

A black and white photograph of a city skyline at dusk or night, with the American flag visible in the background.

# **Soft on Crime**

## **Conservative Roots of Enron and the Corporate Wilding**

**National Press Club  
Washington DC, May 3, 2007**

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## Scandals Through History

Some major financial imbroglios of past decades...

1920s:

- Charles Ponzi defrauded thousands in postal-coupon scam, inspiring term Ponzi Scheme.



- In Teapot Dome affair, Interior Secretary Albert Fall leases federal oil reserves to two oil companies in return for gifts.

1930s:

- NYSE President Richard Whitney jailed for looting customer accounts.

1950s:

- Alexander Gutema manipulates stocks, eventually faces prison.

1960s:

- Tino De Angelis hocks or sells billions of pounds of non-existent salad oil.
- Billy Sol Estes mortgages nonexistent farm equipment.



1970s:

- Robert Vesco gets control of IOS, a mutual-fund firm once run by Bernard Cornfeld, loses hundreds of millions of dollars, flees to Costa Rica.
- Equity Funding is accused of inventing fictitious life-insurance policies, selling them to reinsurance.

1980s:

- Isaac Boenick convicted of insider trading.
- Drexel Burnham Lambert pleads guilty to securities fraud; junk-bond chief Michael Milken (center) later imprisoned.
- S&Ls make aggressive investments in real estate and junk bonds that later go sour; taxpayers lose about \$200 billion.



1990s:

- Orange County, Calif., loses \$1.7 billion on derivatives; treasurer Robert Citron is convicted of securities fraud.
- Long Term Capital Management hedge fund makes huge bet on interest rates, nearly collapses, is saved in bailout organized by Fed.
- Sunbeam overstates earnings and nearly collapses after a series of accounting scandals, former CEO Albert Dunlap later pays \$15 million to settle a shareholder suit.
- HCA/Columbia agrees to \$640 million settlement, including a \$95 million criminal fee, for defrauding Medicare and paying kickbacks to doctors.



# The Washington Post Style

February 10, 2002

## High and Mighty Crooked

Enron Is Merely the Latest Chapter In the History of American Scams

By PATRICK CULLEN  
Washington Post Staff Writer

At left: A series of boxes contain their bodies. They contained more than 100 million dollars in losses. The other

portion of a place where a poor

honest manager saved Charles

Price

from

the

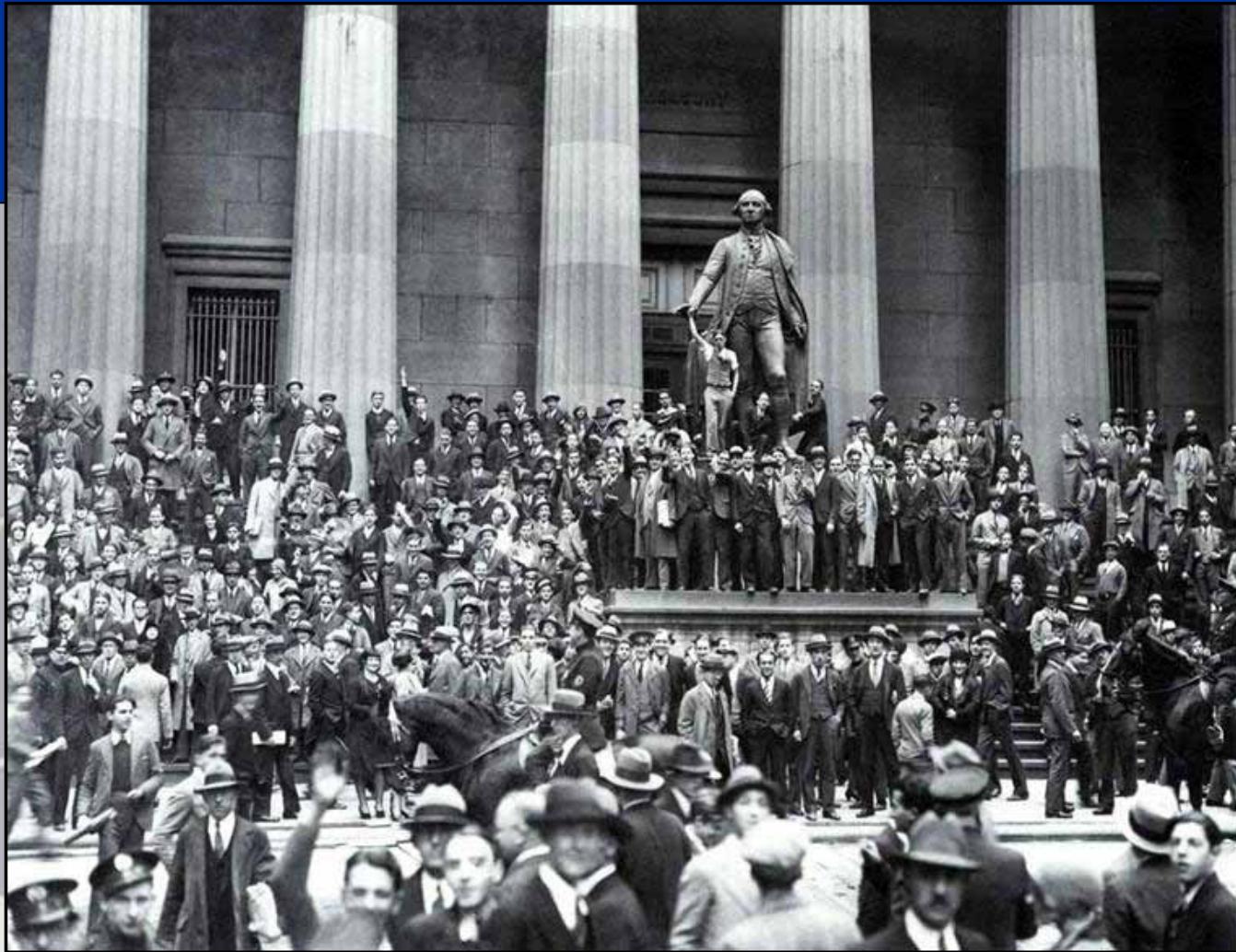
other

part

of

the

other



**On October 24, 1929 – Black Thursday – Wall Street is flooded with investors who seem overcome with disbelief.**



**President Roosevelt signs the 1933 Securities Act, part of his administration's "New Deal" – reform of the financial markets.**

# HOW TO INVEST

*for Growing Income  
and Family Security*

An investment guide  
inserted in the Reader's Digest  
as a special advertisement by

THE NEW YORK STOCK EXCHANGE

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# White-Collar Crime to Blame for S&L Crisis, GAO Tells House Panel

By JONATHAN C. HARRIS

The General Accounting Office told the House Judiciary Committee's criminal justice subcommittee that it had examined 26 insolvent thrift institutions in eight states and found evidence of fraud or abusive insider dealing in each.

