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THE SARBANES-OXLEY ACT AND ETHICAL CORPORATE CLIMATES: WHAT THE MEDIA REPORTS; WHAT THE GENERAL PUBLIC KNOWS

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I. INTRODUCTION

The question for participants in the Securities Regulation Section's program at the 2008 AALS Annual Meeting was whether recent securities regulation reforms hit their mark. I focus in this essay on The Sarbanes-Oxley Act of 2002 (SOX or the Act),[1] the most important legislative reform of securities markets in recent decades.[2] Enacted to assuage public outrage about corporate greed and malfeasance ignited by media reports describing debacles at Enron, WorldCom, Adelphia, Tyco and other companies in 2001 and 2002 (the Corporate Scandals)[3], SOX represented a legislative and political response to public resentment of what some considered a morally impaired corporate America.

In the immediate aftermath of its enactment, the mark at which SOX took aim was the allaying of public indignation. The mark was not only the protection of investors, or reviving their confidence in U.S. markets. SOX also took aim at the general public by attempting to redeem corporate America's public image. Donald Langevoort sees the Act as reflecting "a political instinct that incentive structures in modern public corporations generate risks that require *public* (not just investor) accountability to be legitimate."[4] He observes that some of the Act's provisions "address the *public* interest."[5]

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1. 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.A. (2003)).

2. *See, e.g.*, Peter Tirschwell, *Why Sarbanes-Oxley Matters in Logistics*, J. COM., Sept. 27, 2004, at 54.

3. *See* Tom Petruno, *Tech Probes Cost Twice; Alleged Abuse of Options Takes Toll on Confidence and Financial Results—And on Share Prices*, L.A. TIMES, July 9, 2006, at C1.

4. Donald C. Langevoort, *The Social Construction of Sarbanes-Oxley*, 105 MICH. L. REV. 1817, 1820 (2007) (emphasis added).

5. *Id*. at 1830. There are two references to the interests of the general public in the section of SOX that establishes the Public Company Accounting and Oversight Board (the PCAOB). Section 101 establishes the PCAOB in order to protect the interests of investors and to further the public interest. Sarbanes-Oxley Act § 101. Section 101(e) provides that the PCAOB is to have five members "who have a demonstrated commitment to the interests of investors and the public." Sarbanes-Oxley Act § 101(e). Another section requires the Securities and Exchange Commission to promulgate rules in the public interest that would require attorneys to report instances of

Aware of increased public scrutiny, it is clear that in the immediate aftermath of the Corporate Scandals, business leaders were concerned with their public images. Politicians, legislators and regulators made speeches about corporate responsibility.[6] These factors conflated to create a social and political climate that inspired business leaders to construct corporate climates in which the consideration of ethical business practices would take center stage. This new focus on ethical business climates extended beyond issues relating to financial reporting and other traditional corporate governance matters. There is evidence that business leaders were open to cultural and climate changes that would benefit not just shareholders but stakeholders also.[7]

The discourse about SOX has shifted in recent years. Praise for SOX is dramatically outweighed by criticism and complaints, primarily from corporate directors, managers and others within the business community.[8] The business community's exuberant criticism of SOX has reversed the brief trend to place discussions about ethics at the forefront of corporate governance discourse. It is also clear that now, more than five years after its enactment, the Act's mark is construed more narrowly, focusing only on the investing, rather than the general, public. The legislation's goal shifted from one of restoring *public* confidence to restoring and maintaining *investor* confidence.

Only a fragment of the population participates in today's discourse about SOX. This is significant because it changes the parameters of corporate and legislative accountability. The general public no longer has easy access to (or interest in) news about the Act's shortcomings, or the changes in the way the Act is interpreted or implemented. This may affect the nature of the business community's compliance with the Act's principles. The general public's power to influence the behavior of business leaders who care about their public image disappears when the public is unaware. If the public is no longer paying attention, the business community no longer needs to concern itself with its public image.

II. THE CHANGING DISCOURSE ON SOX AND ETHICAL CORPORATE CLIMATES

A. 2002–2004 (APPROXIMATELY)

In the two years immediately after its enactment, SOX had the potential to foster more ethical corporate climates at U.S. firms. Professor Lynne

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material securities violations or fiduciary duty breaches to certain corporate agents. Sarbanes-Oxley Act § 307.

6. *See, e.g.*, Elisabeth Bumiller, *Bush Faces Scrutiny over Disclosing '90 Stock Sale Late*, N.Y. TIMES, July 4, 2002, at A11.

7. *See infra* p. [6].

8. *See* discussion *infra* Part II.B.

Dallas describes a company's ethical climate as "a manifestation of its corporate culture. Corporate culture is defined as a 'complex set of common beliefs and expectations held by members of the organization,' which are based on shared values, assumptions, attitudes and norms."[9] Dallas explains that the "[e]thical climate . . . answers such questions as . . . 'What is the correct alternative in the organization's view?;' and . . . 'What should I do?'"[10] Another commentator explains, more generally,

> Ethics . . . is the branch of philosophy which studies how moral decisions and positions are justified. . . . Ethics consists of general systems of principles that one can use to evaluate moral beliefs, resolve moral disputes, and rationally determine a moral course of conduct.[11]

Steve Kardell, an attorney representing shareholder activists, seized the opportunity created by SOX's enactment to inspire more ethical corporate climates.[12] In the immediate months after SOX was enacted, some business leaders, worried about their companies' public images, were open to requests from Kardell to carefully evaluate their firms' ethical climates. In 2002 and 2003, Kardell asked corporate boards to review their codes of ethics and compliance programs, particularly the companies' commitment to protecting whistleblowers. Kardell used demand, one of the procedural prerequisites to shareholder derivative litigation[13], to do so. He wrote demand letters to the boards of several companies with codes and compliance programs that seemed to be cosmetic only, asking them to revise their codes and compliance programs.[14] His goal was to close the gap between the companies' "ethical policies and ethical actions."[15]

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9. Lynne L. Dallas, *A Preliminary Inquiry Into the Responsibility of Corporations and Their Officers and Directors for Corporate Climate: The Psychology of Enron's Demise*, 35 RUTGERS L.J. 1, 2–3 (2003).

