the Graham-Miller-Kennedy-Cleland, and others, legislation.

The House Republican plan would leave all these choices in the hands of an insurance company. The companies would be allowed to choose the benefit for seniors. Why is that? The House plan only requires that the individual plan meet a vague standard of actuarial equivalence. It does not provide the certainty which American seniors deserve and which they will receive in the Graham-Miller-Kennedy-Cleland, and others, plan.

I look forward to a full discussion of this beginning next week.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

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

The assistant legislative clerk read as follows:

A bill (S. 2673) to improve quality and transparency in financial reporting and independent audits and accounting services for public companies, to create a Public Company Accounting Oversight Board, to enhance the standard setting process for accounting practices, to strengthen the independence of firms that audit public companies, to increase corporate responsibility and the usefulness of corporate financial disclosure, to protect the objectivity and independence of securities analysts, to improve Securities and Exchange Commission resources and oversight, and for other purposes.

Pending:

Edwards modified amendment No. 4187, to address rules of professional responsibility for attorneys.

Gramm (for McConnell) amendment No. 4200 (to amendment No. 4187), to modify attorney practices relating to clients.

The PRESIDING OFFICER. The Senator from Nevada is recognized.

Mr. REID. Mr. President, this has been cleared by both managers of the bill. We have had a number of inquiries about the need for more time to talk on various issues. As the Chair knows, from 12:30 until 2 o'clock, we have our policy luncheon, and normally we don't have votes.

I ask unanimous consent that the previously scheduled order, which provided that Senator ENZI be recognized at 12 noon today to make a motion to table the McConnell amendment No. 4200, be modified to provide that the recognition of Senator ENZI occur at 12:45 today, with the additional 45 minutes, from 12 to 12:45, equally divided and controlled between Senators SARBANES and GRAMM, or their designees, and that all other provisions of the previous order remain in effect.

Mr. DORGAN. Mr. President, reserving the right to object, I would like to engage in a brief discussion with my colleague from Nevada under my reservation of an objection, if I might. I shall not object to the specific request of the Senator, but I have just visited with the chairman of the committee and you know there exists a list of amendments that Members of the Senate wish to offer to this legislation.

As I have watched this process over the last couple of days, it appears to me that we have set up a gatekeeper of sorts for determining who will offer amendments and whether there will be votes on the amendments, and it appears to me we are not making very much progress. I would like to get some sense of whether we have a clear process beginning this afternoon, so that this afternoon and this evening we might be able to move through 6, 8, 10 amendments and get time agreements so Members of the Senate have the opportunity under the rules to offer and have considered amendments that they consider important in this legislation.

Mr. REID. Mr. President, I say to my friend, the chairman of the committee has worked for hours and hours trying to get movement so people could offer relevant amendments. We have been not very successful, to be very candid with the Senator from North Dakota. I have stood by the Senator from Maryland and coerced, urged, and we haven't gotten to the debating point yet. We have done everything we can.

There are a number of Senators, not the least of whom is the Senator from North Dakota, who have amendments. There is the Senator from Michigan, the Senator from New York, and others who have spent a lot of time wanting to offer amendments. We are doing everything we can. We hope the Enzi motion to table will break some of this loose.

I say to my friend from North Dakota that we understand how he feels. The only thing I will say is there is no gatekeeper. On one bill the two managers said they would oppose any amendment that was not relevant, but

that is not the case now. The Senator from Maryland has expressed to me that there are some relevant amendments which should be offered. He has done everything he can to—

Mr. BYRD. Mr. President, who controls time?

The PRESIDING OFFICER. Under the previous order, the Senator from West Virginia controls the next 45 minutes. There is a unanimous consent request pending.

Mr. BYRD. Mr. President—

Mr. DORGAN. Mr. President, reserving the right to object.

Mr. REID. If I can ask my friend to let me finish. I ask unanimous consent that the time in the colloquy between the Senator from North Dakota and the Senator from Nevada not take away from the time of the Senator from West Virginia.

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

Mr. DORGAN. Mr. President, continuing on my reservation—and it is not my intention to delay the Senator from West Virginia—I want to try to understand what is happening.

First, my comments should not in any way suggest that the chairman of the committee hasn't done an extraordinary job. I have great respect for him. But it has been difficult to get amendments up and get votes on them in the last day or two. There are a good number of very important amendments.

Under the reservation, I say that we know what has happened to the stock market in the last few days. We know this is a critically important issue—this legislation and the amendments to it. We ought not to treat this lightly. This piece of legislation ought to be on the floor and open for amendment, having a robust discussion on the very important issues dealing with corporate responsibility.

Instead, what is happening is we have a couple people on the floor who seem to want to stall this process and prevent amendments from being considered in order. I hope—and I will come back after lunch today—to offer at least two amendments. I want to debate them and get them voted on. At least as a Senator I have a right to do that.

It is very important to me that I be able to add these amendments. If the Senate doesn't like them, fine, we will vote. But it is important to me to have that opportunity. I shall not object to the unanimous consent request with respect to the tabling motion.

I wanted to say to the Senator from Nevada and the Senator from Maryland, who have done everything humanly possible to try to make this process work, that there are others in the Chamber who are trying to drag this process out and prevent others from offering amendments. I am going to assert my rights, to the extent I can, to say that before this bill is completed we need to have the best ideas everyone in the Senate has to offer about how to do this job.

The economy in this country is in significant trouble. We know it. The confidence the American people have in this economy and corporate governance has been shattered in many ways. It rests upon the shoulders of this institution to pass this legislation and do everything we can to make it the best piece of legislation possible to restore that confidence and give some lift to this economy. I wanted to make that point.

I appreciate the indulgence and the patience of the Senator from Nevada. If the Senator from Maryland will give me a chance to say this once again: In no way am I saying the chairman hasn't done everything humanly possible to move this along. He wants to move quickly. I shall not object.

Mr. GRAHAM. Mr. President, reserving the right to object.

The PRESIDING OFFICER. The Senator from Florida.

Mr. GRAHAM. Mr. President, I express my great admiration for what Senator SARBANES has done in presenting to America such a meaningful piece of legislation to deal with one of the great scandals that has occurred in the history of our free enterprise system, and taking a step toward restoring the confidence of the public in the investment community.

But as Senator DORGAN, I have an idea which, in fact, in one instance, is parallel to Senator DORGAN's; that is, I believe we need to be very clear that we are applying the same standards to corporations that have their corporate headquarters inside the United States as we do to corporations that take advantage of our capital markets and have chosen to locate or relocate their headquarters outside of the United States.

Mr. REID. Mr. President, I am reclaiming my time.

Mr. GRAHAM. Reserving the right to object, there are enough incentives to do that already in the Tax Code and otherwise. We should not be creating additional incentives for companies to run from their responsibilities within the United States. My specific—

Mr. REID. Mr. President, I want the floor back.

Mr. GRAHAM. I am raising this today—

Mr. REID. Mr. President, I have the floor.

The PRESIDING OFFICER. The Senator from Nevada has the floor.

Mr. GRAHAM. Mr. President, I am reserving my right to object.

Mr. REID. Mr. President, I have the floor.

Mr. GRAHAM. I will conclude my comments in short order.

The PRESIDING OFFICER. The Senator can either object or not. Reserving the right to object occurs at the indulgence of those who have the floor.

Mr. REID. Mr. President, we have built in time for people to speak. It is not fair to Senator BYRD and others who have been waiting to speak. I have no problem with Senator GRAHAM coming. I agree with his position. There is

time to be allowed under this unanimous consent agreement. Otherwise, the time will be all gone, and there are two Senators who have an hour and a half, by virtue of a unanimous consent agreement entered into last night.

It is not fair to use the extra half hour with these speeches that are taking away from Senator BYRD and Senator MCCONNELL.

The PRESIDING OFFICER. Is there objection?

Mr. GRAHAM. Reserving the right to object, just for the purpose of concluding my remarks.

Mr. BYRD. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. BYRD. Mr. President, I will be happy to yield to the Senator when I get the floor. We cannot make long speeches on reservations to object. We either object or we don't. I object and then I will be happy to yield to the Senator. I want to be fair. Am I recognized?

The PRESIDING OFFICER. The Senator from West Virginia is recognized.

Mr. BYRD. How much time does the Senator wish?

Mr. GRAHAM. Just 1 minute.

Mr. BYRD. Mr. President, I yield to the distinguished Senator from Florida for 1 minute, reserving my right to the floor.

Mr. GRAHAM. I appreciate the courtesy of the Senator. I want to bring to your attention an article from the Washington Post today. I ask unanimous consent that this article be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

SEC CHAIRMAN PITT A POTENTIAL LIABILITY TO ADMINISTRATION  
(By Dana Milbank)

While President Bush was delivering his long-awaited speech on corporate governance Tuesday, Securities and Exchange Commission Chairman Harvey L. Pitt was exactly where many Bush aides wanted him to be: on a week-long beach vacation.

"We were not surprised that the chairman was not included in administration plans for public appearances," SEC spokeswoman Christi Harlan said. "The commission is an independent agency."

White House officials, though calling it a coincidence, acknowledged they had no desire for Pitt's presence.

The arms-length treatment of Pitt underscores a dilemma for Bush and his radioactive SEC chairman. Many Democrats and even a few Republicans have called for Pitt's resignation because of his alleged conflicts of interest and ties to the accounting industry. There is no sign that Bush is even thinking of dropping Pitt. But whether Pitt stays or goes, he is a potential liability.

Dismissing Pitt would violate the Bush code of loyalty and would be viewed as validating Bush's critics, from Senate Majority Leader Thomas A. Daschle (D-S.D.) to Bush's Republican nemesis, Sen. John McCain (Ariz). "Dropping Harvey Pitt right now would be an acknowledgment of wrongdoing where there's been no wrongdoing," said GOP lobbyist Ed Gillespie, a former Bush campaign aide.

Forcing Pitt out would also open the White House to charges of interfering in the SEC's

investigation of Halliburton Co.'s activities when Vice President Cheney was its chief executive. Underscoring that danger, Halliburton shareholders yesterday filed a fraud lawsuit in Dallas against the company and Cheney. White House press secretary Ari Fleischer said the suit is "without merit." That prompted Larry Klayman, whose group, Judicial Watch, represents the shareholders, to accuse the White House of seeking to influence the SEC's investigation.

Yet Pitt's presence as the government's top securities watchdog carries dangers for Bush, too. Even some Pitt defenders say his close ties to the accounting industry limit his credibility as a reformer. In his first speech as SEC chairman last year, Pitt told an audience of auditors that the SEC would be "a kinder and gentler place for accountants."

"Pitt has been in hot water since day one and WorldCom turned it into a full boil," said GOP operative Scott Reed. Because Bush will not drop Pitt, Reed said, "McCain and the Democrats have turned him into a political piñata, and that will continue ad infinitum."