While the survey was skewed to

long way to housing the homeless, feeding the poor, educating the public, caring for the sick," Schumer said. "Instead, it has been wasted on lavish parties, jets, real estate, travel and meals at the expense of taxpayers."

Atty. Gen. Dick Thornburgh last month blamed fraud and insider

**"The bulk of the losses (\$100-150 billion) are directly attributable to the failure by management ...to follow basic, prudent business practices, including the establishment of effective systems of internal control."**

"The bulk of the losses are directly attributable to the failure by management of a minority of the industry to follow basic, prudent business practices, including the establishment of effective systems of internal control," Wolf said.

Asked if that was a crime, Wolf said a violation of fiduciary responsibilities to operate in a sound manner is clearly a criminal issue.

#### Few Convictions

The GAO said it found inadequate records and controls at all 26 of the failed thrifts it examined in detail, excessive loans to one borrower at 23, conflicts of interest among officers or directors at 20 and excessive salaries and benefits at 17.

The subcommittee's chairman, Rep. Charles E. Schumer (D-N.Y.), complained that of the 11,000 S&L cases the Federal

at least 11 after pleading guilty—and 19 more were under indictment. Two people were acquitted in trials.

Of those convicted, 15 were sentenced to prison, but the sentences "generally" were suspended upon probation," Wolfe said.

The GAO did not name the 26 S&Ls it examined, saying some are still open, or the individuals whose names had been referred to the Justice Department for criminal investigation.

"We are prohibited by law from disclosing the names of open banks we review and, as a matter of longstanding policy, we treat thrifts in the same manner," Wolf said.

He said the GAO also is "sensitive to the effect such disclosures could have on the government's effort to seek recoveries in civil suits or to prosecute alleged criminal acts."

**Los Angeles Times**



**"All in favor of a cap on our liability?"**

**Weather**

Today: Partly sunny, breezy, warm.  
High 72. Low 49. Wind 12-22 mph.  
Thursday: Mostly cloudy, rain, cool.  
High 56. Low 42. Wind north 10-20 mph.  
Yesterday: Temp. ranged 43-71.  
AHI 25. Details on Page C2.

# The Washington Post

**FINAL**Inside Front  
Today's Contents on Page A2.

117TH YEAR · · · No. 339 · · ·

WEDNESDAY, NOVEMBER 9, 1994

6

Post Home View in Actual Window  
Metropolitan Washington (See Box on A2)

25¢

*A Historic Republican Triumph*

# GOP Captures Congress

**Sharp Turn to Right  
Reflects Doubts About  
Clinton, Democrats**

By David S. Broder  
*Washington Post Staff Writer*

The center of power in American politics moved sharply rightward yesterday. The massive Republican gains in the state capitals and Congress were a message that voters are rethinking the verdict they rendered in the 1992 election and are ready to give the GOP another shot at running the nation.

The endorsement of a host of Republicans, who had staked out economic

**NEWS ANALYSIS**  
conservatism  
cited in  
majority or  
shape domestic policy  
electing Republican  
Michigan and Ohio as  
New York, Pennsylvania as  
an expanded mandate  
all but one of the eight

White House Chief  
"There's no question  
message they sent is  
the way Washington  
ought to be party in po-

But to many observers  
much larger Clinton  
only a temporary in-  
stance that began in  
the last Democratic po-

The operative ques-

and the battered Democ-



## Party Controls Both Houses For First Time Since '50s

By Dan Balow  
*Washington Post Staff Writer*

Republicans rode a tidal wave of voter discontent to capture both the Senate and the House last night, ending a four-decade Democratic dynasty in Congress in a historic election message of repudiation to President Clinton and his party.

The Republicans picked up eight Senate seats to give them a 52 to 48 majority, their first since 1986. The

preside over seven of the eight most populous states.

The Republican surge was so strong last night that, in a year where voters expressed unhappiness with all politicians, not one incumbent Republican senator or governor lost and, as of early this morning, no House Republican incumbent had been defeated.

House Democrats fell throughout the night, among them former House Ways and Means Committee



## Party Controls Both Houses For First Time Since '50s

Rep. Newt Gingrich (R-Ga.), newly speaker of the House  
of the 104th Congress, celebrates election results.

George Bush,  
Republican governors now will

Last night's election results rep-  
See ANALYSIS, A22, Col. 1

Facts A1, A27

See ELECTION, A22, Col. 1

The Washington Post

December 23, 1995



# Congress Overrides Securities Bill Veto

*Clinton Loses Fight Over Effort to Curb 'Frivolous' Suits by Investors*

**"The current increase in financial fraud  
... is partially attributable to ... the  
Private Securities Reform Act of 1995...."**

- Richard Walker, SEC

Coke: Who's  
In Charge  
Here?

Our Favorite Gadgets • Is Recovery Coming?

# FORTUNE

## The Enron Disaster

Lies. Arrogance.  
Betrayal.

How Ken Lay and his team  
destroyed America's  
seventh-largest corporation.