10. *Id.* at 22–23.

11. Frank J. Cavico, *Private Sector Whistleblowing and the Employment-At-Will Doctrine: A Comparative Legal, Ethical, and Pragmatic Analysis*, 45 S. TEX. L. REV. 543, 628 (2004).

12. *See* Telephone Interview with Steve Kardell, Kardell Law Group (Oct. 14, 2003) [*hereinafter* Kardell Interview] (cited in Cheryl L. Wade, *"We Are an Equal Opportunity Employer": Diversity Doublespeak*, 61 WASH. & LEE L. REV. 1541, 1572–74 (2004)).

13. Derivative litigation is an equitable resolution created by courts to allow shareholders to file suits against corporate boards and managers on behalf of the corporation. Without this equitable remedy, shareholders would not have standing to file the litigation because the cause of action belongs to the corporation as a "person," separate from its shareholders. *See* Cohen v. Beneficial Indus. Loan Corp., 337 U.S. 541, 548 (1949). Because the possibility of bringing a derivative claim against boards and managers also presents an opportunity for shareholders to harass directors and officers by bringing unwarranted suits, courts have created procedural prerequisites that must be satisfied before filing a derivative claim. Demand is one such prerequisite. *See* Grimes v. Donald, 673 A.2d 1207, 1215–16 (Del. 1996); Marx v. Akers, 666 N.E.2d 1034, 1036–37 (1996).

14. Kardell Interview, *supra* note 12.

15. Lynne Dallas described assessments of the efficacy of codes of ethics and hotlines for whistleblowers, noting that the most important "factor in reducing observed unethical conduct . . . is consistency [within the organization] between ethical policies and actions . . . ." Dallas, *supra* note 9, at 42.

Kardell expected that boards would refuse his shareholder clients' demands to fix ineffective compliance programs and codes of ethics. He intended to litigate the refusal, arguing that it was wrongful.[16] To Kardell's surprise, however, the boards of the companies he contacted did what he asked. Instead of refusing his demand, they revised codes of conduct and strengthened compliance programs and whistleblower protections.

In a telephone interview, Kardell explained that after the Act's passage, it was more difficult for boards to get opinion letters from outside counsel stating that compliance programs were adequate.[17] The boards he contacted took corrective action because SOX and the accompanying discourse about corporate responsibility and ethics inspired them to do so.[18] At least in the two years after its enactment, SOX inspired corporate boards to focus on their public images. The boards contacted by Kardell responded favorably to his demands because it seemed that the public was watching.

One of the issues on which Kardell focused was on the problem of retaliation against whistleblowers. Interestingly, Kardell did not limit his focus to employees who reported their companies' failures to comply with disclosure and accounting rules. He asked that boards draft strong language in their codes of conduct explicitly prohibiting retaliation or conduct that would impede the professional advancement of employees who complained about social issues such as sexual harassment and discrimination.[19] Kardell's goal was to get boards to construct corporate climates that would allow employees with material information regarding noncompliance to reveal what they know. Kardell's success in persuading corporate boards evidenced the willingness of business leaders, in the immediate aftermath of SOX's enactment, to improve codes of conduct and compliance programs in a way that would establish more ethical corporate climates that would benefit both shareholders and stakeholders.

B. TODAY'S DISCOURSE

It is not likely that Kardell would get the same level of responsiveness from corporate boards now that more than five years have passed since SOX's enactment. Criticisms about the Act exuberate. The business community's complaints about SOX's shortcomings have replaced discussions about business ethics, the important work that whistleblowers

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16. A shareholder demand letter may ask that the board file a suit that will recover the company's losses, or that the board take some corrective action that would prevent future corporate loss. Corporate boards have the right to refuse a shareholder's demand. *See generally Grimes*, 673 A.2d 1207. When demand is refused, the shareholder's only recourse is to argue that the refusal of the shareholder's demand was wrongful. But, the board's decision to refuse shareholder demand is protected by the business judgment rule. *See* Zapata Corp. v. Maldonado, 430 A.2d 779, 784 (Del. 1981).

17. Kardell Interview, *supra* note 12.

18. *Id.*

19. *Id.*

do and investor protection. Now that criticisms of SOX permeate the business community, Kardell spends much of his time defending whistleblowers who claim that their employers have retaliated against them.[20] The nature of the discourse about SOX has changed dramatically. The broad goal of achieving more ethical corporate climates seems less likely to make it to the top of the agendas of corporate boards and managers.

It is critical to examine today's discussion of SOX in order to evaluate the Act's perceived and actual effectiveness. Some regulators, institutional investors and academics focus on the Act's benefits.[21] There are commentators who argue that the Act has the potential to prevent future corporate fraud.[22] They caution against calls to roll back the legislation because of "the steady stream of corporate fraud revelations" that continue to arise years after SOX's enactment, citing the "accounting issues at Fannie Mae and options backdating at Apple."[23] Other commentators chronicle the improvements in internal controls, corporate governance and financial audits as companies comply with SOX.[24]

Some legal scholars, however, began to doubt the efficacy of SOX soon after its enactment.[25] For example, Roberta Karmel was concerned that some SOX provisions would reduce flexibility and "diminish[] entrepreneurial activity, corporate profitability and competitiveness. The new emphasis on investor protections may detract attention from long-term business interests."[26] At the time of its enactment, the Act's most frequently

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20. Kardell represented two former Wal-Mart employees who claimed that they were fired because they reported corporate malfeasance ranging from an executive's misuse of corporate funds to oppressive labor practices. *See* Michael Barbaro, *Wal-Mart Fights Whistle-Blower Suits*, WASH. POST, July 9, 2005, at D1.

