

**Lessons from Enron:  
A Symposium on Corporate  
Governance  
October 17, 2002**

**Luncheon Keynote Speech**

**by Kenneth E. Lawson\***

It is a pleasure to be here with you today. In the wake of international terrorism, the United States faces the consequences of yet another crisis: that of deception and fraud on the part of American business leaders and advisors. As has become more obvious, white-collar corporate fraud is not a victimless crime. Employees of corporations and their families, investors, and those who believe in the American dream are devastated by this conduct. Often silent but destructive, corporate fraud can go undetected for years and ordinarily will not come to light until immense and irreversible damage has been done.

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The topic at hand concerns us all and has brought to light the role of those boards of directors responsible for the oversight of our American corporations, the responsibility of individual shareholders, and overall government regulation of business activity. I would like to think that Enron, WorldCom, and the like are the exceptions rather than the proverbial "rule."

The actions of these criminals, of course, impact more than just our domestic markets; the impact on our global economy cannot be forgotten. We are an interdependent economy—investors and joint ventures play an integral part in our economy's well-being. When United States citizens lose confidence in those we allow to manage our businesses and trust is eroded, when credibility ceases, how can we expect our foreign trading partners to risk involvement?

President Bush stated on July 9, 2002 to an audience of Wall Street businessmen and women in New York City:

The American economy—our economy—is built on confidence. The conviction that our free enterprise system will continue to be the most powerful and most promising in the world. That confidence is well-placed. After all, American technology is the most advanced in the world. Our universities attract the talent of the world. Our workers and ranchers and farmers can compete with anyone in the world. Our society rewards hard work and honest ambition, bringing people to our shores from all around the world who share those values.<sup>1</sup>

When our businesses fall prey to the same greed that some might argue is human nature and therefore endemic of society as a whole, we must look at causes and remedies. Is the infrastructure too lenient; are regulations in need of revisitation? What can we do to ensure that similar corporate maladies do not recur?

At the Department of Treasury, we are analyzing the effects this grandiose scale of fraud has had on our market, on our society, and on our world economy.

The Department of the Treasury is working to restore faith in the American economy and its prosperity. On July 9, 2002, President Bush, by Executive Order, established the Corporate Fraud Task Force, led by the Department of Justice.<sup>2</sup> The task force, chaired by the Deputy Attorney General, is comprised of various United States Attorneys and representatives from a number of federal agencies, including the

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1. President George W. Bush, Corporate Responsibility, Remarks at the Regent Wall Street Hotel (July 9, 2002), available at <http://www.whitehouse.gov/news/releases/2002/07/print/20020709-4.html>.

2. Exec. Order No. 13, 271, 67 Fed. Reg. 46,091 (July 9, 2002).

Department of the Treasury. The task force was established in order to strengthen the efforts of federal, state, and local governments in their quest to investigate and prosecute corporate crime. In September, members of the task force met in Washington, D.C. at a Corporate Fraud and Responsibility Conference. The task force convenes regularly.

Prosecuting those individuals and corporations who engage in criminal behavior is a priority of the Administration. Under the leadership of President Bush and Secretary Paul O'Neill, the Treasury Department is committed to exposing criminal behavior in the corporate culture and ensuring that people can get accurate information so that they can make sound investment decisions. The Treasury Department, specifically through the Internal Revenue Service's Criminal Investigation Division, assists the Department of Justice in investigation and prosecution of significant financial crime.

The restoration of faith in American business, however, does not solely lie on the shoulders of law enforcement. Integrity of all those involved is the key.

President Bush has asked the American people to "usher in a new era of integrity."<sup>3</sup> Business leaders, accountants, and lawyers must set the standard for those who choose to take on the momentous responsibility of guarding the financial freedom and security of individuals and families who follow the American dream. The Administration has espoused that economic freedom and individual accountability promote continuing prosperity. Integrity and honor are the benchmarks of these objectives.

When abuses of this nature begin to surface in the corporate world, it is time to reaffirm the basic principles and rules that make capitalism work: truthful books, honest people, and well-enforced laws against fraud and corruption. All investment is an act of faith, and faith is earned by integrity. As the President so eloquently proffered, "In the long run, there's no capitalism without conscience; there is no wealth without character."<sup>4</sup>

The President has put forth a ten-point Accountability Plan for American Business, "designed to provide better information to shareholders, set clear responsibility for corporate officers, and develop a stronger, more independent auditing system. This plan is ensuring that the SEC takes aggressive and affirmative action."<sup>5</sup>

I will just speak of a few of the components of the President's overall strategy to combat this type of corruption within our corporate arena.

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3. Bush, *supra* note 1.

4. *Id.*

5. *Id.*

His plan puts forth the following: Corporate officers who benefit from false accounting statements should forfeit all money gained by their fraud. A corporate officer who benefits when his company does well should not be able to benefit from a company with an income statement that is fraudulent in design.

The plan seeks to impose a permanent ban on those who violate public trust. No longer will such so-called business men and women be permitted to simply terminate one corporate structure and begin another. "Corporate leaders who violate the public trust should never be given that trust again."<sup>6</sup> The President's approach would enable the SEC to

punish corporate leaders who are convicted of abusing their powers by banning them from ever serving again as officers or directors of a publicly-held corporation. If an executive is guilty of outright fraud, resignation is not enough. Only a ban on serving at the top of another company will protect other shareholders and employees.<sup>7</sup>

The Accountability Plan also places the CEO in a position that mandates greater personal responsibility. It requires CEOs to personally vouch for their firms' annual financial statements. In the future, the signature of the CEO should also be his or her personal certification of the veracity and fairness of the financial disclosures. In order to regain the confidence of our shareholders, "the SEC has ordered the leaders of nearly a thousand large public companies to certify that the financial information they submitted in the last year was fair and it was accurate."<sup>8</sup>

The Administration will also guard the interests of small investors and pension holders. Stock holders should not suffer because of the actions of those who falsely held themselves out to be savvy business leaders. The Administration has given assurances that pensions will not be abused and wasted to support malfeasance and criminal behavior.

The Plan is one designed to instill American values in the corporate arena. Rest assured, efforts are underway to take issue with those who take advantage of this country's entrepreneurial spirit.

Other remedial actions are being taken by our legislature. The House of Representatives has recently passed needed legislation to encourage transparency and accountability in American businesses.<sup>9</sup> This

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6. *Id.*

7. *Id.*

8. *Id.*

9. Sarbanes-Oxley Act of 2002, Pub. L. No. 107-204, 116 Stat. 745 (codified in scattered sections of 11, 15, 18, 28, and 29 U.S.C.).

transparency will arguably provide needed ease in the review and oversight process and thus make it more difficult for devious business leaders to prevail.

Unscrupulous corporate moguls cannot continue to taint our capitalistic philosophy, nor can they shield themselves under a "corporate veil" in their attempts to hide from justice. The few should not be permitted to affect the many honest business men and women who make this economy great.

We are taking issue with violators and we will continue to do so until trust in "corporate America" is regained!

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