Plus  
The Best  
& Worst  
of 2001

[www.fortune.com](http://www.fortune.com)  
DISPLAY UNTIL DEC. 31, 2001

\$4.99 US \$5.99 CAN

529



aol keyword: fortune

December 31, 2001

# WHY THERE WAS NO WARNING OF ENRON'S COLLAPSE





# Banks on the **Hot Seat**

With their involvement with Enron, WorldCom, and others, J.P. Morgan Chase and Citigroup have sullied their reputations.

By Julie Creswell

CITIGROUP CHAIRMAN SANFORD I. FINEMAN, left, chairman of J.P. Morgan Chase, Citigroup's

internal e-mails emerged showing how the

**FORTUNE**

September 2, 2002

**With their involvement with Enron, Worldcom, and others, J.P. Morgan Chase and Citigroup have sullied their reputations.**

Is There a  
Cure for Aging?

SPECIAL RETIREMENT GUIDE  
**How to Rescue Your 401(k)**

George Soros  
Is Mad as Hell

# FORTUNE

DISPLAY UNTIL NOVEMBER 3, 2003

## PARTNERS IN CRIME

EXCLUSIVE

**The Untold Story of  
How Citi, J.P. Morgan  
Chase, and Merrill  
Lynch Helped ENRON  
Pull Off One of the  
Greatest Scams Ever.**

By Bethany McLean and Peter Elkind



[www.fortune.com](http://www.fortune.com) (AOL Keyword: Fortune)



Former  
Enron CFO  
Andy Fastow  
being led off in  
handcuffs

October 27, 2003

**"If the antifraud provisions of the securities laws are gutted, as [the Reform Act] would do...worry about the public and your markets, and in 10 or 15 years you will be holding another hearing with a debacle in the securities markets that will make you remember the S&L mess with fondness."**

**William S. Lerach,  
Congressional Testimony, 1995.**

# Los Angeles Times

November 8, 1995

The 1920's were a period of pro-business,  
anti-federal regulation, pro-stock  
investing prosperity with an increasing  
disparity between rich and poor.  
What followed next?



Senate Panel Chides  
SEC for Falling Short

A

SEN  
temi  
curi  
regulation of Enron Corp.  
In a for reaching staff report and photo

October 7, 2002

# Senate Panel Chides SEC for Falling Short In Enron Regulation

*Scolding Letter Says Agency Left  
Investors 'Defenseless' in Failure  
To Detect Company's Deceptions*

other troubling disclosures when they first appeared in Enron's 1999 annual report, some of the enormous losses suffered by workers and investors might have been prevented," the senators wrote.

The report offers the most comprehensive evaluation to date of the failure to detect the Houston

Committee staff has concluded that the Commission's largely hands-off approach to the company—combined with the failure of the auditors and board of directors to do their jobs—allowed inaccurate and incomplete information to flood the



Forbes  
June 21, 2004

January 5, 2006

# *Crime and Consequences Still Weigh on Corporate World*

## *Four Years Later, Enron's Shadow Lingers as Change Comes Slowly*

By STEPHEN LABATON

WASHINGTON, Jan. 1 — America's corporate chieftains would prefer that Enron just go away.

But four years after the company's ignominious collapse, Enron's former top executives are about to head to a climactic criminal trial later this month, serving as a reminder that changes in the behavior of many American companies have been more muted than many once expected.

Despite an array of new and expensive laws and regulations that were adopted to tighten corporate oversight after the wave of scandals earlier in the decade, serious accounting problems continue to trouble publicly owned companies. In the last year, a record number have been forced to correct erroneous earnings statements, which often led to sharp stock declines.

Moreover, for all the widespread criticism of high pay of executives at Enron and other companies that lat-

er proved derelict, studies show that there is still little overall correlation between the performance of many companies and the executive compensation set by their directors.

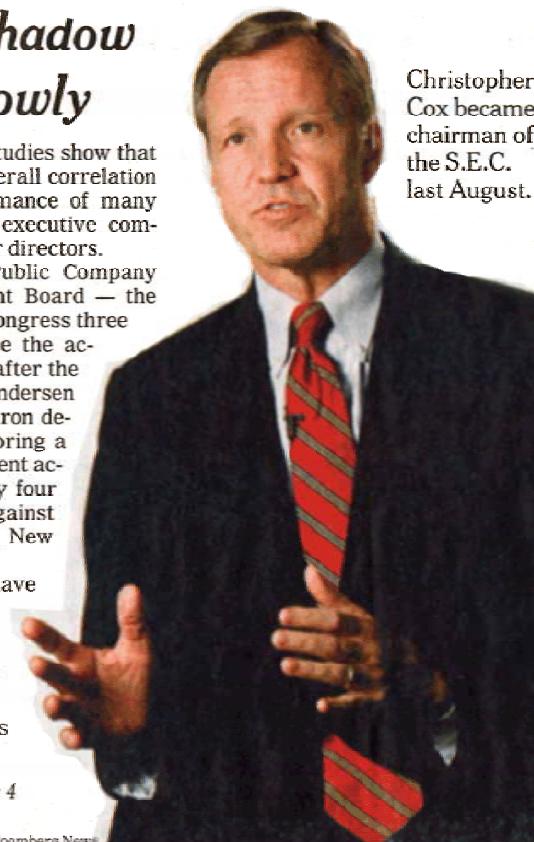
Meanwhile, the Public Company Accounting Oversight Board — the agency created by Congress three years ago to oversee the accounting profession after the collapse of Arthur Andersen for its role in the Enron debacle — has yet to bring a significant enforcement action. It has filed only four disciplinary cases against tiny firms in Texas, New York and California.

"We certainly have seen some improvements in governance, but we've also seen some areas of no improvement and some areas

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Continued on Page 4

Dennis Brack/Bloomberg News



Christopher Cox became chairman of the S.E.C. last August.



## Financial Restatements Increase In 2006

By **Shannon Henson**, shannon.henson@portfoliomedia.com

*Portfolio Media, New York (March 6, 2007)*

Stock options backdating breathed new life into financial restatements in 2006, which declined for larger companies and increased for smaller companies, according to a new report by research firm Glass Lewis & Co.