21. *See* Scott Harshbarger & Goutam U. Jois, *Looking Back and Looking Forward: Sarbanes-Oxley and the Future of Corporate Governance*, 40 AKRON L. REV. 1, 6 (2007).

22. *Id.* at 5.

23. *Id.* at 6.

24. *See generally* Daniel L. Goelzer, *Auditing Under Sarbanes-Oxley: An Interim Report*, 7 J. BUS. & SEC. L. 1 (2007) (pointing out the positive effects SOX has had on auditing since its enactment); Milton Ezrati, *Taking a Second Look at SOX*, ON WALL ST., Apr. 1, 2007, http://www.onwallstreet.com/asset/article/529371/taking-second-look-sox.html?pg= (discussing the costs and benefits of SOX).

25. *See, e.g.*, Michael A. Perino, *Enron's Legislative Aftermath: Some Reflections on the Deterrence Aspects of the Sarbanes-Oxley Act of 2002*, 76 ST. JOHN'S L. REV. 671 (2002). Perino observed that SOX duplicates already-existing law, regulation and standards and is unlikely to deter criminal conduct in the future. *Id.* at 673; *see also* Brian Doherty, *You Can Be Too Careful*, REASON, Jan. 2006, at 40. Legislatively, SOX did not change much, at least not from the perspective of criminal liability. Executives at Enron, WorldCom and Adelphia were successfully prosecuted after SOX's passage, but they were not prosecuted or convicted under the Act. HealthSouth CEO Richard Scrushy was prosecuted under SOX, but a jury found him not guilty. *See id.*

26. Roberta S. Karmel, *Realizing the Dream of William O. Douglas—The Securities and Exchange Commission Takes Charge of Corporate Governance*, 30 DEL. J. CORP. L. 79, 79 (2005). Professor Karmel noted that "[w]hether Sarbanes-Oxley will result in better corporate

articulated goal was to boost investor confidence, but critics question whether investors truly benefited.[27] There are significant numbers who argue that compliance with the Act has made companies that are listed on U.S. stock exchanges less competitive than companies listed elsewhere.[28] Other commentators lament the high costs of compliance with provisions such as Section 404,[29] even though there is evidence that these costs are declining.[30]

The Act's most rancorous critics belong to the business community. According to a survey described in *CFO Magazine*, 94% of executives from 217 companies wanted to "tone down" SOX.[31] Another study, by Korn/Ferry International, revealed that more than half of U.S. directors want SOX "repealed or overhauled."[32] Seventy-two percent of directors surveyed in the U.S. said SOX "made them too cautious,"[33] and that they are "not taking the necessary risks to drive growth. . . . [Fifty-nine percent] of directors surveyed in the Americas have declined a board position due to the risk associated."[34]

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governance and greater sensitivity by corporate officers and directors to investor interests remains to be seen." *Id.* at 81.

Professor Karmel's concern about the impact of a focus on protecting investors on long-term business interests seems misplaced. "Long-term business interests" is a term that is hopelessly vague. Almost anything can be deemed to be in the long-term interests of the corporation, shareholders, or stakeholders. In any event, it would seem that long-term business interests must certainly include the protection of investors. If an entrepreneur wants to focus on long-term business interests, whatever they are, rather than investor protection, she should do so with her own money or with bank financing. She should not look to investors for capital.

27. *See, e.g.*, Louis M. Thompson, Jr., *Sarbanes-Oxley Means Opportunities and Challenges for Companies and IROs*, CPA J., Sept. 2005, at 14. The "'compliance by checklist' mode with respect to disclosure and corporate governance . . . may provide assurance that a company is following the rules, [but] it is debatable whether investors are better off for it." *Id.*

28. *See, e.g.*, Emma Trincal, *Chamber Pushes Regulatory Reform*, HEDGEWORLD DAILY NEWS, Mar. 12, 2007; Robert Schroeder & Greg Robb, *Regulations, Litigation Criticized at Conference*, MARKETWATCH, Mar. 13, 2007, http://www.marketwatch.com/news/story/paulson-business-leaders-hit-red/story.aspx?guid=13F2929C-B876-4D26-ACBE-2963DC97443F&print=true&dist=printTop (reporting that New York City's Mayor and Senator Charles Schumer (D-N.Y.) warned that "New York City is in danger of losing its preeminence as the world's main financial center because companies are seeking to do business elsewhere" so that they do not have to comply with SOX).

Some observe, however, there are other reasons why the number of initial public offerings has decreased in U.S. markets and that they are not less competitive because of SOX. Goelzer, *supra* note 24, at 6–8.

29. *See infra* notes 43–44 and accompanying text.

30. *See* Goelzer, *supra* note 24, at 7; Aaron Siegel, *Research Shows Compliance Costs Rev Up*, INVESTMENT NEWS, Mar. 12, 2007, at 6 (asserting that in the past two years costs of complying with SOX have dropped).

31. Tim Reason, *Feeling the Pain: Are the Benefits of Sarbanes-Oxley Worth the Cost?*, CFO MAGAZINE, May 2005, at 51, 54.

32. Chris Evans, *Directors call for Sarbanes-Oxley Repeal*, ACCT. AGE, Feb. 23, 2006, http://www.accountancyage.com/accountancyage/news/2150885/sarbanes-story.

33. *Id.*

34. *Id.*

There is an aspect of board membership that may explain the pervasive view among corporate directors and executives that SOX should be overhauled. Commentators have observed that groupthink my render group members blindly uniform in their beliefs, even when those perspectives are erroneous.[35] Groupthink renders "group members . . . uniform in their views" seeing "only the positive, not the negative, about group attitudes and behavior."[36] It is "a group dynamic [that] binds group members together and blinds them to their failings and abuses."[37] Group members "will collectively discipline any member who fails to stand uniformly behind the group's perspective and are dismissive, even contemptuous, of those outside the group and of views other than their own."[38] These observations based on social psychology may explain the sweeping criticism of SOX. The inner circle, or corporate elite, is unified in its criticism of SOX, but this anti-SOX discourse may be the result of groupthink among the business inner circle.