Democrat Chris Lehane, who defended Bill Clinton and Al Gore during that administration's scandals, said Bush is making the wiser political choice in keeping Pitt, even though Pitt could undermine faith in Bush's reforms. "Pitt could do everything right and nobody's going to give him credit for it," he said.

Pitt's foes point to his past legal work for executives of now-sullied corporations, including MCI, Merrill Lynch & Co., Arthur Andersen LLP and other accounting firms. He has also been criticized for meeting in April with a former client, KPMG Consulting Inc., while KPMG's audits of Xerox Corp. were being investigated by the SEC. Critics also say that as a lawyer, Pitt favored restricting federal oversight of auditing firms. Over the years, Pitt has represented figures such as Ivan Boesky and Michael Saylor in SEC actions.

Bush, in his Monday news conference, generously defended Pitt. "I support Harvey Pitt—Harvey Pitt has been fast to act," Bush said. Later, Bush added: "I'm going to give him a chance to continue to perform."

Privately, Bush has expressed amazement at the conflict-of-interest charges. "It's only in this town that people want someone who doesn't know what they're talking about to lead an agency," he told congressional Republicans visiting the White House yesterday.

Pitt has an unlikely defender in Lanny J. Davis, one of President Clinton's scandal handlers. "The attack being made by Democrats could be made on most anyone for having conflicts from prior positions," he said. But Davis said the administration has been making matters worse. "The more you bottle up Harvey Pitt, the more you allow Democrats to make him an issue," Davis said.

Observers on both sides expect Pitt to make a public effort to build his credibility by demonstrating that he can be hard on his old friends. Indeed, some in the administration joke that Pitt will come to resemble a model Democratic SEC chairman, one heavy on regulations.

The White House has distributed evidence of Pitt's activity on the job: requiring chief executive and chief financial officers of the 947 largest companies to personally recertify the accuracy of their disclosures; seeking to bar 54 officers and directors; and issuing a long list of new reporting rules and regulations.

Pitt was not Bush's first choice for the SEC job, and officials say he continues to be far from Bush's inner circle. The reforms

Bush announced Tuesday were developed largely by Treasury Secretary Paul H. O'Neill and White House deputy staff chief Joshua Bolten, with help from Bush economic advisers Lawrence B. Lindsey and R. Glenn Hubbard.

But Bush is stubborn about demonstrating loyalty to his aides, which enables him to claim reciprocal loyalty. Officials say he continues to defend Army Secretary Thomas E. White, embattled because of his Enron Corp. ties and personal travel, because White has been faithful to Bush.

But when underlings act disloyal, Bush can quickly cut them loose. Linda Chavez was dropped as Bush's nominee to be labor secretary when it appeared she had misled those vetting her background. Michael Parker, the civilian chief of the Army Corps of Engineers, was ousted for complaining about administration budget cutting.

Pitt so far has demonstrated fealty to Bush, and Bush aides remain loyal to him. "The best thing to do is vigorously enforce the law, and that's what he's doing," Lindsey said.

Mr. GRAHAM. In this article, the President of the United States has given as one of his reasons to continue his support for the Chairman of the Securities and Exchange Commission, Chairman Harvey L. Pitt, the fact that Mr. Pitt has required chief executives and chief financial officers of the 947 largest companies to personally recertify the accuracy of their disclosures.

What was left out were all the American companies which have their corporate headquarters outside the United States of America. Apparently, the Chairman of the SEC believes he can discriminate and apply a principle only against those corporations which are sited in the United States and exclude corporations outside the United States.

That is an irrational and unfair distinction and one that we should correct as promptly as possible in this legislation.

I thank the Senator from West Virginia.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. REID. Mr. President, will the Senator yield for a unanimous consent request?

Mr. BYRD. Gladly.

Mr. REID. Madam President, I renew my unanimous consent request.

The PRESIDING OFFICER (Ms. LANDRIEU). Without objection, it is so ordered.

The Senator from West Virginia.

Mr. BYRD. Madam President, since the revelation last month of yet another corporate accounting scandal—this time involving the second largest telecommunications provider, WorldCom—the Bush administration seems to have lost its patience with corporate America. In fact, from the rhetoric we have heard from the administration in recent weeks, I expected to hear the President tell corporate America this week that his top advisors had been in the White House basement planning, not just a corporate fraud task force, but a new Department of Corporate Security.

The President said last month at the G8 summit in Canada, "The revelations

that WorldCom has misaccounted [\$3.8 billion is outrageous.]”

In his June 29 weekly radio address, the President warned corporate America that “no violation of the public’s trust will be tolerated. The Federal Government will be vigilant in prosecuting wrongdoers to ensure that investors and workers maintain the highest confidence in American business.”

The President apparently is so miffed with these corporate “wrongdoers” that he has elevated them in his rhetoric to a bad-guy level that is almost, but not quite as bad, as al-Qaeda’s “evildoers.” Almost the same level; perhaps not quite.

WorldCom president and CEO John Sidmore, in a June 28 letter to President Bush, joined the President in expressing his outrage. “I want you to know that we, the current management team, are equally surprised and outraged . . . about past accounting irregularities at WorldCom,” he said.

So the Bush administration and the CEO of WorldCom now both agree that American corporations teaming up with unscrupulous (or incompetent) accountants to mislead shareholders about how much money the company is making is an “outrageous” practice.

Madam President, how comforting it is. As Jackie Gleason used to say: “How sweet it is.” How sweet it is. How comforting it is to know that we have finally reached a consensus on that issue.

Despite the excuses and the explanations, I find little credibility in the argument that certain corporate executives lacked sufficient knowledge to ask the right questions about their companies’ accounting practices.

If CEOs are worth their generous pay, one would think they could take the time to make sure that the company’s chief financial officer is not padding earnings by omitting costs from the balance sheet.

In fact, one finds disconcerting the acute lack of shame—the acute lack of shame—S-H-A-M-E—on the part of some of these corporate executives. Former Enron CEO Jeffrey Skilling told the House Energy and Commerce Oversight Subcommittee that Enron had tight control on financial risk, but that he could not be expected to oversee everything and “close out the cash drawers . . . every night.”

Can you imagine that kind of statement? I think it was Wordsworth who said: No matter how high you are in your department, you are responsible for what the lowliest clerk is doing.

Let me repeat that. Wordsworth said: No matter how high you may be in your department, you are responsible for what the lowliest clerk is doing. That was William Wordsworth. Let’s take that statement and put it beside the statement of former Enron CEO Jeffrey Skilling when he told the House Energy and Commerce Oversight Subcommittee that Enron had tight controls on financial risk but that he could not be expected to oversee every-

thing and “close out the cash drawers . . . every night.” Oh, that poor man. What a heavy burden he carried. That poor man. We can all shed crocodile tears for someone who is put into that very difficult position and then consider the kinds of salaries these people draw down.

Shakespeare said: “The quality of mercy is not strain’d, it droppeth as the gentle rain . . . upon the place beneath.” I will tell you, it does strain gentle mercy when we read about these scandals that have swept over this country and how these people plead the fifth amendment when they are called up before Senate committees and House committees—plead the fifth amendment. That is a stunningly irresponsible attitude for a chief executive.

It is something that you might hear from the teenage manager of a fast food restaurant who cannot account for a handful of change missing from the cash drawer at the end of the night. You might hear that from the teenage manager of a fast food restaurant who cannot account for a handful of change missing from the cash drawer at the end of the night. But we are not talking about a handful of change. We are talking about the American public. Those eyes that are peering—they are peering at this Senate floor at this very minute through the lenses of those cameras. They are the taxpayers out there. I see them looking through those cameras. I see them in West Virginia. I see them in Texas. I see them in Wyoming. I see them in New York looking through those cameras.

We are talking about them, the American public having lost by some estimates tens of billions—not millions—tens of billions of dollars of invested savings in companies that issued false—the Ten Commandments, I keep them on my walls; some of these CEOs should keep them on their walls—financial reports and tens of thousands of workers who have lost their jobs, and many have lost their meager earnings that they, too, invested, that is what we are talking about.

So here is an individual who tells a House committee he cannot be expected to oversee everything and close out the cash drawers every night—such a stunning, irresponsible, arrogant attitude on the part of a chief executive. I say again it is something that you might expect to hear—you might—from the teenage manager of a fast food restaurant who could not account for a handful of change missing from the cash drawer at the end of the night.

We are not talking, let me say again, about a handful of change. We are talking about the American public, those people out there, Republicans and Democrats and Independents, in the Alleghenies, along the eastern coast, on the storm-beaten coast of Maine, the fishermen on the mighty deep, the people in the Plains and the Rockies and beyond. These are the people, north and south, the public. We are talking

about the American public having lost, by some estimates, tens of billions of dollars of invested savings in companies that issued false—and they knew they were issuing false—financial reports. Tens of thousands of workers who have to wash the grime from their hands and their faces, workers in the fields, in the mines, in the shipyards, those are the people we are talking about, the public, tens of thousands of workers who have lost their jobs.

Even after these corporations’ fraudulent accounting, somebody ought to go to jail, and the doors should be locked and the keys thrown away. Throw away the keys. It really would not be too severe a punishment for some of these four-flushers.

Even after these corporations’ fraudulent accounting methods are exposed, the accounting games seem to continue. After telling the Securities and Exchange Commission that it hid nearly \$4 billion in expenses last year, WorldCom submitted revised financial reports to the SEC which the SEC Chairman, Harvey Pitt, immediately called wholly inadequate and incomplete. Apparently, WorldCom’s revised financial statements included additional accounting errors dating back to 1999 and 2000. That, Chairman Pitt said, could add at least \$1 billion to the company’s financial revision.

No wonder the trust of those people is broken. No wonder the public’s trust in corporate America has eroded. What kind of trust can the public have in companies that hide information in an effort to pull the wool over the eyes of American investors?

After WorldCom’s announcement, the Bush administration sharpened its rhetoric and is now working to assure the American public that it recognizes the importance of transparency and disclosure. The Chairman of the White House Council of Economic Advisers, Glenn Hubbard, said in an interview last month that the President wants to reassure investors about the economy while also delivering a shot across the bow to leaders of corporations that abuses of the public trust will not be tolerated.

In the midst of congressional hearings last March, after the collapse of Enron, the President lectured corporate America about how to regain the public’s trust. He said corporations must disclose relevant facts to the investing public and they must focus on the interests of shareholders, who are the real owners of any publicly held enterprise, to properly inform shareholders and the investing public that we must adopt better standards of disclosure.

That is nice rhetoric, but this administration hardly sets the model for openness and transparency. In fact, this is an administration that prides itself on operating in secrecy and governing by surprise. Remember the secret government that was being set up? In fact, this is an administration, let

me say again, that prides itself in operating in secrecy and governing by surprise.

I find it difficult to watch this administration lecture corporate America about virtues of disclosing information to the public while at the same time it is restricting the public's access to information about its own executive actions.