The paper, "The Errors of Their Ways," found that companies with U.S.-listed securities filed 1,538 financial restatements in 2006, up 13% from the previous year. About one out of every 10 public companies filed a restatement last year, compared with one for every 12 in 2005.

**About 1 out of every 10 public companies filed a restatement last year, compared with one for every 12 in 2005.**

"working."

Without the law, "we feel certain that investors still would be relying today on false financial reports at many of the 2,198 companies that restated their accounts in 2005 and 2006," the report said.

The report found that restatements declined among larger companies, which are those with at least \$750 million in market capitalization. But the report attributes the overall increase trend to the fact that microcap companies hadn't had to comply with Section 404 yet.

"As such, their lax internal controls, which remain untested by independent auditors, continue to produce materially erroneous financial reports for investors and other users of financial statements," the paper said.

The report also found that the stock options backdating scandal "breathed new life into stock-option-related restatements." It said that 95 of the approximately 200 companies being investigated in 2006 for the practice announced they needed to restate their financials.

The report also found that 254 companies, up from 163 in 2005, restated but didn't file amended financial statements and didn't make the proper Form 8-K filings with the SEC to warn investors the prior statements weren't reliable.

So-called stealth refiling should be stopped, the paper says.

December 19, 2005

## ACCOUNTING

# STOCK OPTIONS: OLD GAME, NEW TRICKS

Companies are finding ways to lower options costs despite stricter rules



BY JANE SASSEEN

**T**HE ERA OF "FREE" stock options is ending, but some companies seem reluctant to acknowledge that bills will soon start to arrive.

During the boom years and beyond, many companies enticed employees with piles of options, which allow recipients to buy stock at a set price. And why not? If share prices rose, employees profited. Unlike a cash salary, options weren't treated as an expense and didn't dent the bottom line.

That accounting maneuver is on its way out. After losing a decade-long battle with regulators, U.S. companies will finally be required to deduct the cost of options from their earnings starting in fiscal 2006, which for most means the quarter beginning in January.

Some companies are taking steps that will moderate the hit to their earnings. One gambit is tinkering with the formulas used to assign options a value, which can result in lower costs. A more popular strategy has been to accelerate the vesting of options. That, too, has the effect of pumping up future profits. "It's smoke and mirrors," warns Bear, Stearns & Co. analyst Christopher

PHOTOGRAPH COURTESY THOMAS CAMPANA III; ILLUSTRATION BY TIM BOWER



*"Hold it! We almost forgot your backdated stock options."*

March 7, 2007

# Companies Say Backdating Used In Days After 9/11

in a backdating scandal that involves more than 140 companies and has resulted in more than 70 firings or resignations of corporate officials. (See related article on page A9.) The new information suggests some executives profited from

*By Mark Maremont,  
Charles Forelle and  
James Bandler*

the market's plunge following Sept. 11 by manipulating options grant dates.

Stock options give the recipient the right to buy shares at a set price, typically the stock's closing price on the day the options were granted. If the stock later rises, the recipient can cash in the option for a profit. The lower the exercise price, the greater the potential gain.

Backdating options involves looking for past low points for a stock, then pretending the options were granted on those favorable dates. The post-Sept. 11 period was an attractive time for back-daters. The market had its worst week in more than 60 years, then rebounded sharply in the fourth quarter.

At KLA-Tencor Corp., at least 11 top executives purportedly were awarded options on Oct. 2, 2001, at the very bottom of a sharp dip in the semiconductor-equipment maker's stock. But in a recent filing KLA said those options were among some that were improperly back-dated, suggesting in a securities filing

*Please turn to page A12*

December 17, 2004

FLOYD NORRIS

## 3 Years After Enron, Resistance to New Rules Grows

**I**T remains," said Harvey J. Goldschmid, a commissioner, after an extraordinary meeting of the Securities and Exchange Commission, "an interesting place to work."

There are few more crucial issues for the S.E.C. than the rules governing how stocks are traded in the United States. Will the market power of giant institutional investors take precedence over the interests of smaller investors? Will public markets provide enough liquidity for institutional trading? Which markets — most notably the electronic exchanges or the New York Stock Exchange — will prosper? How different should the Nasdaq market be from the Big Board?

It took nerve for William H. Donaldson, the S.E.C. chairman, to wade into those issues, which previous chairmen had been unwilling or unable to address in detail. His action helped force the Big Board to move to faster electronic trading for some orders, a major accomplishment.

But now the rulemaking effort has slowed, and Mr. Donaldson's plan to pass a rule this week was stalled as opponents gained one more delay in an effort to rouse opposition. A Republican commissioner, Paul S. Atkins, was critical of the proposal, saying the commission should get out of the way and let competition among markets benefit everyone. He did not address how to avoid having such competition benefit brokers rather than their customers. The S.E.C. is seeking more public comment.

The issue that is arousing passion is called a trade-through rule. It is supposed to assure that if an investor offers to buy a share for \$25, no stock will be sold for less than that until his order is filled. To Mr. Donaldson, there is a need to protect investors who place such orders and provide liquidity to the markets.

It appears that Mr. Donaldson and the two Democratic commissioners, including Mr. Goldschmid, are ready to pass such a rule and extend it to all markets that offer very fast execution of orders. The big remaining question is whether it will apply only to orders at the best price in each market, or to orders below that price as well. That extension could cause unintended conse-



William H. Donaldson

quences, and there may be a case for not moving that far at the beginning. Action, however, is needed.

Still, three years after the collapse of Enron, opposition to change is growing on both sides of the Atlantic. In Brussels yesterday, the European Federation of Accountants declared its opposition to what it views as "excessive regulation" of auditors under proposed European rules.

This month, the chairwoman of the European Parliament's financial affairs committee denounced as a "loophole in democracy" the fact that the International Accounting Standards Board, rather than elected officials, could adopt rules to

force European companies to recognize the value of derivative securities they own. The European Commission has blocked the most important part of that rule, at the behest of some banks. It is a similar American accounting rule that the S.E.C. said this week had been evaded by Fannie Mae.