Another phenomenon of board membership may explain why most directors are critical of SOX. Commentators have observed that because most directors are chosen from a small network of people who belong to many of the same organizations, a closely knit group is created.[39] Because one director is likely to serve on several boards, ideas or even rumors about the merits of corporate governance reform expressed at one large company's board meeting are likely to spread to almost all other boards of large corporations in a matter of months.[40] Interlocking board memberships create a cluster of individuals among whom ideas spread easily.[41] Monthly board meetings and a "small-world network" of directors combine to provide the ideal opportunity for spreading practices, strategies and rumors among business leaders.[42] Anti-SOX discourse spreads easily from board to board.

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35. *See* Marleen O'Connor, *The Enron Board: The Perils of Groupthink*, 71 U. CIN. L. REV. 1233 (2003).

36. James Fanto, *Whistleblowing and the Public Director: Countering Corporate Inner Circles*, 83 OR. L. REV. 435, 462 (2004) (concluding that groupthink may explain why so many members of the corporate inner circle either participated in, or failed to object to the behavior that led to the corporate scandals).

37. *Id*. at 441.

38. *Id.* at 462.

39. *See* Gerald F. Davis, Mina Yoo & Wayne E. Baker, *The Small World of the American Corporate Elite, 1982-2001*, 1 STRATEGIC ORG. 301 (2003).

40. *Id.* at 320–21.

41. *Id.*

42. *Id.* at 321.

III. CURRENT IMPLEMENTATIONS OF AND INTERPRETIVE CHANGES TO THE ACT

A. SECTION 404: FINANCIAL REPORTING CONTROLS

Much of the criticism of SOX has focused on Section 404, the most contentious of the Act's provisions. Section 404 requires managers to create, maintain and test processes that monitor internal controls over financial reporting, thereby decreasing the likelihood that financial statements will contain material inaccuracies. Even though the costs of complying with 404 have decreased in each of the three years after the provision became effective, the business community complains vociferously that compliance costs outweigh the benefits provided under 404.[43] Business leaders lament that they have far too little time to spend on attending to core business issues because so much time, money and effort go into 404 compliance.[44] They express concern that the time and effort invested in complying with the internal control and reporting requirements reduce the type of innovation that makes businesses profitable. This has been especially problematic for smaller companies. Also, the enhanced auditing requirements have strained relationships between clients and their auditors. Firms complain that overzealous auditors focus on irrelevant minutiae, further wasting managers' time and the shareholders' money.

In the years immediately after SOX's enactment, the SEC provided no guidance for managers with respect to complying with Section 404.[45] In June, 2007, however, the SEC responded to the business community's concerns about the costs of complying with 404 by issuing interpretive guidance[46] that the SEC's Deputy Chief Accountant says is "not a retrenchment" of 404.[47] The SEC's Deputy Chief Accountant described the principles on which the SEC's interpretive guidance is based:

> The first principle is that management should evaluate whether it has implemented controls that adequately address the risk that a material misstatement in the financial statements would not be prevented or detected in a timely manner. The second principle is that management's

43. Kara Scannell, *Moving the Market: Costs Fall Again for Firms To Comply With Sarbanes*, WALL ST J., May 16, 2007, at C3. "Total compliance costs in 2006, the third year companies have had to follow the new rules, fell 23 percent . . . from the prior year. That is 35 percent lower than the first year. . . ." *Id.*; *see also* Amy Borrus, *Learning to Love Sarbanes-Oxley*, BUS. WK., Nov. 21, 2005, at 126–28 (describing some companies' being able to "cut costs and boost productivity" as an effect of complying with Section 404).

44. Joe DosSantos, *Master Data Management as a Compliance Solution*, SEC. INDUSTRY NEWS, June 18, 2007, at 4.

45. *See* John W. White, Dir., Div. of Corporation Fin., SEC, Statement: SEC's Proposed Interpretive Guidance to Management for Section 404 of Sarbanes-Oxley Act (May 23, 2007), *available at* http://www.sec.gov/news/speech/2007/spch052307jww.htm.

46. *Rules and Related Matters*, SEC NEWS DIG., June 21, 2007.

47. Kara Scannell, *Moving the Market: Softening a Sarbanes-Oxley Thorn; SEC Makes Progress on Tweaking the Rules for Unpopular Provision*, WALL ST. J., Apr. 5, 2007, at C2.

> evaluation of evidence about the operation of its controls should be based on its assessment of risk.[48]

In other words, the SEC advises managers to focus on the risk that financial statements will contain material inaccuracies in order to comply with 404.[49]

The Commission declined to provide more specific guidance, rules or examples because the Commission staff wanted management to focus on the principle of risk and how it operates at a manager's particular company.[50] A list of specific rules, standards or examples would inspire managers to take an approach under 404 that would have them simply ticking off items on an articulated checklist. This approach would have managers focus on form rather than substance or principles. The changes to 404 take aim at the check-the-box approach that managers have taken:

> We're re-orienting 404 to focus on what truly matters to investors—and away from expensive and unproductive make-work procedures that waste investors' money and distract attention from what's genuinely material. No longer will the 404 process tolerate procedures performed solely so someone can claim he considered every conceivable possibility.[51]

A rules-based approach may require managers to consider matters not relevant to their firms and the risk that their firms' financial statements may be materially misleading.[52] The SEC's principles-based interpretation of 404 is aimed at avoiding this type of inefficiency. SEC Chairman Christopher Cox predicted that principles-based compliance that focuses on the risk of material financial misstatements will be particularly beneficial for smaller companies:[53]

> Compliance costs should come down because the new SEC guidance that's been developed specifically for management will allow each small

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48. Zoe-Vonna Palmrose, Deputy Chief Accountant, SEC, Statement: SEC's Proposed Interpretive Guidance to Management for Section 404 of Sarbanes-Oxley Act (May 23, 2007), *available at* http://www.sec.gov/news/speech/2007/spch052307zvp.htm.

