



SALON

Enron's Legacy

20 May 2006

The Wall Street Journal

(Copyright (c) 2006, Dow Jones & Company, Inc.)

"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 associated both 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 revealing some larger cultural rot, the corruption was serious but limited to a handful of companies. Prosecutors and regulators used the political opening created by the Enron collapse to hunt for malfeasance far and wide, but the news is how little they found. Every economic boom produces scoundrels who are exposed when the tide recedes, but the vast majority of American capitalists are honest and honorable.

The public sector deserves a more mixed grade. Congress, as usual, ran off in panic and whooped through Sarbanes-Oxley, the intrusive accounting law that has cost the U.S. economy far more than predicted by its backers. Sarbox has added hundreds of billions of dollars in compliance costs, and for no clear public gain. Deloitte has estimated that the average large company has lost 70,000 man-hours to Sarbox compliance, often by its most senior managers.

The law's backers can say there have been 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 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 got 20 years. Tyco's two top former officials could serve 25 years in jail. These individual prosecutions are likely to be a far greater deterrent to potential offenders than anything in Sarbanes-Oxley.

Less admirable has been the Justice Department's infamous Thompson memo, which has encouraged prosecutors to brandish the threat of a criminal indictment against entire firms. Since this often means a death sentence a la Arthur Andersen, the threat gives prosecutors enormous leverage to win concessions that may well be an abuse of due process. We're referring to such things as companies being forced to waive attorney-client privilege or stop paying for the legal defense of indicted officials. It's no small irony that this week Justice used this nuclear indictment against Milberg Weiss, the law firm that became rich by suing corporations for "fraud." (A subject we'll return to next week.)

The Supreme Court overturned the Andersen conviction, albeit too late for its thousands of innocent employees. And trial judges have begun to question the zealotry 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.

© 2006 Dow Jones Reuters Business Interactive LLC (trading as Factiva). All rights reserved.