Last October, Attorney General John Ashcroft issued a memo encouraging Federal agencies to withhold unclassified records under the Freedom of Information Act, the law that gives the American public the legal right to certain Government information. The Attorney General even told the Federal agencies that the Justice Department would defend agency decisions to deny FOIA, Freedom of Information Act, requests.

Last November, the President issued an Executive order to limit access to Presidential papers that, under the Presidential Records Act of 1978, would normally be made available to the American public. The Executive order allows a former or a sitting President to normally be made available to the American public. The Executive order allows a former or a sitting President to block the release of records requested under the law by invoking "constitutionally based privileges." The words "constitutionally based privileges" are in quotation marks.

The American people would have to go to court to challenge the privilege claim. The order could even permit a former or incumbent President to impede requests for old records simply by withholding approval for their release, effectively negating the need for the Chief Executive to even make the claim of executive privilege.

We have had our own little taste of this side of the coin from the executive branch as we on the Appropriations Committee, Senator STEVENS and I, tried to have the administration let Tom Ridge come up before the committee and testify.

Then we see this creation of this mammoth reorganization of Government that sprang like Minerva, fully clothed and armed, from the forehead of Jupiter.

When this administration's chief executive talks about adopting better standards of disclosure, I hope that these executive actions are not what he has in mind. These are just examples of the administration directly restricting the public's access to government information. The administration has also moved to limit access by Members of Congress, who are elected by the people and responsible for the oversight of executive actions in the public's behalf.

Last December, the President gave notice that he was unilaterally withdrawing the United States from the Antibalistic Missile Treaty, allowing the administration to begin development of a new antibalistic missile defense system. Soon after, the Pentagon began to exempt missile defense projects from traditional reporting requirements and Congressional oversight, an overt attempt to keep the

Congress and the American people in the dark about the progress of that system. As the administration requests additional defense funds, the Pentagon is taking further steps to shield cost estimates and time tables from the Congress, making it harder to keep the administration accountable for technical and budgetary assessments.

The Dark Ages were supposed to have ended in about 1000 A.D. They lasted 1,000 years, the Dark Ages. Reminiscent of the Dark Ages, an administration that believes in keeping a Congress in the dark, the American people in the dark, and we are hearing a lot of sword rattling about it. An attack on Iraq—the administration should level with the Congress. It is an equal branch. It is not a subordinate branch to the Government. It never has been, and I hope never will be. Let's hear more about this plan to invade Iraq. Watch out for August when Congress is out of town, or before the election. Who knows?

This reorganization of Government sprang like Aphrodite from the ocean foam, and she was carried on a leaf to the island of Crete. She later appeared in full dress before the gods on Mount Olympus. They were stunned with her beauty.

This is what we see. These ideas sprang from where? This idea to reorganize the Government—and I am concerned it will also reorganize the checks and balances of the Constitution unless we are watchful—sprang from the bowels of the White House, the creation of four individuals who are named in the public press. Not exactly the equal, perhaps, of that committee that wrote the Declaration of Independence—Thomas Jefferson, Benjamin Franklin, Roger Sherman, John Adams, and Livingston, those five. Not exactly.

But look at all the commotion that ideas has created. Look out, the Congress is being stampeded into putting its imprimatur on that idea. Well, some parts of the idea may be OK, but we should not be in too big a hurry.

And that is to say nothing of the fact that these executive actions toward secrecy have occurred during a period in which the President has refused to allow Tom Ridge, in his capacity as the Director of Homeland Security, to testify before the Congress, and in which the Comptroller of the General Accounting Office was forced to sue the Vice President of the United States to obtain information about the White House energy task force and its connections to Enron.

These are not the actions of an administration that believes in the virtues of disclosing information to the public. This is an administration that not only embraces the idea of operating in secrecy, but flaunts its abilities to hide information from the Congress and the American public.

Upon announcing its proposal for a new Department of Homeland Security, the administration bragged to the

media about how the plan had been pieced together by just four men and a few trusted aides in the basement of the White House. As the work became more detailed and the working groups expanded, the code of silence was gravely explained to each new arrival. At the end of each meeting, all papers were collected; nothing left that room, we've been told. The work was completed before any member of the Congress was briefed on the plan. White House Chief of Staff Andrew Card even arrogantly proclaimed, "We consulted with agencies and with Congress, but they might not have known we were consulting."

Now, get that. I can hardly believe my eyes, except my eyes have seen this prior to my having stated it on the floor. White House chief of staff Andrew Card even proclaimed—I used the adverb "arrogantly," I will put it back in—White House chief of staff Andrew Card arrogantly proclaimed, "We consulted with agencies and with Congress but they might not have known we were consulting."

What a reflection on Congress. What is he saying about Congress? That is hardly a model of transparency that I want corporate America to follow.

We don't want to hear corporate CEOs saying we shared information with the American public, but they might not have known we were sharing it with them. The administration's euphoria for secrecy seems motivated in large part by its desire to implement a political agenda. That is what it is. A political agenda, regardless of whether it has the support of the American people.

Mr. REID. Will the Senator yield?

Mr. BYRD. I would be glad to yield.

Mr. REID. Mr. President, I have been listening to the Senator from West Virginia give his speech, and I am of the opinion maybe the reason all that secrecy takes place is they are running the White House like people run corporations. Rather than having a public institution as the administration and White House should be, maybe they are running the White House like a corporation.

I say to my friend that the White House, this administration is covered with corporate America. Maybe they think the White House is to be run like a corporation.

Mr. BYRD. The distinguished Senator from Nevada introduces an interesting idea. Maybe they do. Maybe anything goes. All is fair in love and in war they say. Now we can add, big business. Big business.

That is not a fair thing to say about many big businesses really because many of the people in big business are honest and try to do the right thing. They are open, they are transparent. It is too bad a few bad apples reflect on the whole barrel. I used to sell produce. I was a produce boy, married, with children coming on, and I found that a few bad peaches would quickly ruin the whole bushel. The same thing with apples and other fruits and so on.

When the administration's polls suggest opposition to certain policies from the American public, it limits access to information about that policy. I fear that the American public, and their elected representatives in Congress, at times are viewed by this administration as some sort of obstacle or hurdle that is to be avoided. There is a contempt, there is an arrogancy in this administration, there is a contempt for Congress. They hold Congress in contempt.

This kind of executive mentality can only emanate from the arrogance of an administration that believes the White House is the fountain of wisdom in Washington. Wisdom is the principal thing. Such a mentality is dangerous, it is absolutely dangerous. I was here in the Nixon administration. I remember what happened to that administration. Such a mentality is dangerous. We need only look to the corporate accounting scandals which this administration has so harshly criticized in recent weeks to see why.

Most economic pundits seem convinced that the hyperactive stock market of the late 1990s was the catalyst for a slow, steady deterioration in professional and ethical standards in corporate America. The pressure on CEOs and companies to produce earnings, quarter after quarter, resulted in a kind of competitive behavior that encouraged companies to push the accounting envelope. Rising profits and stock prices provided cover for underlying ethical lapses. The longer the boom lasted, the more brazen these corporations became in cutting corners and taking a little more off the top.

By the end of the boom, many companies appear to have been engaged in the kind of fudging, gamesmanship and ethical corner-cutting that, while legal in some cases, was certainly less than ethical. Unfortunately, it was only after the stock market began its inevitable decline and great piles of money were lost that people began to ask the critical, penetrating questions that should have been asked earlier to prevent this kind of behavior in the first place. Those harder questions are now leading to accounting revisions, executive resignations, lawsuits, and criminal investigations.

So far, the reflexive instinct of the business community and the Bush administration largely has been to blame a "few bad apples," but that assertion is hardly consistent with the fact that the SEC opened 64 financial-reporting cases between January and March of this year, and that almost a thousand companies, not just a handful, have been asked to recertify to the SEC their financial statements through the last fiscal year.

It is somewhat ironic that the actions of chief executives were protected by soaring stock prices, since the administration finds itself in a similar position. Just like soaring stock, as long as the President's approval ratings remain high, presumably propped

up by the American public's understandable desire to support the war on terrorism, the more latitude the administration will be granted in restricting information about its executive actions under the guise of national security. This kind of culture can be extremely dangerous. It was allowed to flourish in corporate America during the late 1990s, and now threatens the public trust.

The administration would do well to take some of its own medicine and make itself more transparent to the American public. For all of its expressed concerns about the public's loss of confidence in corporate America, this administration seems to have given little, if any, consideration to the loss of the public's trust in government. That is the most basic of commodities in republican government. I do not refer to it, as many politicians who ought to know better glibly refer to this, our system, as a democracy. They ought to go back and read Madison's 10th and 14th essays in the *Federalist Papers*. They will finally learn the difference—or be reminded of the difference. They probably have forgotten the difference between a democracy and a republic.

The public's trust in government—when the public loses its trust, when the public's trust is eroded, all is lost: The public trust. And sooner or later, high poll numbers will tumble, as they always do. We have seen them do it before.

Don't read the polls, I say to my colleagues, so assiduously, read the Constitution—which I hold in my hand. Read the Constitution. I say to the administration, I say to the executive branch, read the Constitution. Don't be so enamored with the polls. They are fleeting. Read the Constitution.

This administration's Chief Executive came into office touting himself as the first President to earn a master's degree in business administration. That is certainly more than I have. He announced that he would run the White House like a modern-day corporation. Ha-ha-ha; watch out.

To be fair, the President probably didn't realize at the time that he would be faced with the exposure of a corporate culture—not all his. The President probably didn't realize at the time that he would be faced with the exposure of a corporate culture which encouraged shoddy auditing, negligent or criminal management, and impudent and secretive corporate CEOs.

In hiding its own actions from the public view, this administration is fostering the same kind of arrogant, arrogant culture in which these corporate accounting scandals were allowed to flourish. This administration would do well to take preventive measures to keep the nasty, nasty little seeds of arrogance and secrecy that have affected corporate America from taking root in the executive branch and threatening the public's trust.

I close with a Biblical parable: Pride goeth before destruction, and the haughty spirit before a fall.

I ask unanimous consent to have printed in the RECORD an article from today's Washington Post titled "Bush Took Oil Firm's Loans as Director"; and an article from today's Washington Times titled "Cheney named in fraud suit."

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Washington Post, July 11, 2002]

BUSH TOOK OIL FIRM'S LOANS AS DIRECTOR

(By Mike Allen)

As a Texas businessman, President Bush took two low-interest loans from an oil company where he was a member of the board of directors, engaging in a practice he condemned this week in his plan to stem corporate abuse and accounting fraud.

Bush accepted loans totaling \$180,375 from Harken Energy Corp. in 1986 and 1988, according to Securities and Exchange Commission filings. Bush was a director of Harken from 1986 to 1993, after he sold his failed oil and gas exploration concern to the company. He used the loans to buy Harken stock.