49. *Commission Announcements*, SEC NEWS DIG., May 5, 2007.

50. *Id.* "In adopting the revisions [to 404's interpretation] . . . regulators said small companies, in particular, should benefit by being able to focus audits on financial records that appeared to present the greatest risks of fraud." Robert Schroeder, *Regulators Asked for Sarbanes-Oxley Costs*, MARKETWATCH, June 12, 2007, http://www.marketwatch.com/news/story/regulators-asked-sarbanes-oxley-costs/story.aspx?guid=%7BC6871C12-7A3C-4F9F-BBCB-36D95CA474EE%7D.

51. Christopher Cox, Chairman, SEC, Testimony Concerning Section 404 of the Sarbanes-Oxley Act and Small Business Before the H. Comm. on Small Business (June 5, 2007), *available at* http://www.sec.gov/new/testimony/2007/ts060507cc.htm; Robert Schroeder, *Further Tweaks Urged for Sarbanes-Oxley*, MARKETWATCH, Feb. 26, 2007, http://marketwatch.com/news/story/further-tweaks-urged-sarbanes-oxley/story.aspx?guid=%7B80E96DF9-A846-4624-B3F0-98133388BE2F%7D (noting that under the new guidelines corporate managers have more flexibility in preparing financial reports because the new guidance does not require "every financial control to be checked").

52. *See* Palmrose, *supra* note 48.

53. Cox, *supra* note 51.

> business to exercise significant judgment in designing an evaluation that is tailored to its individual circumstances. Unlike external auditors, management in a smaller company tends to work with its internal controls on a daily basis. They have a great deal of knowledge about how their firm operates. Our new guidance allows management to make use of that knowledge, which should lead to a much more efficient assessment process.[54]

The PCAOB coordinated with the SEC to make changes in the way auditors comply with Section 404 that are similar to the changes made under the Commission's 404 interpretive guidance for corporate management.[55] Auditing Standard No. 5 has replaced the original internal control auditing standard articulated in Auditing Standard No. 2.[56] The new standard for auditors, like the guidance given management, incorporates a principles-based approach that focuses on the risk that a particular company's financial statement would contain material misinformation.[57] This approach, like the approach to be taken by management, allows auditors to customize their audits according to important risks.[58] This means that auditing costs for smaller, less complex companies will not be unreasonably high because auditors will not spend time investigating details that are not related to the risk of disclosure inaccuracies. Auditors are encouraged to use "professional judgment in the 404 process, particularly in using risk-assessment"[59] and in "determining when and to what extent the auditor can use the work of others."[60]

B. SECTION 806: WHISTLEBLOWERS

Another section of the Act that vividly illustrates a context in which conclusions about the applicability of SOX have narrowed is Section 806.

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54. *Id.*

55. Press Release, Pub. Co. Accounting Oversight Bd., Board Approves New Audit Standard for Internal Control Over Financial Reporting and, Separately, Recommendations on Inspection Frequency Rule (May 24, 2007), *available at* http://www.pcaobus.org/News_and_Events/News/2007/05-24.aspx.

56. *Id. See generally* Press Release, SEC, SEC Approves PCAOB Auditing Standard No. 5 Regarding Audits of Internal Control Over Financial Reporting; Adopts Definition of "Significant Deficiency" (July 25, 2007), *available at* http://www.sec.gov/news/press/2007/2007-144.htm (describing the improvements of Auditing Standard No. 5 over No. 2).

57. Press Release, Pub. Co. Accounting Oversight Bd., *supra* note 55.

58. Robert Schroeder, *Accounting Board OKs Sarbanes-Oxley Changes*, MARKETWATCH, May 24, 2007, http://www.marketwatch.com/news/story/accounting-board-streamlines-sarbanes-oxley-rules/story.aspx?guid=%7B0F1CDE25-ED55-4045-9460-5ED6BF079BE7%7D.

59. Press Release, SEC, SEC Commissioners Endorse Improved Sarbanes-Oxley Implementation to Ease Smaller Company Burdens, Focusing Effort on 'What Truly Matters' (Apr. 4, 2007), *available at* http://www.sec.gov/news/press/2007/2007-62.htm; *see also* Robert Schroeder, *SEC Agrees to Coordinate Auditing Proposals*, MARKETWATCH, Apr. 4, 2007, http://www.marketwatch.com/news/story/sec-agrees-coordinate-auditing-proposals/story.aspx?guid=%7B52D19FEB%2DFC9E%2D4B14%2DBA07%2DF4C99BC351A5%7D.