The political reality is that no politician can risk appearing to be opposed to financial reform. Reacting to reports that some business lobbyists were pushing for a new S.E.C. chairman, the White House said this week that it supported Mr. Donaldson, "who has worked hard to help us crack down on corporate wrongdoing."

Or, as William J. McDonough, the chairman of the Public Company Accounting Oversight Board, said before speaking to the European accounting group in Brussels, "I think the people are too unhappy about the scandals for political pressure to calm it all down to succeed."

But this round of reform has probably passed its peak. The pressures on Mr. Donaldson are likely to grow.

# Enron's Legacy

"Enron" has become a totemic word, a stand-in for corporate greed, deception and malfeasance. The verdicts now being considered by a jury against the company's two former CEOs, Ken Lay and Jeffrey Skilling, won't change that.

WorldCom's \$11 billion fraud was bigger. The self-dealing at Adelphia was more brazen. But Enron was first, and its name will forever be associated with corporate crime and the wave of new law and regulations that followed in its wake. So the eve of the Enron CEO verdicts is as good a moment as any to consider the legacy of those corporate scandals four years later, and how well our institutions have responded. Our sense is that business has done better than its government critics.

One conclusion is how exceptional those scandals have turned out to be. Far from re-

*The verdict on corporate scandals, four years later.*

announced that the Securities and Exchange Commission would take steps to make the application of Sarbox more flexible and thus less costly. Congress may also get into revising the act next year, after its two principal authors, Democrat Paul Sarbanes and Republican Michael Oxley, have retired.

The criminal justice system has done somewhat better, though also not without excesses. Certainly no one can say the business class has got off lightly. The Justice Department's Enron Task Force has secured more than 30 convictions and guilty pleas. That includes a 10-year sentence for admitted mastermind Andrew Fastow, plus multiple charges against the two former CEOs.

WorldCom CEO Bernie Ebbers was sentenced to 25 years, a conviction he intends to appeal. Eighty-year-old John Rigas of Adelphia got 15 years, effectively a life sentence, for his self-dealing at the company he founded. His 49-year-old son Timothy Rigas

## HOT TOPIC

The collapse of Enron was a debacle....  
But...the people...have now had their day in court. **It will take far longer to undo the regulatory and legal excesses that the post-Enron political panic sparked.**

No large new scandals since Sarbox passed. But then again the culprits in Enron, Tyco, Adelphia and the rest were all prosecuted under laws that existed before Sarbox. The one big prosecution under Sarbanes-Oxley, Richard Scrushy of HealthSouth, ended up in acquittal. The real test of whether the law has prevented corporate wrong-doing will be during the next business downturn. We doubt Congress has succeeded in outlawing criminal behavior.

Meanwhile, the cost of Sarbox has also created a political backlash that is causing Congress and the SEC to reconsider some of its terms. This week, Chairman Christopher Cox

seen conviction, albeit too late for its thousands of innocent employees. And trial judges have begun to question the zealousness of prosecutors under Thompson memo standards. The memo and its misuse is a topic for Attorney General Alberto Gonzales to reconsider, and the sooner the better.

The collapse of Enron was a debacle. Thousands of people lost their jobs and some their life savings. Regarding Messrs. Lay and Skilling, the wheels of justice have taken four years to turn. But they—and the people—have now had their day in court. It will take far longer to undo the regulatory and legal excesses that the post-Enron political panic sparked.

THE WALL STREET JOURNAL

May 20, 2006

# *Winds Blow For Rollback Of Regulation*

HIGH & LOW Business

**FINANCE** President Bush came to office with a clear bias against heavy regulation, and Harvey L. Pitt, his first chairman of the Securities and Exchange Commission, made it a priority to improve relations with auditing firms when he took office.

Then came Enron and WorldCom. A nearly unanimous Congress passed, and President Bush signed, the Sarbanes-Oxley Act in 2002, dramatically increasing regulation.

Mr. Bush's Justice Department set up a task force to deal with corporate crime, and it brought criminal charges against Arthur Andersen, a major accounting firm that had been



W. Glenn Hubbard, an economist at Columbia University, is co-chairman of a panel calling for less regulation of companies.

Enron's accountant. The firm promptly went out of business.

Auditors, accustomed to very light self-regulation, got a regulator, the Public Company Accounting Oversight Board, that was quite willing to tell them how to conduct audits and to force them to redo audits it found inadequate.

At first glance, now would not seem to be the logical time to push an antiregulatory agenda. By no means are Democrats automatically pro-regulation, but they are less likely than Republicans to be against it, and they will control Congress in the next two years. Mr. Bush appears to be weakened.

But many business leaders are hopeful that at least some of what they see as post-Enron excesses can be rolled back, with a battle cry of making America more competitive. Companies complain that auditors spend too much money and time auditing internal controls. Wall Street argues that it is such rules — and not higher investment banking or listing fees — that keep foreign stocks from

*Continued on Page 10*

The New York Times

December 1, 2006



# *S.E.C. Feels Pressure To Weaken Some Rules*

funds are governed and hedge funds are regulated.

The proposals, which flow from scandals in the mutual fund industry and at some of the nation's largest corporations, have split the agency largely along partisan lines. The two Democratic commissioners support them, the two Republicans have expressed skepticism about them, and the swing vote is in the hands of the agency's chairman, William H. Donaldson, a Bush appointee.

Mr. Donaldson has expressed support for the proposals in general terms, breaking ranks with his fellow Republicans on the commission to support the Democrats, notably Harvey J. Goldschmid, who has promoted the rule changes.

Inside the agency, officials and lobbyists say, Mr. Donaldson has indicated a willingness to temper some of the original proposals in response to industry criticism. How far the S.E.C. will go in watering them down is now playing out in its hallways.

"This is a pivot moment at the commission and it is coming in the middle of an election year, no less," said Lynn E. Turner, a former chief accountant at the S.E.C. during the Clinton administration who has been an advocate for greater federal oversight of corporate America and Wall Street. "What happens will mark the legacy of Donaldson."