Corporate loans to officers came under scrutiny after WorldCom Inc., the long-distance carrier that last month reported huge accounting irregularities, revealed it had lent nearly \$400 million to Bernard J. Ebberts to buy the company's stock when he was chief executive. He resigned in April as the stock price tumbled.

Bush attacked corporate loans during his speech on Wall Street on Tuesday, when he offered proposals to tighten the accountability of corporate executives while stopping short of the tougher measures headed toward passage in the Senate. "I challenge compensation committees to put an end to all company loans to corporate officers," he said.

A senior administration official, briefing reporters on Bush's plan, said Tuesday that Bush wants public companies to ban loans to their officers, including directors. "Corporate officers should not be able to treat a public company like their own personal bank," the official said.

The contrast between Bush's record as a business executive and his rhetoric in the face of corporate scandals underscores the challenge his administration faces in trying to credibly foster what he calls "a new era of integrity in corporate America."

Bush was investigated by the SEC in 1991 for possible illegal insider trading, although the SEC did not take action against him, and he has admitted making several late disclosures to the agency, which regulates public companies.

Harken's loans to Bush—at 5 percent interest, below the prime rate—were reported several times in filings to the SEC in the years before the debt was retired in 1993 and were noted in news accounts at the time. The loans were for the purchase of Harken stock, which was then held as collateral.

Rajesh K. Aggarwal, a Dartmouth College professor who specializes in executive compensation and incentives, said such loans "are not unique, but are by no means widespread."

White House communications director Dan Bartlett said Harken offered the loans to directors to buy shares in the company as part of an incentive for board members "to have a long-term commitment with the company." Bartlett said the loans to Bush were "totally appropriate—there was no wrongdoing there."

"This is a common practice in small, medium and large companies," Bartlett said. "These recent abuses of certain types of loans led the president to believe that the government should draw a bright line concerning loans going forward. This is one of the main things that undermined the confidence of investors and shareholders."

Bartlett said the loans were for \$96,000 in 1986, for 80,000 shares, and \$84,375 in 1988, for 25,000 shares. He said that in 1993, Harken changed its compensation policies and discontinued the loan program. He said Harken converted to a program giving directors stock options, allowing them to buy stock later at a fixed price.

Bartlett, asserting that Bush did not profit on the loans, said Bush traded the 105,000 shares being held as collateral for the loans, retiring his debt. Bush then received 42,503 options under the new compensation plan, Bartlett said. The options were never exercised and expired after Bush left the board, Bartlett said.

With administration officials privately expressing concern about the impact of so much fresh attention to old questions about Bush's career, the White House yesterday distributed talking points headlined "If you get asked about Harken" to Bush loyalists who might be contacted by reporters. Bartlett said the fact sheets were sent to members of Congress after they asked for them.

White House press secretary Ari Fleischer said aides to Bush have "talked to the private accountants and private counsels who are involved in the president's private transactions" while preparing answers to reporters' question during the growing debate over corporate responsibility.

Vice President Cheney also is receiving unwanted attention to his corporate past. The SEC is investigating an accounting practice begun by Halliburton Co., the Dallas-based energy services company, when Cheney was chief executive before joining Bush's campaign ticket.

Also yesterday, the White House refused to release records of Bush's service on Harken's board. Bush had pointed to those records during a news conference on Monday when asked about his role in the sale of a subsidiary. The transaction later was used by Harken to mask losses.

"You need to look back on the director's minutes," Bush said.

Bartlett said the administration does not have the minutes and does not plan to ask Harken for them. "He personally would not have access to them," Bartlett said. "These are company documents. I can't release something I don't have."

Harken has declined to release board records ever since questions about Bush's record on the board were raised during his first campaign for Texas governor, in 1994.

Bartlett also said the White House would not accept a challenge by Senate Majority Leader Thomas A. Daschle (D-S.D.) on Sunday to ask the SEC to make public the records of its investigation into whether Bush had engaged in illegal insider trading of Harken stock.

Daschle said on CBS's "Face the Nation" that Bush would do well to ask the SEC to release the file. "We've had different explanations as to what actually occurred," Daschle said. "I think that would clarify the matter a good deal."

Bartlett said Bush will not do that. "Those are documents in the possession of an independent regulatory agency," Bartlett said. "I'm not in a position to call on them to do that. We've made available every relevant document we have in our possession."

Administration officials said they would take the same position about an SEC investigation that resulted in Harken's restating

its earnings to show a \$12.6 million loss for a quarter instead of an earlier reported loss of \$3.3 million. Bush was a member of the board's audit committee.

[From the Washington Times, July 11, 2002]

#### CHENEY NAMED IN FRAUD SUIT

(By Patrice Hill)

Vice President Richard B. Cheney was named yesterday with the energy company he headed in a lawsuit by investors that cited bookkeeping practices under investigation by the Securities and Exchange Commission.

The lawsuit arranged by Judicial Watch, a government watchdog group, charges that Halliburton Inc. overstated its revenue by \$534 million between 1998 and the end of last year by illegally booking revenue from oil construction projects that were in dispute and had not been collected from its clients. The suit says the accounting fraud resulted in overvaluation of Halliburton's stock, deceiving investors.

Mr. Cheney was Halliburton's chief executive from 1995 until August 2000, after he joined the Bush presidential campaign. The White House and Halliburton yesterday said the suit was without merit but both acknowledged that the SEC investigation is continuing.

"We are working diligently with the SEC to resolve its questions regarding the company's accounting practices," said Doug Foshee, Halliburton's chief financial officer. The claims in this lawsuit are untrue, unsupported and unfounded."

SEC Chairman Harvey L. Pitt has vowed to pursue the investigation. "We don't give anyone a pass," he told ABC's "This Week" on June 30. "If anybody violates the law, we go after them."

President Bush on Tuesday called for stronger SEC enforcement and longer prison terms for corporate executives found guilty of the kind of accounting fraud charged in the lawsuit. The suit was filed in the U.S. District Court in Dallas, where Halliburton is based.

A unified Senate approved harsh new penalties yesterday for corporate fraud and document shredding, adding enforcement teeth to Mr. Bush's plan to curb accounting scandals. In a series of unanimous votes, senators added the penalties to an accounting oversight bill moving toward passage.

Also named as a defendant in the lawsuit is the Arthur Andersen firm, Halliburton's former auditor, which was fired in April after the accounting firm was charged with obstructing an SEC investigation of Enron Corp. Andersen was convicted of the obstruction charge last month and is no longer permitted to audit public companies.

The suit says Andersen was a champion of "aggressive" accounting tactics and masterminded the bookkeeping maneuvers that defrauded Halliburton investors.

As evidence of Mr. Cheney's knowledge and approval of these maneuvers, the suit refers to his appearance in a promotional video for Andersen in which he said he got "good advice" from the firm, advice that went "over and above just the normal by-the-books auditing arrangements."

The lawsuit cites a critical accounting change made by Halliburton and Andersen in late 1998. Halliburton was facing losses because of a recession in the oil industry and cost overruns on construction contracts in which the company had negotiated fixed, or lump-sum, payment plans.

Before the accounting change, which was never formally disclosed to investors, Halliburton had booked the cost overruns as losses on such projects as long as they were in dispute and customers had not agreed to pay them.

But starting in 1998, the company booked payment for the cost overruns as revenue if it believed the disputes would be resolved and the customers would pay the bills.

As a result of this change, Halliburton showed a profit for several quarters in 1998 and 1999 when it otherwise would have posted losses, the suit charges. In some years, the disputed revenue appears to account for as much as half of the company's reported profits.

"Halliburton overstated profits that many American citizens relied upon," said Larry Klayman, chairman of Judicial Watch. "That's fraudulent security practices, and it resulted in those Americans suffering huge losses."

The suit says Halliburton and Andersen violated securities laws when they did not disclose and justify the accounting change in a letter to investors. Halliburton's financial statements starting in 1998 do note, however, that it was booking uncollected revenue from cost overruns.

Mr. REID. Madam President, if the Senator will yield for a parliamentary inquiry.

Mr. BYRD. Yes. I yield.

Mr. REID. The Senator was allocated 45 minutes. Of course, we have other time. We have an extra 15 minutes. It is my understanding there are 4 or 5 minutes left. Is that right?

The PRESIDING OFFICER. There are 3½ minutes remaining.

Mr. REID. If the Senator so desires, we could also allocate 15 minutes to the Senator from West Virginia if he has more to say.

Mr. BYRD. Madam President, I thank the distinguished majority whip for his courtesies and generosity, and for his characteristic ways of helping his colleagues. I think I will let my remarks remain today as they are. I thank him.

I yield the floor.

Mr. REID. Madam President, while there are a couple of minutes remaining of the Senator's time, I am sure the chairman of the committee joins with me in expressing our pleasure at being able to listen to such a profound statement which the Senator made. I think it again is what this is all about. By "this," I am talking about the legislation.

I talked with a friend of mine. We played football together as young men. He runs a company in Las Vegas. He said: HARRY, I took all of my money out of the stock market. I will never invest in the stock market until something is done. He said: I am afraid. I said: We all feel that way.

I think the Senator really condensed what is going on in corporate America. It needs to be changed, and hopefully this legislation will help that.

Mr. BYRD. Madam President, let me express my gratitude to the distinguished Senator for his comments.

And with respect to the manager of this legislation, let me state without any equivocation that this is one of the finest minds I have seen in the Senate. I have been here 44 years. I have seen the equivalent of the entire Senate come and go, and I have never seen a sharper intellect. I have seen some

sharp ones—John Pastore, Herman Tamadge, and there are others. I have never seen any sharper than that of PAUL SARBANES, in my judgment. I don't know a great deal about the intelligence quotients. I don't know what the high range is. I assume it could be 150, or 155, or 160—whatever it is. PAUL SARBANES is the brightest.

Also, he has a way about him of not flaunting his intellect in front of others. Most of us—not because of that kind of intellect—have been inclined to speak more often—maybe too much, and perhaps I do already, but not because of that kind of intellect. But I salute the manager and commend that kind of intellect. He applies it. I watch him in the committees, and I watch him on the floor as he manages a bill. He is never a man to act in haste, or to be too rhetoric in haste. I admire his patience. He is plotting; he is studying; he is working; and he is extremely effective.

When I was majority leader, there were certain Senators I would call into my office from time to time. I would try to pick their brains as to what we should do on this or that. Scoop Jackson was one. PAUL SARBANES is always there.

Mr. REID. Madam President, will the Senator yield for a comment?

Mr. BYRD. Yes.

Mr. REID. What the Senator is saying is that the Rhodes Scholar Committee a number of years ago made a good choice in selecting PAUL SARBANES to be a Rhodes scholar. Is that what the Senator is saying?

Mr. BYRD. I am saying exactly that. I am happy the distinguished Senator put it that way.

This bill before the Senate is the product of that kind of mind, that kind of attention, and that kind of dedication.

I hope we can pass this bill with an overwhelming vote, and, also in conference so that when put on the President's desk he can sign it. I am eager to support it in any way I can.