60. Press Release, SEC, *supra* note 59.

This section prohibits employers from retaliating against employees who report conduct the employees reasonably believe to be "a violation of . . . any rule or regulation of the Securities and Exchange Commission, or any provision of [f]ederal law relating to fraud against shareholders."[61] Section 806 also protects employees who report conduct they reasonably believe to be a violation of four criminal statutes: "Frauds and Swindles;"[62] "Fraud by wire, radio or television;"[63] "Bank fraud;"[64] and "Securities Fraud."[65]

It seemed that by enacting Section 806, Congress understood the importance of corporate whistleblowers and the need to protect them from employer retaliation. The author of a 2003 practice-oriented article observed that corporate employers' careful compliance with SOX's whistleblower provisions would "foster an ethical atmosphere within the company."[66] He predicted that "Sarbanes-Oxley's mandated ethics rules will have a substantial impact on corporate organization, culture and procedures."[67] Moreover, in describing the Act's potential to establish more ethical corporate climates, the author predicted that SOX's impact would extend beyond the narrow context of fraud against investors. He believed that SOX compliance would promote "the creation of an ethical corporate environment that stresses compliance with all applicable employment laws throughout the company.[68] SOX "can provide the catalyst to create a corporate culture that encourages early internal reporting, prompt and thorough investigation, and constructive resolution of employee complaints, *whether related to fraud or other inappropriate conduct*. Such actions will not only limit whistleblower lawsuits, they will instill investor confidence."[69]

These predictions about the impact of SOX and its protection of whistleblowers did not come to fruition. Whistleblower litigation under SOX in the years since its enactment has yielded a narrow interpretation and application of Section 806. For example, an employee at Northrup Gruman Synoptics revealed that his supervisors submitted false internal reports, misclassified internal expenses, and that one used the company's contractors to remodel his home.[70] The administrative law judge who heard

61. Sarbanes-Oxley Act of 2002 § 806, 18 U.S.C.A. § 1514A (2006).

62. 18 U.S.C.A. § 1341.

63. 18 U.S.C.A. § 1343.

64. 18 U.S.C.A. § 1344.

65. 18 U.S.C.A. § 1348.

66. Mark R. Attwood, *When The Whistle Blows: Renewed Enthusiasm Among Employee Watchdogs*, 1378 PLI/CORP 1157, 1176 (2003).

67. *Id*. at 1183.

68. *Id*. at 1161.

69. *Id*. at 1178 (emphasis added).

70. Marshall v. Northrup Gruman Synoptics, Case No. 2005-SOX-00008, at 2 (Dep't of Labor June 22, 2005), http://www.oalj.dol.gov/Decisions/ALJ/SOX/2005/MARSHALL_HUNTER_

the case held that Section 806 did not apply to protect the Northrup employee because his whistleblowing merely related to his supervisors' violations of the company's internal ethical standards.[71] In another case, an employee revealed that her supervisor engaged in the unethical handling of mutual fund accounts, resulting in unjustified charges to clients.[72] An administrative law judge held that Section 806 did not protect her.[73] These two cases demonstrate how the discourse about ethics has narrowed since 2002. The Act's protection of whistleblowers does not extend to employees who reveal conduct that is "merely" unethical.

Commentators have concluded that whistleblower protection under Section 806 is inadequate for a variety of reasons.[74] The high failure rate for whistleblowers who bring retaliation claims,[75] coupled with the business community's discourse about the Act's shortcomings, reduces the likelihood that whistleblowers trust that the protection from retaliation articulated in the Act is real. Unlike some members of the general public who may be apathetic and/or uninformed about the current discourse about the shortcomings of SOX, whistleblowers are vividly aware of the vitality with which the Act is criticized.

Whistleblowers may not feel adequately protected under Section 806 because administrative law judges have narrowly construed the applicability of whistleblower protection.[76] Also, because corporate executives, directors and other business leaders are almost united in their criticism of SOX,[77] their solidarity on this issue is a factor that will likely discourage whistleblowers from coming forward with information. Of course, there are other factors that contribute to the vulnerability of whistleblowing employees, but anti-SOX discourse is especially chilling in the corporate

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v_NORTHROP_GRUMMAN_SYN_2005SOX00008_(JUN_22_2005)_091435_CADEC_SD.PDF.

71. *Id.* at 5.

72. Barnes v. Raymond James & Assoc., Case No. 2004-SOX-58, at 4 (Dep't of Labor Jan. 10, 2005), http://www.oalj.dol.gov/Decisions/ALJ/SOX/2004/BARNES_ALEXANDRIA_M_v_RAYMOND_JAMES_and_AS_2004SOX00058_(JAN_10_2005)_143558_CADEC_SD.PDF.

73. *Id.* at 6.

74. *See, e.g.*, Beverley H. Earle & Gerald A. Madek, *The Mirage of Whistleblower Protection Under Sarbanes-Oxley: A Proposal for Change*, 44 AM. BUS. L.J. 1 (2007); Miriam A. Cherry, *Whistling in the Dark: Corporate Fraud, Whistleblowers, and the Implications of the Sarbanes-Oxley Act for Employment Law*, 79 WASH. L. REV. 1029 (2004).

75. *See* Stewart S. Manela, *Blowing the Whistle on Fraud in Companies*, NAT'L L. J., Mar. 8, 2004, at S1 (noting that "[s]o far, most whistleblower charges have not been upheld").

As of March 21, 2006, 714 Sarbanes-Oxley whistleblower cases had been filed with the Department of Labor . . . . Six hundred nineteen cases have been completed . . . . Of these . . . 454 were dismissed, 92 were withdrawn, and 96 were determined to have merit (resulting in 81 settlements). Debra S. Katz, *Whistleblowing, Sarbanes-Oxley, and Retaliation Claims*, SM097 ALI-ABA 487, 489 (2007).

76. *See supra* notes 71–73 and accompanying text.

77. *See* discussion *infra* Part IV.B.

environment, easily silencing employee whistleblowers who do not want to jeopardize their careers.

The silence of potential whistleblowers is one of the casualties in the war against the Act waged by some members of the business elite. The vulnerability of whistleblowers vividly illustrates how SOX has missed its mark. Protection for whistleblowers under 806 could have extended to those who reported material facts that, if left unreported, would serve to undermine a company's ethical climate. Whistleblowers and the information they provide protect investors and the public interest, but SOX inadequately protects whistleblowers. In a climate where whistleblowers feel vulnerable, investors become more vulnerable because it will be less likely that corporate malfeasance will be reported.