Whatever happens is likely to do so in the

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*Continued on Page 2*

**The New York Times**

**May 10, 2004**

October 29, 2006

# BUSINESSES SEEK NEW PROTECTION ON LEGAL FRONT

## CIVIL AND CRIMINAL CASES

Trying to Sway Pendulum,  
With Encouragement  
of Administration

In an interview last week with Bloomberg News, Mr. Paulson repeated his criticism of the Sarbanes-Oxley law. While it had done some good, he said, it had contributed to "an atmosphere that has made it more burdensome for companies to operate."

Mr. Paulson also repeated a line from his first speech, given at Columbia Business School last August, where he said, "Often the pendulum swings too far and we need to go through a period of readjustment."

Some experts see Mr. Paulson's complaint as a step backward.

"This is an escalation of the culture war against regulation," said James D. Cox, a securities and corporate law professor at Duke Law School. He said many of the proposals, if adopted, "would be a dark day for investors."

Professor Cox, who has studied 600 class action lawsuits over the last decade, said it was difficult to find "abusive or malicious" cases, particularly in light of new laws and court decisions that had made it more difficult to file such suits.

The number of securities class action lawsuits has dropped substantially in each of the last two years, he noted, arguing that the impact of the proposals from the business groups would be that "very few people would be prosecuted."

People involved in the committees said that the timing of the proposals was being dictated by the political calendar: closely following Election Day and as far away as possible from the 2006 elections.

Mr. Hubbard, who is now dean of Columbia Business School, said the committee he helps lead would focus on the lack of proper economic foundation for a number of regulations. Most changes will be proposed through regulation, he said, because "the current political environment is simply not ripe for legislation."

But the politics of changing the rules do not break cleanly along party lines. While some prominent Democrats would surely attack the pro-business efforts, there are others who in the past have been sympathetic.

People involved in the committees' work said that their objective was to improve the attractiveness of American capital-raising markets by scaling back rules whose costs outweigh their benefits.

"We think the legal liability issues are the most serious ones," said Professor Scott, the director of the committee singled out by Mr. Paulson. "Companies don't want to use our markets because of what they see as the substantial, and in their view excessive, liability."



Stephen Bildgir/Bloomberg News



Erikke Massille for The New York Times

Leading the groups hoping to scale back regulation are R. Glenn Hubbard, dean of Columbia Business School, left, and John L. Thornton, a former president of Goldman Sachs.



Adam Berry/Bloomberg News



David McIntyre/Bloomberg News

Other leaders include Robert Glauber, a former NASD chairman, left, Donald Evans, a former commerce secretary, right, and Samuel DiPietro, chief executive of PricewaterhouseCoopers, below.



Mychelle Delteil/Agence France Presse/Getty Images

**November 30, 2006**

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INTERIM REPORT OF THE COMMITTEE  
ON CAPITAL MARKETS REGULATION

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November 30, 2006

November 6, 2006

A s per ar ab m and Zeus is one who think grace take no for anay So we never t holding up the he ing, especially an guy's able to set down his awesome burden and catch a little

# Worrywart's Lament

by Alan Abelson

In a recent commentary in the New York Times, [Ben Stein] lit out after Henry M. Paulson Jr., the new Treasury Secretary, late of Goldman Sachs, for his sponsorship of something called the **Committee on Capital Markets Regulation**, which might more properly be called the **committee for Fat Cat Relief**.

also lays worse, a when they  
DN'S NE is Online:  
all Street  
ons.com'.  
closes in  
house to  
colleague,  
think the  
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ss. Jim is  
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treasury.

Goldman Sachs, for his sponsorship of something called the Committee on Capital Markets Regulation, which might more properly be called the Committee for Fat Cat Relief.

This committee was created a scant two months ago, purportedly to study whether securities regulation and litigation designed to protect widows, orphans and kindred innocents are necessary

brightest of academia and the Street lobbying for less accountability to shareholders?"

Except for that part about "the best and the brightest"—but then Ben's gracious to a fault—we couldn't have put it better, ourselves. Bravo, Ben!

**I**N ONE OF HIS RECENT COMMUNI-  
QUES, money manager Jeremy

purchase of a growth da easier to justify even vbe, especially after—the unness unexpectedly goes r earlier years at Batter-investment firm that Dick co-founded with Dean Ley recalls, "we lost 50% in decline."

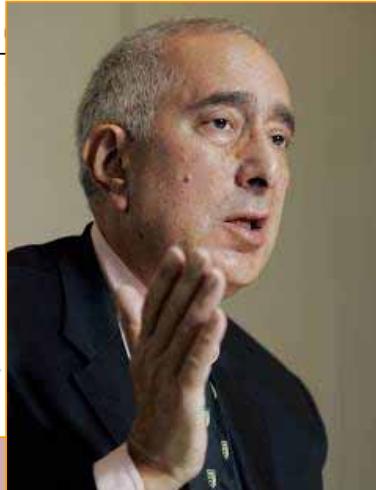
indemnably ferocious, none-  
ight in line with the losses he big banks on their hold-  
ty-Fifty stocks. But, he you can almost hear him st far more business and because, as one client brill-  
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pusis servery wrily: "Great Lakes Dock & Dredge, Hartford Steam Boiler and Twin Disc Clutch made el-  
nts feel much worse, apparently, than losing the same money in Avon, IBM and Johnson & Johnson." Stocks and assets that make investors uncomfortable, he reflects, even if they are less risky, will always have to return more than their sexier equivalents. That, he

## EVERYBODY'S BUSINESS

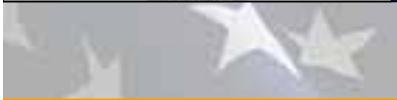
BEN STEIN

### Has Corporate America No Shame? Or No Memory?



**much interested by what he** "career management" ele-  
**you tell for an institution** contrarian value stock when  
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**in store. Instead, alas,** the  
**continues to disappoint and** by does the action of its  
**investment—often the latter-day equi-  
valuation, but more usually** euphoria and concludes that  
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not handle volatility and beta effi-  
ciently, but it certainly handles career  
risk and business risk efficiently." ■



## Group Sees SEC as Congressional Bypass to Tort Reform

### The Corporate End Run

Corporate profits are at record levels. The Dow, too, has climbed past its high-water mark from the dot-com era. Executives reap bigger and bigger paydays, even as wages have stagnated. Meanwhile,

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lawsuits, for the second year in a row.