Before I yield the floor, let me say that when we talk about intellect and sharp intellects, this man from Texas, PHIL GRAMM, is another. He is sharp. I have talked to my staff many times about that kind of intellect. He can talk about anything. He doesn't need a script. I have prided myself on working with him on several challenges, and I have found him to be fair and straightforward.

I admire people—like these two—having that kind of sharp intellect.

I was told by an old Baptist pastor, former chief chaplain in the Army during the war—I don't remember which war it was. But he always said: The mark of brilliance is to surround yourself with brilliant people.

I am really proud to look around this Chamber and see people such as PAUL SARBANES and PHIL GRAMM. Sometimes I say that North Dakota has the highest overall quotient, perhaps of all, with its two Senators—Senators

CONRAD and DORGAN. I don't know whether they are Rhodes scholars or not. I am not a Rhodes scholar. I was not fortunate enough. I just barely made it by working at night for 10 years just to get a law degree. But these people make me proud to serve in this body.

Let me yield to the Senator from Maryland.

Mr. SARBANES. Madam President, I thank the distinguished Senator for his extraordinarily generous remarks. I am very appreciative of them.

I want to echo what the very able Senator from Nevada said about the Senator's eloquent address just a few minutes ago, which is reflective of the pattern that he has established—which is to go on the floor of the Senate and go to the very fundamentals of what our system is all about. His constant reference to the Constitution draws us back to those fundamentals. The Senator has always put before the Senate this broader and deeper vision of why we are here, what we ought to be doing, and calling us back to our basic principles as a nation—right back to the Founding Fathers—as the Senator pointed out in his talk today. Important aspects of that are being challenged today in a very serious way.

I echo what my colleague said and express my appreciation to the Senator from West Virginia.

Mr. BYRD. Madam President, I thank the distinguished Senator. I am going to yield the floor.

Before I yield it, I apologize to the distinguished Senator from Kentucky, Mr. MCCONNELL. He is a Republican and I am a Democrat.

I have been known to go down into Kentucky at his invitation and speak, and I value his friendship. I apologize to him for imposing on his time.

Mr. GRAMM. Before the Senator yields, if he would yield very briefly to me, I thank him for his very sweet comments. I am very happy to be named along with PAUL SARBANES. And someday when I am talking to my grandchildren about the fact that their grandpa actually was a pretty important guy in his day—though his mind, I am sure, at that point will have seemed to have largely slipped away—I will say: I got to serve with the great ROBERT C. BYRD.

Mr. BYRD. I thank the Senator.

AMENDMENT NO. 4200

The PRESIDING OFFICER. The Senator from Kentucky will now be recognized for up to 45 minutes.

Mr. MCCONNELL. Thank you, Madam President.

I rise to speak on behalf of the McConnell amendment which will be voted on sometime in the not too distant future. It is my understanding that my own colleague, Senator ENZI, may make a motion to table at the end of the debate. So let me, at the outset, say I support the Edwards-Enzi amendment.

The second-degree amendment that is pending at the desk, which I will

shortly discuss, does not, in any way, change or diminish the Edwards-Enzi amendment. I think it is a good idea. However, I think it simply does not go far enough.

I also supported the Leahy amendment yesterday after my amendment to combat union fraud was defeated. I will continue to support responsible corporate accountability measures in this bill.

My only point is, corporations do not have a monopoly on misconduct, deception, and fraud. As long as we are addressing professional misconduct, deception, and fraud, we ought to recognize this is a problem in our entire professional culture, not just in corporate culture. Let me repeat that. This is a problem in our entire professional culture, not just in corporate culture.

I understand the mood at the moment is to beat up on corporations. And they deserve it. That is what the underlying bill is about. On the other hand, to ignore other areas of abuse, it seems to me, is to miss an opportunity to address the problem in a broader way.

The Senator from North Carolina raises real problems with the ethics and conduct of corporate lawyers. I commend him for that. And I commend the Senator from Wyoming for that. But I have long sought to curb similar and well-documented abuses in the general practice of law, specifically in the case of personal injury law.

Let me say at this point that the McConnell amendment applies only to Federal claims and Federal courts. We are talking here about Federal claims and Federal courts. My point in offering this amendment is not to obstruct but to extend and enhance our debate on professional conduct.

We ought to set standards for corporate attorneys. I favor that. And we ought to set standards for personal injury lawyers as well. Corporations and corporate attorneys do not have a monopoly on misconduct. We are doing a real disservice to the American public if, during this important debate on professional misconduct, we turn a blind eye to abuses in our society that have been piling up way before—long before—Enron, WorldCom, and Global Crossing.

All too often we hear stories about lawyers who take advantage of their clients by not informing them of the legal fees and costs those clients will incur. This sad practice results in consumers of legal services receiving next to nothing in personal injury and other claims.

Let me recount the story of Diana Saxon. Ms. Saxon was a victim of, among other things, attempted forcible rape. The defendant was convicted, and Ms. Saxon brought a personal injury action against that defendant. The attorney she hired said the fee he was going to charge was 40 percent, plus costs.

Ms. Saxon received an award of \$25,000. Of that, per her agreement,

\$8,300 went to her lawyer in attorney's fees. But an additional \$20,716 went to her lawyer for expenses. However, none of those costs was made known to Ms. Saxon during the course of the litigation. She was only informed of them after her case was concluded.

Now, it gets even better—or, for Ms. Saxon's unfortunate situation, it gets worse. After her lawyer charged her his costs, she ended up owing her attorney \$4,000—\$4,000. That is right. For poor Ms. Saxon, she was actually left over \$4,000 in the hole, in debt.

Now, to be fair, Ms. Saxon's lawyer was actually magnanimous in that he waived a few costs and a small portion of his fee so that she was actually able to walk away with the princely sum of \$833—\$833.

In his letter to her, where he agreed to offer her these few hundred dollars from her award of \$25,000, he wrote:

I'm agreeable to pay the sum of \$833. This is the only money you will receive from your \$25,000 settlement.

So, in sum, even though Ms. Saxon's lawyer told her that the lawyer would get 40 percent of her award, plus costs, in reality, after including these costs, he got 96 percent—96 percent—of her award. That is right, 96 cents on every dollar that Ms. Saxon received.

We need to make sure that consumers of legal services are not duped by this type of inaccurate and incomplete information.

Let me quote Ms. Saxon. She has put the problem better than I could. Here is what she had to say:

This is not how our civil justice system is supposed to work. What happened to me should never happen to anyone again. You have a chance today to make a difference by passing a law to protect people from the kind of thing my attorney did to me. Had I known in advance or at some point along the way how little of my lawsuit was going to benefit anyone but my lawyer, I might have thought different about enduring 2 years of emotional trauma during the litigation.

Summing up what she had to say: Had she had any idea how little of the money she might get, she might not have wanted to endure the trauma of this litigation for 2 long years.

Now, Ms. Saxon, in a sense, was lucky in that at least her lawyer told her she would be liable for costs, although he obviously did not tell her the magnitude of the costs she was looking at and, thereby, completely misled her.

But as these excerpts from the Yellow Pages here in the District of Columbia area phonebook indicate, some lawyers are not even that candid.

So let's take a look at the first chart out of the DC phonebook. On this first chart, we have an ad with the big banner entitled "AUTOMOBILE ACCIDENTS." There is a line almost as big—the fourth line down—proclaiming: "No Recovery, No Legal Fees"—"No Recovery, No Legal Fees." It does not say anything about the cost the plaintiff is going to have to bear and, therefore, does not paint an accurate picture.

Let's take a look at the second chart, again out of the DC phonebook. It has a big banner down the right side entitled "PERSONAL INJURY." At the top it says: "Personal Injury Lawyers Who Put You First." "The Firm Boasts an All-Star Roster of Top Personal Injury [Lawyers]." And it makes the point: "No fee if no recovery." But, again, like the last ad, it does not mention at all anywhere in the ad—nowhere in all of this ad—that the client will be liable for costs.

Let's take a look at chart No. 3. This ad is marginally—marginally—better. At the top of the ad there is a headline, in bold, saying: "Legal Problems Require a Lawyer." Obviously, legal problems require a lawyer. About midway down is a line item saying: "Call Me. I can help." "Call me. I can help." And right below this line, another line says: "No Legal Fee If No Recovery." In a little bit smaller print you will notice, "No Legal Fee If No Recovery." But this lawyer, at least, to his credit, has an asterisk by this line. If you look very carefully, you see an asterisk; and way down here at the bottom of the ad, in minuscule print—which might require you getting your glasses adjusted or to get a magnifying glass—it says: "Cost May Be Additional."

This lawyer at least gets credit in his ad for mentioning that there might be some cost, although you better have your glasses adjusted in order to find it.

Chart No. 4 is a familiar pitch, that there be "no legal fees unless recovery." This lawyer, to his credit, at least has it in print large enough to where you might actually see that line. But there is, of course, an asterisk; down here at the bottom, again, in tiny, minuscule print, "Clients may be responsible for reasonable fees."

This lawyer, at least, gets some credit—be the print ever so small—for pointing out that there could be a cost involved, and maybe a careful client would see that in the ad.

Chart No. 5, really my favorite one, it has a big banner at the top, "accidents," all the way across the top. You wouldn't have any trouble missing that. Underneath, "No legal fee if no recovery." Very enticing observation to an injured client, potential client, and there is an asterisk after it.

Going to the bottom of the page, below the Visa and MasterCard logos, it says, "excluding costs." That is about the smallest print on the ad. But a careful potential client might be able to find that there could conceivably be a cost attached to this.

Frankly, I am not sure if this phrase means that costs are excluded and, therefore, you don't have to pay for these either, or if it means that costs are excluded from the exclusion, which means you do have to pay for them. A consumer of legal services should not be enticed by the prospect of free legal services, including what appears to be an exclusion of cost from the charges for which he is responsible.

As I will shortly describe, the amendment I am offering would help prevent people from being duped by incomplete and misleading representations such as these. Let me repeat that the scope of my amendment is not every court in America but only applies to Federal claims and Federal courts.

Shifting gears for a moment, we also hear stories of ambulance chasers who take advantage of grieving families when they are most vulnerable. For example, at the scene of a 1993 collision between two commuter trains in Gary, IN, witnesses reported seeing lawyers' business cards being passed around at the scene of the accident. And the injured were being videotaped as they were removed on stretchers.

After an August 1987 crash of a commercial airline flight in Detroit, a man posing as a Roman Catholic priest, Father John Irish, appeared at the scene to console families of the victims. He hugged crying mothers and talked with grieving fathers of God's rewards in the hereafter. Then he would hand them the business card of a Florida attorney, urging them to call the lawyer, and then the father would disappear.

We should make sure that misleading ads and shameless ambulance chasing do not occur. I propose a clients' bill of rights for consumers of legal services. We have talked a lot in recent years about a Patients' Bill of Rights to make sure patients are treated properly by health maintenance organizations. We need a clients' bill of rights to make sure consumers of legal services are treated fairly.