IV. PARTICIPANTS IN TODAY'S DISCOURSE ABOUT SOX

Understanding the nature of today's discourse about SOX requires identification of the participants in the discourse. Donald Langevoort identified the participants in what he calls the social construction of SOX as follows: corporate executives, institutional investors, the securities industry, accountants and auditors, lawyers, regulators, the media and corporate employees.[78] Missing from Langevoort's list, however, is the American public. Langevoort does not discuss the general public's role in the social construction of SOX, even though he noted that some of the Act's provisions aim beyond investors and address the public interest.[79]

Fifty-five percent of the American public own interests in public companies through pension plans.[80]

> [T]he overriding objective of securities regulators is to encourage greater public participation in the capital markets by strengthening transparency and investor protection . . . [t]he . . . increased reliance on private investment to fund individual retirement, and the dismantling of state-run savings plans . . . create tremendous pressure to take steps to increase the general public's willingness to invest in equities.[81]

Members of the general public who own stock indirectly through retirement plans and pension funds ("indirect investors") participate in the discourse about SOX through fund managers.[82] It seems, however, that

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78. *See* Langevoort, *supra* note 4, at 1834–45. Clearly the business community dominates the discussion. *See* Harshbarger & Jois, *supra* note 21, at 6 ("[C]orporate interests have been particularly well-received in today's political climate.").

79. *See* Langevoort, *supra* note 4.

80. John Biggs, former Chairman & CEO of TIAA-CREF, Keynote Address at Loyola University Chicago School of Law Symposium: Emerging Issues: Integrated Risk Management and Corporate Governance (Apr. 20, 2007).

81. Daniel L. Goelzer, *Auditing Under Sarbanes-Oxley: An Interim Report*, 7 BUS. & SEC. L. 1 (2007).

82. For example, Sean Harrigan, the president of the California Public Employees Retirement System (CalPERS) board of directors from 2002 until 2004 considered it his "duty to speak out on

members of the general public who are not part of the investing class, and who are not indirect investors, are excluded from the discourse.

A. PUBLIC PARTICIPATION IN TODAY'S DISCOURSE ABOUT SOX

The 2002 discourse about SOX was directed at the general public because of the outrage expressed by some Americans concerning their perceptions of pervasive corruption within corporate America. Donald Langevoort has noted the public nature of SOX discourse in 2002.[83] Michael Perino observed that SOX was the result of politicians who engaged in "political grandstanding"[84] as a response to "the public outcry over seemingly widespread corporate malfeasance."[85] The general public was part of the discourse because the entire nation, not just investors, was affected by the Corporate Scandals.[86] Today's discourse about SOX, however, no longer includes the general public. The general public is largely unaware of the business community's criticism of SOX and the changes that criticism inspired.

One explanation for the public's ignorance about the Act's shortcomings is found in the dichotomy between what business leaders have said about SOX to the public and what they say to each other. Even though condemnation of the Act has spread quickly among business leaders, "many from the corporate world . . . are reluctant to talk on the record and thereby show 'bad faith' regarding the [Act]."[87] This reluctance on the part of business leaders to speak publicly about their disapproval of the Act evidences the potential power of the public to influence corporate policy. Business leaders are concerned about what the public thinks. They care deeply about their public images. But, if corporate leaders are talking only among themselves and not on the record about their disdain for SOX, public citizens will remain unaware of the political pressure the business community is applying on regulators to tone down the Act just a few years after its passage. One author, assuming that "[t]he public still has its eye on [SOX]"[88] wrote that "any open attempts to remove portions of the Act, or

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behalf of CalPERS against despicable business practices and individual greed . . . ." Sean Harrigan, *The Corporations Couldn't Tolerate My Activist Voice*, L.A. TIMES, Dec. 5, 2004, at M5. Harrigan was fired from his position as president of CalPERS in 2004. *Id*.

83. *See* Langevoort, *supra* note 4.

84. Perino, *supra* note 25, at 673.

85. *Id.* at 677.

86. For example, the collapse of Enron and WorldCom affected employees who lost retirement savings, and even had an adverse impact on the communities in which the bankrupted companies once did business. "[E]mployees, shareholders, and creditors experience[d] first-hand the consequences of the corporation's bankruptcy, and . . . the reverberating effects of Enron's demise undermine[d] confidence in U.S. stock markets." Dallas, *supra* note 9, at 1.

87. Doherty, *supra* note 25, at 40.

88. Chris Morrison, *Challenging the Validity of Sarbanes-Oxley, Pt. 2*, FIN. WIRE (Feb. 7, 2007), http://www.investrend.com/articles/article.asp?analystId=0&id=44965&topicId=160&level=160.

even entirely re-work it, are certain to hit a wall of outrage."[89] The wall of public outrage, however, has crumbled.

B. CHANGES IN NEWS COVERAGE OF SOX

In the immediate aftermath of the Corporate Scandals, corporate governance issues were part of news reporting aimed at the general public.[90] Today, criticisms of SOX are almost virulent,[91] and they are very convincing, but the criticisms are most completely covered in the financial press, excluding citizens who do not read business or legal news. Almost all of today's discussions criticizing the Act occur beyond the scrutiny of the general public. So far, changes to SOX have been confined to the way the Act is interpreted or implemented, but because the public may no longer have its "eye on" SOX, even more radical changes that may occur in the future are likely to go unnoticed.

I examined news articles describing the business community's criticism of SOX appearing in three major newspapers—the *New York Times*, the *Washington Post*, and the *Los Angeles Times*.[92] My goal was to assess how the media reported news about criticisms of SOX, including efforts to roll back, or pare down, some of its provisions. I wanted to know how the story was reported to the general public and whether Americans who are not lawyers, accountants, in the business world or part of the investing class have easy access to information about the way SOX is criticized, interpreted and implemented more than five years after its enactment.