What has actually happened is that opponents of regulation believe that the coast is clear. The law's namesakes, Paul Sarbanes and Michael Oxley, are retiring. Kenneth Lay of Enron is dead. The time appears ripe for rollbacks.

Advocates of big business like to point to a sharp decline in the United States' share of global initial stock offerings between 2000 and 2005, hoping that everyone will infer that the cause was the passage of Sarbanes-Oxley in 2002. In fact, that share

had been declining since 1996, even before the Asian financial crisis. It hit bottom in 2001 and has risen since.

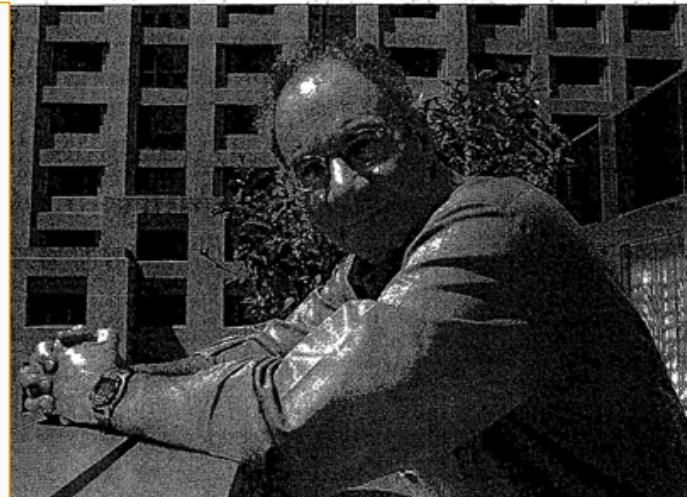
United States markets lost their dominance of

**Industry groups are seeking broad new protections for corporations and accounting firms, not through legislation but from the Bush administration through agency rule changes.**

America's investor protections and corporate regulations have made it a nation of share owners, with almost 57 million American households owning stocks either directly or through mutual funds. The Securities and Exchange Commission has already signaled that it will smooth the implementation of Sarbanes-Oxley, especially for smaller companies. And abuses of the private litigation system like payoff-to-play should be stopped. There is room for reform. But over all, the system is working. It may need tweaks, but it does not need a revamping.

The committee was buoyed by a recent speech Paulson gave to the Economic Club of New York, in which he called the nation's tort law

In particular, the article examines the Securities and Exchange Act of 1934's Rule 10B - 5 that prohibits



S. TODD ROGERS / Daily Journal

ord professor Joseph Grundfest suggested in a 1994 article that the SEC could restrict e securities litigation without congressional approval

LOS ANGELES

**Daily Journal**

November 30, 2006

In addition to tort reform, the Committee on Capital Markets Regulation has targeted three other areas of the capital markets for reform, according to its director, Hal Scott, a Harvard Law School professor. Scott would not detail the proposals until the report is released.

But he said the other areas where

# Enforcement Cases By SEC Fall Again; Focus on Late Filers

sion's total cases in fiscal 2006.

"This has been a banner year for enforcement," said SEC Chairman Christopher Cox, though he said raw filing numbers aren't the best measure of success.

The 374 SEC enforcement actions in the past fiscal year are down from 400 in fiscal 2005 and 639 in fiscal 2004. The SEC hit its high water mark in fiscal 2003 with 679 cases.

Declining enforcement cases comes as the SEC's budget has been flat for several years and its enforcement division staff fell 10% from a year earlier. Some experts think the SEC's budget would need to increase three- or four-fold for it to be sufficiently funded. "There's a strong case to be made for greater resources," said Columbia University Law School professor John Coffee. "The decline in enforcement actions does not mean there's been a decline in securities crimes."

Prof. Coffee and others appear to agree about the pattern of declining SEC actions at a time when there are signs insider trading is on the rise and hedge funds may be "cutting corners" to achieve high returns for their wealthy clients. The SEC said it brought 46 insider-trading cases in fiscal 2006, accounting for 8% of its total output.

Overall, the SEC's enforcement-case output last year was nearly 19% higher than in fiscal 2004, the SEC noted. The agency got a huge budget increase in the wake of corporate scandals at Enron Corp. and WorldCom Inc. It is slated to receive \$888 million of funding in the current fiscal year, more than double the level in fiscal 2001. The enforcement staff of 1,188 full-time employees is up about 28% in the same period.

## Who's watching out for your money?

**You remember Enron.** You remember that lots of investors lost their shirts - and their futures ....

**And you remember that Congress and the SEC, which is supposed to protect investors, passed reforms and vowed a brighter, cleaner day for people who put their money in companies.**

**Would it surprise you, then, that the SEC is meeting behind closed doors on Thursday to consider intervening on behalf of Enron in a federal lawsuit filed by Enron shareholders in Houston?**

That's the same SEC that was lambasted for precious little, if any, oversight over the events that led up to the Enron debacle.

3Q July 2007

Investor Groups and SEC Face Off in *Tellabs* Case

What is interesting in this case is not simply that defendants sought review in the Supreme Court, but that **the SEC and Solicitor General came in against the investor class**, siding instead with defendants....

**"One has to wonder if the SEC is now on the side of the defense bar.** [The SEC's] brief does not read like an SEC brief...it reads like a litigants brief."

that the SEC and Solicitor General came in against the investor class, siding instead with defendants. According to the brief the SEC and the Department of Justice filed, the Seventh Circuit's standard was too lax; instead, they argued that the law required

law professors James D. Cox, Richard M. Buxbaum, Jill E. Fisch, C. Hugh Friedman, Frank Partnoy and Marc I. Steinberg, urged the Court to adhere to the well-established Rule 12(b)(6) procedure and thereby avoid a violation of plaintiff's

## EVERYBODY'S BUSINESS

BEN STEIN

*Enron, the Supreme Court and Shareholders on the Brink*

**L**ONG ago and far away, when I was a little tyke studying economics under the tutelage of C. Lowell Harriss at Columbia, and finance under Jan Ginter Deutsch and Henry Wallach at Yale, we were taught that the stockholder was the ultimate owner of a public company, the ultimate boss, the ultimate trustee to whom the highest standards of fiduciary duty were owed.