This clients' bill of rights would do two things. The first thing it would do is require consumers of legal services to receive basic information at the beginning, during the course, and at the end of the case so that all along the way the client, the consumer of legal services, has a clear understanding of what the financial relationship is between the lawyer and the client.

As the old saying goes: Knowledge is power. My amendment empowers consumers by giving them the knowledge they need to make informed decisions about their legal representation. As I pointed out earlier in one of my examples, there was a lady who had no earthly idea, because of not receiving proper information about the extent of the cost that could be involved in her case, that after getting a \$25,000 settlement she would essentially get nothing. The lawyer then benevolently gave her \$833.

So clients need information all along the way to make informed decisions about legal representation.

At the initial meeting before they are retained, under the McConnell amendment, attorneys would have to provide would-be clients with the following things—and this is not unreasonable; it's elementary justice—No. 1, the estimated number of hours that will be spent on the case; No. 2, the hourly fee or the contingent fee that will be charged; No. 3, very importantly, the probability of a successful

outcome; next, the estimated recovery reasonably expected; next, the estimated cost or expenses the plaintiffs will bear; and whether a client will be subject to fee arrangements with other lawyers.

This is elementary consumer protection. Let me say to my friends in the Senate who are close to and allied with the plaintiffs' lawyers in America: We are not talking about capping anybody's fees. This is not about capping fees. The fee arrangement could still be whatever astronomical amount the lawyer believes he can charge. But we are talking about providing basic information to the client so the client can understand what the fee arrangement is going to be. There are no fee caps in this amendment.

Monthly statements: My amendment would also require lawyers to provide their clients with monthly statements so that consumers of legal services will be informed on a regular basis of the basic progress of their case. Specifically, the lawyers would have to tell clients how much time they are expending on their case, what they are spending their time doing, and what expenses they are incurring in the case. Again, this is basic information clients should receive so they know how their case is progressing and how in essence their money is being spent.

Then an accounting at the end of the case: Clients should receive basic information at the end of the case so they know exactly what they paid for during their representation. To this end, my amendment provides that within 30 days after the end of the case, attorneys shall provide clients with the number of hours expended; the amount of expenses to be charged; the total hourly fee or the total contingency fee in a contingency fee case; the effective hourly fee charged, which would be determined by dividing the total contingency fee by the total number of hours expended.

Again, this is elementary, reasonable information, no fee caps, just providing reasonable information to the client at the end of the case so they can understand just what the legal services have provided.

Madam President, in the age of disclosure, I cannot believe that my colleagues would not support some basic disclosures that the first part of my amendment would provide. It does not limit—I say again—attorney's fees in any regard. There are no fee caps of any sort in this amendment. Frankly, I would like to see that. We have had fee caps under the Federal Tort Claims Act for years, and I am told there is no dearth of lawyers prepared to bring tort claims against the United States. But there are not any fee caps in this legislation. That is something a large number of Members of the Senate do not support. The first part of my amendment simply enables consumers of legal services to make informed choices.

The second thing my amendment does is establish a bereavement rule. A

bereavement rule means the provision for a period of mourning, or a period of bereavement, during which lawyers would have to be respectful of injured victims or their families. As I mentioned, this provision is important because there are disturbing stories of ambulance-chasing lawyers who prey upon victims and their families when these people are the most vulnerable.

To address this problem, my amendment simply provides that there will be no unsolicited communication by lawyers to victims, or to their families, regarding an action for personal injury, or wrongful death, for 45 days from the date of death or personal injury—just 45 days to give the victims, or their families, an opportunity to begin to get their feet back under them before they start considering which lawyer, if any, they want to retain to pursue the legal action to which they may be entitled.

Let me repeat. This amendment applies only to unsolicited communications. If the victims or their families are feeling like it 2 days after the event, they are certainly free to call whomever they choose. This only applies to unsolicited communications to victims or their families. Injured parties and their families are free to contact whomever they want whenever they want.

Madam President, there is precedent for this respectful, considerate principle in existing Federal law. In 1996, we passed legislation that prohibited lawyers from engaging in unsolicited communications for 30 days following an airline disaster. Let me say it again. There is precedent for a bereavement rule already in Federal law. In 1996, we passed legislation that prohibited lawyers from engaging in unsolicited communications for 30 days following an airline disaster. Just 2 years ago, in 2000, we extended this prohibition to 45 days from the date of an airline crash. That prohibition is codified at 49 U.S.C. section 1136(g)(2).

The point I am making here is that there is precedent in Federal law already for a bereavement rule, and this simply expands upon that preference and provides this protection for additional victims during a period of mourning.

Madam President, someone who has been killed or injured in a train crash or a shipping accident is just as dead, or just as injured, as someone who is killed or injured in an airline crash. These victims and their families deserve the same type of respect and consideration. All these types of victims and their families are in a vulnerable state where it is easy for them to be pressured or taken advantage of.

The second part of my amendment would afford victims of other tragedies the same protection that we afford victims of airline disasters. The language in my amendment that we used to do so is virtually identical to current Federal law. It would guarantee these people a reasonable period of time to grieve, collect their thoughts, and to

think clearly about what action they want to take and who they want to take such action on their behalf.

As I said, there is current precedent for it in Federal law, and I hope my colleagues will support it, along with the disclosure provisions in my amendment.

Madam President, what is the time situation?

The PRESIDING OFFICER. The Senator has 20 minutes remaining.

Mr. McCONNELL. Madam President, let me sum up what the McConnell amendment is. There are essentially two parts to it. First, it would require that lawyers provide to their clients all along the way, from initially being retained until the conclusion of the case, adequate consumer protection information so the clients will have a sense at every stage of the case how the case is moving along, what the likelihood of success is and, very importantly, what kind of costs the client may be incurring in the course of the litigation.

Secondly, we provide for a bereavement rule of 45 days to give the victims and their families an opportunity to get back on their feet during an atmosphere in which unsolicited efforts to retain these victims are put off. If, however, the family at any point during that 45-day period decides it is ready to move on and wants to look at its legal options, there is nothing in the amendment that would prevent the victim or victim's families from retaining a lawyer at any time. All this does is protect them from unwanted solicitations for a brief period of 45 days following the occurrence of the event.

As I pointed out, there is already precedent in Federal law for such a bereavement period of 45 days. That applies in the wake of airline disasters.

Finally, let me repeat this because I know this is something that is offensive to many Members of the Senate, particularly on the other side of the aisle. As much as I would like to see fee caps established, this amendment has no fee caps in it. Even though, under the Federal Tort Claims Act, since the late 1940s, we have had a fee cap of 25 percent in tort actions against the Federal Government, no such fee cap is in this amendment.

So I think this is a modest proposal to provide consumer protection to victims of accidents as they contemplate their futures and determine, first, which lawyer to hire, and after hiring the lawyer, have adequate information along the way to make sure they understand what the fee arrangement is.

I yield the floor and retain the remainder of my time and now urge—and I will also do so later—the Senate to adopt this amendment.

The PRESIDING OFFICER (Mrs. CLINTON). Who yields time?

Mr. SARBANES. Madam President, can I inquire as to what the allocation of time is? Let me make a parliamentary inquiry. I understand the vote on a motion to table that will be offered by Senator ENZI is scheduled to take place at 12:45.

The PRESIDING OFFICER. That is correct.

Mr. SARBANES. Can the Chair inform us as to the allocation of time from now until quarter to 1?

The PRESIDING OFFICER. The unanimous consent agreement provided that the time between the conclusion of Senator MCCONNELL's remarks and the 12:45 p.m. vote will be evenly divided between Senators GRAMM and SARBANES, and Senator MCCONNELL has a remaining amount of time of 16 minutes.

Mr. SARBANES. Sixteen minutes?

The PRESIDING OFFICER. That is correct.

Mr. MCCONNELL. Madam President, is it the Senator's thought we move up the vote?

Mr. SARBANES. Staff has made an announcement, and people have planned accordingly. I understand that is the situation on both sides of the aisle for that matter. It was announced earlier on. People, therefore, made plans accordingly.

The PRESIDING OFFICER. If Senator MCCONNELL used all of his remaining time, each side would have approximately 10 minutes.

Mr. MCCONNELL. I say to my friend from Maryland, I will be happy to hear from the other side on the amendment. I am reluctant to yield back my time until I know the extent of the debate in which we are going to engage. In any event, the vote, Madam President, occurs at quarter to 1?

The PRESIDING OFFICER. That is correct.

Mr. MCCONNELL. I retain the remainder of my time until such time we decide otherwise. I have not heard from the other side.

Mr. SARBANES. As I understand the agreement, I do not think others can use time until the Senator from Kentucky uses his time.

The PRESIDING OFFICER. That is the Chair's understanding.

Mr. MCCONNELL. I suggest we divide the remainder of the time between now and the vote. Will that be acceptable?

The PRESIDING OFFICER. Is there objection?

Mr. SARBANES. I ask unanimous consent that the remaining time between now and quarter of 1 be divided equally to the manager of the bill, to Senator ENZI, and to Senator MCCONNELL. That will give us about 10 minutes each, I think.

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

The Senator from Maryland.

Mr. SARBANES. Madam President, I will speak briefly to the McConnell amendment which has been added as a second-degree amendment to the Edwards-Enzi amendment. Before I address that amendment itself, let me again indicate my very strong support for the underlying first-degree amendment, the Edwards-Enzi amendment, which was very carefully worked out and I believe represents a constructive suggestion. I am hopeful we can get to

that amendment and have a vote on it sometime in the near future.

Obviously, the way things are now structured, we have to dispose of the McConnell second-degree amendment in order to get to the Edwards-Enzi amendment, but I think the Edwards-Enzi amendment warrants both the attention and the support of this body. I hope at some point we will be able to do that.

I am not going to address the substance of the McConnell amendment, or perhaps I will discuss it only in passing. I simply wish to observe that it is not relevant to this bill. It is talking about a client's bill of rights which may or may not be a worthy subject to examine.

How we regulate the lawyers is a complicated problem, obviously. It has mostly been done at the State level. The Senator from Kentucky has some sweeping proposals on a national basis, and they may warrant examination, but I certainly do not think they warrant coming into this debate on a very different issue. I do not know that there has been any study of it. I do not think this represents the recommendation or the report of any committee that is putting this forward, having undertaken an appropriate series of hearings in order to examine the subject. I have not had the benefit of testimony from the proponents and opponents. In fact, if the Senator from Kentucky will yield for a question, has a committee of the Senate recommended anything like this?

Mr. MCCONNELL. I say to my friend from Maryland, no committee of the Senate recommended the energy bill on which we spent 6 weeks in the Senate, and the majority leader has bypassed committees consistently throughout the last year. So I do not know that the Senate was constrained in any way—

Mr. SARBANES. It may be a response to say to me it was done somewhere else. I have a very specific question: Has a committee of the Senate recommended this proposal?

Mr. MCCONNELL. I would like to provide my own answer. If the Senator is asking for an answer from the Senator from Kentucky, I would like to be able to express myself, if that is OK with the Senator from Maryland.

Mr. SARBANES. The Senator from Kentucky is very skilled. I watched him on these television programs. I know he is very good when the question is put to him to give the answer he wants to give, even though it is not directed to the question. Obviously, I will have to go through that same experience on the floor of the Senate now.

Mr. MCCONNELL. I thank my friend from Maryland for his compliment and respond, as with many other bills over the last year that we dealt with on the floor of the Senate, it has not been reported by a committee. But many worthwhile ideas have been adopted and made a part of law that have been

recommended by both Democratic and Republican Senators that, in the years my friend and I have been here, were not officially reported out of a committee.

Mr. SARBANES. Have any hearings been held on these proposals—the bereavement period and the fees proposal? Have hearings been held on those issues?

Mr. MCCONNELL. I am unaware of any hearings to that effect, but I ask my friend from Maryland why he thinks something as elementary as this, something as obviously as fair as this, and in the case of the bereavement rule, which we adopted in Federal law for families and victims of airline crashes, would not be an appropriate thing to do with or without hearings?

Mr. SARBANES. It seems to me there are complicated issues that are raised by Senator MCCONNELL's proposal, and they certainly should have been preceded by hearings in which the pros and cons could have been carefully examined.

Madam President, I reiterate my point, this amendment is not relevant to the issue before us. It does not come to us on the basis of any hearings that back up or buttress the proposal. It has not worked through any committee. It certainly has not been recommended by any committee, and there have not even been any hearings, as I understand it, by any committee.

At the appropriate time, I will be very strongly supportive of the motion to table that will be offered by the able Senator from Wyoming. This is, of course, the second McConnell second-degree amendment we have had to deal with on this legislation.

I hope the Senator from Kentucky does not view this as a kind of fair hunting game to bring forth at each step along the way, whenever there is an opening for a second-degree amendment, whatever sort of pet project he has been harboring in his office for whatever period of time.

I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. MCCONNELL. I yield myself some of my time to respond to my friend from Maryland.

As I listened carefully to my friend from Maryland, he is straining to think of a good argument against this worthwhile amendment. It has been my experience over the years in the Senate that when we start saying there has been no committee action, there have been no hearings, we are having a hard time thinking of a good argument against the proposal on the merits.

So let me repeat again what the merits are. It seems to me we do not need committee hearings or committee action to convince us that a 45-day bereavement rule for victims and their families, which we have already adopted in Federal law for victims and families of plane crashes—we do not need committee action to tell us this is a fundamentally appropriate thing to do.

Do we need hearings and committee action to tell us that in Federal claims and in Federal cases it is appropriate and only right that lawyers provide information to their clients at the beginning, during, and at the end of their handling of the case as to the possible costs involved? That is what is before us, not the issue of whether or not we should have hearings on this or whether or not the committee should act. My goodness, we spent 6 weeks on an energy bill that the committee did not pass out of the Energy Committee. We do that frequently. The Senate is not known to be constrained by tight rules of germaneness, nor by official committee action.

So I urge my colleagues to look at the amendment itself, not these rather extraneous arguments seeking to divert our attention away from what the amendment itself provides, which is protections for consumers of legal services.

I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. Madam President, on the energy analysis, I simply point out that the Energy Committee held extended hearings over a long period of time on the energy issue. Then, they did not actually evolve a bill, but they had a very full set of hearings and a lot of recommendations available to be included in an energy package.

On the other, I say to my colleague, I forbore from discussing the substance because I did not want to prejudice the Senator on some future occasion by having to go substantively into the weaknesses and deficiencies of the proposal that is before us. Since the time is limited and that would take quite a while to do, I intend to continue to do that out of a sense of consideration to my colleague because presumably, if this amendment is tabled, he will be back visiting with us on another day, perhaps on an appropriate vehicle. I do not know. One would have to wait and see whether that would be realized.

Out of some deference of respect for my friend from Kentucky, I simply thought I would not undertake to go into this point by point on the substance because it is really not appropriate. We ought to recognize that and go ahead and table the amendment, and maybe when it finally comes up in an appropriate context, we can then address its substantive weaknesses or strengths. Perhaps at that time it would have evolved into a different animal.

I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

The Senator from Wyoming.

Mr. ENZI. Madam President, I yield myself such time as I may consume. At 12:45, I will be making a motion to table the McConnell second-degree amendment to amendment No. 4200. We are working on a bill that I have spent hundreds of hours on, part of them in hearings, much of the time in drafting

my own legislation, then working with Senator GRAMM to come up with an even better bill, and then working with Senator SARBANES to come up with the bill we have before us.

There is a crisis in the stock market. Two days ago, it dropped by 185 points. Yesterday, it dropped by 285 points. Some suggest that is because Congress is working on this issue and it is scaring the heck out of the people of the United States. I hope that is not the case. I hope it is a sign that they do want to have a solution, and they want to have a solution quickly. We do have the solution that, combined with the House bill, can serve the purpose of restoring the confidence of American investors.

The McConnell amendment is a clients' bill of rights to reform the way attorneys treat their clients. It is not about securities and exchange. It is all about attorneys. Senator EDWARDS and I modified our amendment so it applies only to action before the Securities and Exchange Commission. That was so that if this debate draws out with multiple second-degree amendments well beyond the time we have the cloture vote, our amendment will still be germane.

A standard that the Senator from Texas, Mr. GRAMM, has put on amendments is that they be germane. He did an extensive speech last night about the need to do germane amendments and get this finished.

This amendment is good and well intended. It requires attorneys to do a number of things in representing those who put their trust in attorneys' hands, and this includes requiring attorneys to provide written disclosure to their clients on the number of hours that will be spent on their case, the attorney's hourly or contingent fee, the probability of successful outcome, estimated recovery of costs, and bereavement.

Under normal circumstances, I probably would be very excited about this bill. The reason I am opposing it is simply because it does not have any place in the accounting reform bill that we are debating today. I realize it does not change anything in my amendment. It is not a substitute amendment, but it is an addition that will cause problems further down the road. It will delay actually getting accounting reform into place. The accounting reform bill is being used as a vehicle to provide a free ride for a non-germane, unrelated amendment. I will probably use that same line again on a number of other amendments that come up later—it is nongermane.

The McConnell amendment needs to hitchhike on a different road with a different vehicle at a different time.

Over several months, I and my esteemed colleagues on both sides of this aisle have worked hard on the accounting reform bill. We have worked hard to keep out surplus, nonrelevant issues so we can get through the process of getting accounting legislation through

in a timely fashion and in a bipartisan manner. We have been very successful at keeping out exact amendments even that deal with how to do accounting and have set up a process where people who are knowledgeable on that can figure out the right way to do it and the right way to do it faster than before.

I strongly believe this bill cannot afford to be held up any longer just for Members on both sides of the aisle to score political points on hot button issues. A lot of us have pet projects and issues we would have liked to add on, but we resisted and we encouraged our colleagues on the Banking Committee to do the same thing.

We are now in the amendment process, but amendments should be germane to the contents of the underlying bill and amendment. That is not a requirement until after cloture, but we need to get the bill done. There is no reason we even need to go to cloture if we would get the germane amendments done and get this into a conference committee so we can get the work done.

The McConnell second-degree amendment, while well intended, is not germane. It does not deal solely with securities laws or those attorneys appearing and practicing before the SEC. It does not deal solely with attorneys working for publicly traded companies but to any attorney and any client practicing any form of Federal law. It does not deal with an attorney's professional responsibilities of reporting Federal securities law violations to its corporate client. It is much broader than the underlying amendment which does deal strictly with Federal securities laws, attorneys appearing and practicing before the SEC, and internal reporting by an attorney within a publicly traded company.

In addition, the McConnell amendment is going to require study and debate, meaning more time spent diverting passage of the much needed accounting reform bill. We are running out of time before the next recess and have several important bills yet to consider, including Homeland Security Department legislation.

While the McConnell amendment is well intended, the timing is simply wrong. I respect my colleague from Kentucky and his constant support and earnest effort to make attorneys play it straight with their clients. But I must respectfully oppose this amendment at this time. I hope we will be able to debate and vote on it on another day. When the time is appropriate under the agreement, I will make a motion to table the amendment.

I yield the floor, and I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. MCCONNELL. Madam President, let me say first with regard to whether this is appropriate to be added to this bill, the ranking member of the Banking Committee, the manager of the bill

on this side, supports my amendment. Obviously, it is not his view that this is in any way inappropriate for this legislation.

I also say to my good friend from Wyoming, this will not slow down the bill. This amendment will be voted on at 12:45. There is a time agreement on it. We certainly are not in any way trying to slow down the passage of the underlying bill which I fully expect to support.

The issue is whether we are only interested in corporate defense counsel misbehavior. Why are we only interested in corporate defense counsel misbehavior? My amendment applies to the other side, the plaintiff's side. It would apply to cases, for example, brought under the Federal Employers Liability Act, which governs injury and wrongful death actions against railroads in interstate commerce by railroad workers and their families. It would apply to cases brought under the Longshore and Harbor Workers Compensation Act, which establishes no-fault compensation for employees injured on navigable rivers. And it would apply to plaintiffs bringing action under the Price Anderson Act amendments of 1998, which creates a Federal cause of action for nuclear accidents. It would also apply to the Federal Tort Claims Act, which creates Federal causes of action for tort claims against the U.S. Government. It would apply to lawyers representing clients bringing cases under the Public Health Service Act, which are suits against certain federally supported health centers and their employees brought under the Federal Tort Claims Act. And finally, it would apply to lawyers representing clients bringing actions under part of Federal law, very important in my State, the Black Lung Benefits Act of 1972, which establishes a compensation scheme for coal miners allegedly suffering from blank lung disease and survivors of miners who died from or were totally disabled by the disease.

Let me sum it up again: it is not my intent to slow the bill down. This amendment will be voted on at 12:45, so it clearly is not slowing anything down. It seems to me entirely consistent with the underlying amendment dealing with corporate defense counsel misbehavior to also address the question of a plaintiff's lawyer's misbehavior.

Beyond that, we are talking simply about providing consumers of legal services with basic information, at the beginning, during, and at the end of a lawsuit, and a modest 45-day bereavement rule giving the victims and their families a chance to get back on their feet before they are contacted by lawyers seeking to represent them in court. It would not in any way prevent families from contacting a lawyer during that time but would protect them from unwarranted solicitation of legal services for a mere 45 days.

This is a very modest proposal. I would love to go a lot further. I like

the fee caps in the Federal Tort Claims Act. That is not what we have offered. That is not what I offered. There is no impact on fees, no caps on damages. This is strictly consumer protection in the area of legal services. It is a very modest proposal which I hope the Senate will adopt when we vote on it at 12:45.