These included the duty to put the interests of the stockholder ahead of the interests of the managers and their agents in each and every situation, to avoid even the appearance of a conflict of interest, to disclose each and every material fact and to avoid any subterfuge that would operate to conceal a material fact.

These duties were common-law obligations, but some of them had also been codified in federal and state law. Federal law, in particular, enacted after the disclosure of huge securities fraud surrounding the 1929 stock market crash that started the Great Depression, prohibited the use of any artifice or device to conceal material facts or to keep them from being disclosed to the investing public.

Section 10(b) of the Securities Exchange Act of 1934 specifically barred the use of any manipulative device or contrivance that would defraud or mislead. A rule adopted by the Securities and Exchange Commission under that act, the famous Rule 10b-5 said that it would be unlawful for any person "directly or indirectly" to "engage in any act,

practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security."

That, you would think, would have special relevance to the huge scandal at Enron. In that sad story, managers of the company used various devices to conceal from the markets and the investing public that the company was essentially a huge fraud.

In that effort, the managers were helped considerably by a number of very large investment banks. These banks and brokerages used complex transactions that made it look as if Enron were making money when in fact it was insolvent. Andrew S. Fastow, the former finance boss at Enron, testified during legal proceedings about Enron that he saw the large banks as "problem solvers" who would come up with these schemes and thus help the company conceal the reality of its dire situation.

Now, you would think that if this were true, Merrill Lynch, Credit Suisse and Barclays — named in an investor lawsuit — might possibly be liable to the defrauded stockholders, whose losses were in the tens of billions of dollars, and might owe some little pittance to them. (Banks including Citigroup, JPMorgan Chase and CIBC have already paid more than \$7.3 billion to settle with Enron shareholders.) You would think that there would at least be a trial about it.

Ah, but then you would be missing the point that the law is a wily, cunning beast of utter unpredictability. Some years ago, in 1994, after a series of disastrous missteps by accounting firms in connection with an earlier series of securities frauds, the Supreme



Philip Anderson

Court brought out an opinion in the case called Central Bank of Denver v. First Interstate Bank of Denver.

In this long and incomprehensible case, the high court basically said that there would be no 10(b) liability for players who "merely" aided and abetted securities fraud.

Just as an opinion, by little me, this was done to save the accounting firms from completely immolating themselves by their misconduct. However, the facts of that case were somewhat limited. The defendant, Central Bank, had been the trustee for \$26 million in defaulted bonds issued by a local public building authority. But Central was not its investment bank and did not issue investment analysis and, moreover, the securi-

ties in question were not publicly traded.

The Enron fraud involved a public company and had a much wider scope. In a huge class-action case where millions of documents had been collected in a federal district court, and in which many witnesses had been deposed, a jury trial was headed to daylight. But suddenly last month, something happened. A three-judge panel of the Fifth Circuit United States Court of Appeals in New Orleans ruled that the class-action suit against investment banks over Enron could not proceed. (Individuals' ability to pursue claims was not affected.)

The panel held that although its ruling might prevent justice from being done and satisfaction from being had, the acts of the

investment bankers were at most aiding and abetting, not direct acts, and therefore not actionable under 10(b) as construed in the Central Bank case.

Ouch. Yes, the defendant banks are accused of concealing the true facts about Enron and likely led investors to buy when they should have sold. Yes (and this is a beauty), at the same time the investment banks were helping Enron with its questionable financials, their "analysts" were praising Enron. (As the petitioners' brief notes in an appeal to the Supreme Court to overturn the Fifth Circuit decision, these were "full service" banks.)

But, according to the Fifth Circuit panel, this was not enough. This was not a scheme or contrivance to defraud, they said. Yes, the facts were completely different from those of the Central Bank case, but the banks were to be let off the hook. This was in the name of offering predictability in these cases (apparently the predictability that the stockholders would be mistreated).

But not all hope is lost. A tasty appeal has been filed, which is a little masterpiece of legal argumentation.

Now, the Supreme Court can have another look at this case. It can return some dignity and rights to Enron stockholders and send up a warning flare to investment banks to avoid helping out with financial fraud. It can let this case go forward to trial.

This is a potential golden moment for the stockholders — or another step down the dreary alley toward extinction of the rights of those poor whipped dogs: the actual owners of America's public companies. It is up to the Supreme Court to right the ship. □

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# BusinessWeek

SEPTEMBER 11, 2000

A PUBLICATION OF THE MCGRAW-HILL COMPANIES

## Global Investing

Smart new strategies

## Bio Invasion

The worldwide risk of new diseases



## Car Design

Can a French designer fix GM's problems?



## E-Business

A shakeout in B2B

# TOO MUCH CORPORATE POWER?

Even though Big Business helped create **UNPRECEDENTED PROSPERITY**, most Americans think corporations have **EXCESSIVE INFLUENCE** over their lives. Now, it's become a hot **POLITICAL ISSUE**. What's going on?

*Exclusive Business Week Poll*

WHAT'S GOOD AND BAD ABOUT  
CORPORATE BEHAVIOR

AOL Keyword: BW

September 11, 2000

A black and white photograph of a city skyline, likely San Diego, featuring several skyscrapers and a large stadium or convention center in the foreground. An American flag is visible in the background, its stars and stripes partially obscured by the city buildings.

# **Soft on Crime**

## **Conservative Roots of Enron and the Corporate Wilding**

**Washington DC, May 3, 2007**

**Michelle Ciccarelli • 619.338.4599 •**  
**[michelec@lerachlaw.com](mailto:michelec@lerachlaw.com)**