I reserve the remainder of my time.  
The PRESIDING OFFICER. The Senator from Wyoming.

Mr. ENZI. Madam President, I will give a little explanation for the point raised that this particular bill—because a time has been set for the vote—will not hold things up. There are about 60 amendments out there; there are probably 10 that actually deal with what is in the bill. There has to be some point where we have to ask, Can we not concentrate on what is in the bill instead of bringing up the other things? I am sorry that yours is the bill on which we are starting that.

Mr. MCCONNELL. Will the Senator yield?

Mr. ENZI. Sure.  
Mr. MCCONNELL. It was my understanding that cloture was filed last night. Would my friend from Wyoming not agree, that cloture vote brings the bill to a conclusion? I am not in any way trying to delay the passage of the bill. I support the underlying bill. I believe my amendment is appropriate to be considered.

Mr. SARBANES. Will the Senator yield?

Mr. ENZI. Yes.  
Mr. SARBANES. Actually, I will use my own time, and the Senator may reserve his time.

We must table this amendment. Otherwise, it becomes an invitation for others to come in and offer second-degree amendments that are not relevant to the bill. This amendment is not relevant to the bill—nowhere close. If we start this process now, opening up the bill to these nonrelevant amendments, what will happen to the relevant amendments, some of which are germane under cloture and others of which might miss the tight test of germaneness but are relevant material, which are pending, which other colleagues have offered, if they want to get to those amendments?

We could have done the Edwards amendment yesterday and moved on to something else, but we came in with a second-degree amendment, not relevant—not only not relevant to the Edwards amendment, not relevant to the bill.

Frankly, we are well beyond the point where we at least ought to set aside amendments that have no relevance to the underlying legislation.

Mr. MCCONNELL. Will the Senator yield?

Mr. SARBANES. Certainly, I yield.

Mr. MCCONNELL. I ask my friend from Maryland, if he believes my amendment may have some merit, whether he would support taking it up as a freestanding measure with a time agreement.

Mr. SARBANES. No, I would not support that.

Mr. MCCONNELL. I thank the Senator.

Mr. SARBANES. Why would I support a request like that? Surely the Senator from Kentucky is just making a joke on the floor of the Senate by making that inquiry. That must be apparent to all. I appreciate the Senator's sense of humor in that regard. I also appreciate his indication, just a moment or two ago, he intends to support the underlying bill. Of course, we are gratified to hear that.

I yield the floor and reserve whatever time I may have left.

What is the time situation?  
The PRESIDING OFFICER. The Senator has 33 seconds, Senator MCCONNELL has 4 minutes 38 seconds, and the Senator from Wyoming has 3 minutes.

Who yields time?  
The PRESIDING OFFICER. The Senator from Kentucky.

Mr. MCCONNELL. It was my understanding that Senator SANTORUM was on the way. But if he has not arrived yet, I suppose the best thing to do would be to enter a quorum call knowing full well my time is running.

I suggest the absence of a quorum.  
The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. REID. Madam President, I ask unanimous consent the order for the quorum call be rescinded.

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

Mr. REID. Madam President, I will alert Members we are going to have a vote later. The two members of the Appropriations Committee have finally gotten a meeting with the House appropriators on the supplemental appropriations bill. I think it would be in everyone's best interest that they are allowed to go forward with that most important meeting.

We received a request from the chairman of the Appropriations Committee, Senator BYRD. Therefore, I ask unanimous consent that the order that is now in effect be modified and that Senator ENZI would be recognized at 2 p.m. to move to table the amendment, and that 8 minutes prior to that would be devoted to debate between the two managers of the bill, Senator SARBANES and Senator GRAMM, and that Senator ENZI would be recognized for 2 minutes, and Senator MCCONNELL for 2 minutes—a total of 8 minutes. All other provisions of the unanimous consent agreement now in effect would remain the way they are.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. REID. Madam President, the vote will occur at 2 o'clock today. In the meantime, I ask there be a period from now until then for morning business, with the time equally divided between Senator DASCHLE or his designee or Senator LOTT or his designee.

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

Mr. REID. I suggest the absence of a quorum, and I ask the time be charged equally between Senator DASCHLE and Senator LOTT.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mrs. CLINTON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. MILLER). Without objection, it is so ordered.

#### UNEMPLOYMENT INSURANCE EXTENSION

Mrs. CLINTON. Mr. President, I rise in this period of morning business to raise a continuing and serious problem that we believe most acutely in New York but which I know is shared in other parts of our Nation.

Last month, the Nation joined New Yorkers in our reflection and sorrow as the workers at ground zero removed the final debris from the 16-acre World Trade Center site.

While this event, which was accomplished ahead of schedule and below budget by the most dedicated workforce that I think you could find anywhere in the world—unionized building trades and construction workers who worked on that pile for 12- to 15-hour days, 7 case days a week, for months, and, therefore, because of their heroic efforts we moved one step closer to the beginning of the rebuilding process—there are many workers who have not been able to begin rebuilding their lives simply because there are not enough jobs right now.

Many of us will remember a photograph shortly after September 11 that the press ran showing hundreds of people standing in lines at a job fair that was held in the city, people who had lost their jobs, both directly because of the attack on the World Trade Center and indirectly because of the ripple effect through the economy.

There were workers—and I have met with scores and scores of them—whose jobs were literally destroyed when the Twin Towers collapsed. They were the janitors. They were the doormen. They were the waiters and waitresses. They were the secretaries and the messengers. They went to work every day in that huge complex of offices. There were those who served the small businesses that took care of the workers in those buildings. And, of course, then there were those throughout the city who may not have worked at ground zero but who lost their jobs because of the aftermath on the entire economy because of the terrorist attacks.

We all know that thousands of hard-working Americans have been thrown out of work because of the combination of the jobless recovery and the terrorist attacks.

Prior to September 11, our economy was beginning to slow down. Our national unemployment rate rose from 4.5 percent a year ago to 4.9 percent in September and to 5.9 percent today. But I think that somehow does not even tell the whole story because what we have seen occurring since September 11 is this so-called jobless recovery.

The Wall Street Journal just ran an article about it stating that employment has now shown 13 consecutive months of decline through April. That exceeds the 11 straight months of loss in the 1990-91 recession, the only recent comparable period, about a decade ago.

I ask unanimous consent that article be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Wall Street Journal]

#### UNEMPLOYMENT HIT 5.9% IN JUNE; REVISIONS SHOW GRIM JOB PICTURE

(By Greg Ip)

WASHINGTON—WITH WEAK STOCK PRICES AND CORPORATE SCANDALS DAMPING COMPANIES' HIRING PLANS, THE RECOVERY IS STARTING FOR WORKERS TO LOOK AS BAD AS, IF NOT WORSE THAN, THE "JOBLESS RECOVERY" OF 1991-92.

The number of nonagricultural jobs rose just 36,000 in June from May, and the unemployment rate edged up to 5.9% from 5.8%, the Labor Department said Friday. Government statisticians once again revised down prior months' levels of employment, revealing a job market far weaker than previously thought.

"The economy is on the road to recovery [though] the recovery is a bit anemic," said Labor Secretary Elaine Chao. "The labor market lags behind changes in real economic activity."

While the Labor Department regularly revises its payroll estimates, those revisions have been strikingly negative this year, with every month's report being revised downward—often sharply. The agency originally said payrolls rose 66,000 in February, but now it says they fell 165,000. An originally reported gain of 58,000 jobs in March is now a loss of 5,000, and a gain of 43,000 in April is a loss of 21,000. May's gains were revised down to 24,000 from 41,000.

A "benchmark" revision a month ago also reduced employment throughout last year. Employment in November 2001 was 340,000 below original estimates.

As a result, employment now shows 13 consecutive monthly declines through April. That exceeds the 11 straight losses in 1990-1991, though those declines were steeper. Back then, job losses continued intermittently through 1991 and into early 1992. A similarly tough spell could be in store for workers now, with the recovery so far subpar and employers more determined than usual to boost output per employee rather than the number of employees.

Lois Orr, acting commissioner of the Bureau of Labor Statistics, said recent revisions haven't been statistically significant, but she couldn't explain why they have been overwhelmingly negative. Data compiled by the Federal Reserve Bank of Philadelphia show that in 1991, as the economy emerged from recession, early payroll revisions were alternately positive and negative, though benchmark revisions years later sharply lowered employment levels.

While job creation was stagnant last month, there were still signs in the jobs report that the economy is continuing to grow.

The average work week rose to 34.3 hours from 34.2 hours, and in manufacturing it jumped to 41.1 from 40.9 hours. When firms see an increase in business but aren't sure if it will last, they often boost the hours of current employees before hiring new ones, because it is easier to cut back hours later than to sack workers.

Temporary employment, another way for firms to raise output without adding to permanent payrolls, edged up by 9,000. Manufacturing payrolls fell 23,000, though that was one of the smallest declines in two years. In services, losses in retail trade were offset by gains in health care and government.

"Businesses are hesitant to expand, due to concerns about the stock market and heightened uncertainty over the geopolitical outlook," Bank Credit Analyst, a financial-markets research firm, said in a report Friday. "The attack on accounting standards and concerns about re-regulation are additional factors keeping corporate executives from expanding."

Long-distance phone company WorldCom Inc. announced 17,000 layoffs two weeks ago when it disclosed it had understated operating expenses by \$3.8 billion. Electronic Data Systems Corp., a major supplier to WorldCom whose accounting has also come under scrutiny by investors, said last week it would lay off about 2,000 employees in response to sluggish demand for its computer services.

The weak job market doesn't mean a shrinking economy because firms are squeezing increased production out of their current employees.

Merrill Lynch estimates that productivity, or output per hour worked, expanded at more than a 3% annual rate in the second quarter, down from the first quarter's remarkable 8.4%, but still robust.

Mrs. CLINTON. So here we are with a national unemployment rate of 5.9 percent, and the situation in New York is even worse. In our State, it is 6.1 percent unemployment, and in New York City, 8 percent unemployment.

We did the right thing a few months ago when we passed unemployment insurance and disaster unemployment assistance for 13 weeks. Those are both very important programs.

The disaster unemployment assistance, which comes through FEMA, goes directly to those workers who actually lost their jobs because of the physical destruction of September 11. Unemployment insurance, as we know, is triggered when there is a lack of jobs for whatever reason. And, of course, more people are out of work in New York and throughout our Nation because of the impact of September 11.

Unfortunately, these extensions, which provided a very needed safety net for thousands of workers, are about to expire for many of those workers. Nationally, 686,000 individuals will have exhausted their benefits with no job to enter.

On Monday, I participated in an announcement of a study that was commissioned by a group called the 9/11 United Services, which is a coordinating group that tried to bring all the charities together. A very accomplished corporate executive was asked to come in and serve as the temporary chairman. He immediately said: We don't have any data. We don't know what the facts are.