I found many newspaper reports about the Corporate Scandals in 2002 and very few in 2007.[93] Other scandals relating to stock options backdating[94] and the mutual fund industry[95] have occurred in the years since the 2001/2002 scandals, so it is not surprising that there are fewer stories

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89. *Id.*

90. "[C]orporate governance became an issue of national attention, as was exemplified by President Bush's speech about corporate abuses in the early days of the revelation of the scandals." Fanto, *supra* note 36, at 477.

91. *See* Langevoort, *supra* note 4, at 1833–45.

92. *See* Appendix A *infra* for a description of the author's search methodology and choice of publications. One commentator provided an interesting discussion of the ways that financial journalists may help to uncover managerial malfeasance. *See* Michael J. Borden, *The Role of Financial Journalists in Corporate Governance*, 12 FORDHAM J. CORP. & FIN. L. 311 (2007).

93. *See infra* Appendices B and C for the full search results.

94. *See, e.g.*, Press Release, SEC, SEC Charges Former Apple General Counsel for Illegal Stock Option Backdating (Apr. 24, 2007), *available at* http://www.sec.gov/news/press/2007/2007-70.htm; Press Release, SEC, SEC Announces $6.3 Million Settlement With Former Take-Two Interactive Software, Inc. CEO in Stock Option Backdating Scheme (Feb. 14, 2007), *available at* http://www.sec.gov/news/press/2007/2007-20.htm.

95. *See, e.g.*, Press Release, SEC, Prudential to Pay $600 Million in Global Settlement of Fraud Charges in Connection With Deceptive Market Timing of Mutual Funds (Aug. 28, 2006), *available at* http://www.sec.gov/news/press/2006/2006-145.htm; Press Release, SEC, SEC Settles Fraud Charges with Bear Stearns for Late Trading and Market Timing Violations (Mar. 16, 2006), *available at* http://www.sec.gov/news/press/2006-38.htm.

about the Corporate Scandals in 2007. The story of the 2001/2002 scandals was several years old in 2007, but news reports describing criticisms of SOX in 2007 would have been timely and relevant. The business community's discussion in 2007 criticizing the Act and the accompanying calls for paring down certain of its provisions was not as exciting as the details of the 2002 Corporate Scandals reporting, but it was an important story nevertheless. There were very few articles, however, describing criticisms of SOX, efforts to tone down the Act, or changes in interpretation of the Act in 2007.[96] Moreover, almost all of the 2007 news articles reporting criticisms of SOX appeared somewhere in the newspapers' business section, and most times not on the front page of that section. Members of the general public who are not part of the legal or business communities could easily miss such coverage. This is in sharp contrast to newspaper reports in 2002 when a significant number of articles about SOX or the Corporate Scandals appeared in the newspapers' main sections, some on the front page, easily accessible to the general public.[97]

C. PUBLIC OPINION POLLS

Legislators, regulators and other policymakers may have overstated the level of public outrage even in 2002, the year that SOX was enacted. It seems that a segment of the American public was outraged, but it may have been slightly less than one-third of the public.[98] Presumably, outraged citizens would follow news coverage of the corporate scandals very closely, but in a survey conducted by the Pew Research Center, only 31% of Americans said they followed coverage by news organizations about Enron or WorldCom "very closely."[99] Seventeen percent did not follow the story closely, 33% followed "fairly closely," and 18% followed "not too closely."[100]

Karlyn Bowman compiled public opinion studies regarding the Corporate Scandals for the American Enterprise Institute.[101] She noted the possibility that two-thirds of the American public may not have followed the Corporate Scandals story very closely because SOX had been enacted to address the issue.[102] The public was perhaps satisfied that the problem was resolved by the legislation. She hypothesized, however, that the public's long-standing distrust of business leaders better explained why most

96. *See infra* Appendix C.
97. *See infra* Appendix B.
98. AM. ENTER. INST., AEI PUBLIC OPINION STUDIES: TAKING STOCK OF BUSINESS: PUBLIC OPINION AFTER THE CORPORATE SCANDALS 14 (2006), *available at* http://www.aei.org/docLib/20031121_Business2.pdf [hereinafter PUBLIC OPINION AFTER CORPORATE SCANDALS] (survey by the Pew Research Center).
99. *Id.*
100. *Id.*
101. *Id.*
102. *Id.*

Americans did not follow the story very closely.[103] According to a survey by the Gallup Organization 50% of the American public felt that corporate corruption was "always like this."[104] Another survey conducted by Zogby International revealed that 64% of American citizens felt that "fraudulent and misleading financial reporting by major corporations [has] always been commonplace."[105]

Bowman may be right about the public's opinion that corporate corruption was a problem before the 2001 and 2002 scandals, but the public's perception of business executives' ethical standards dimmed even more after hearing and reading about Enron. For example, in 2000, 23% gave business executives high marks for honesty and ethical standards.[106] In 2001 (presumably before the story about Enron was uncovered) 25% of American citizens rated the honesty and ethical standards of business executives "high" or "very high."[107] The portion of American citizens who thought that business executives were honest and ethical was low in 2000 and 2001; but by February 2002, the percentage of Americans who thought business executives were honest and ethical dropped to just 16%.[108] In any event, it is clear that by the middle of 2002, Americans thought very little of the ethical standards of business executives.

In 2004, public opinion regarding big business had not improved.[109] And, in 2005, the public continued to give low marks for the ethical and moral practices of corporate leaders.[110] The public also continued to believe

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103. *Id.*

104. PUBLIC OPINION AFTER CORPORATE SCANDALS, *supra* note 99, at 16 (survey by the Gallup Organization). That is, corporations were "always" corrupt. *Id.*

105. *Id.* (survey by Zogby International). Bowman also hypothesized that most Americans who worked for corporations did not feel as though their own companies were plagued by the kind of corruption that destroyed Enron and WorldCom. She thought that this explained why many did not follow the corruption coverage more closely. *Id.* at 16–17.

106. *Id*. at 10 (survey by the Gallup Organization).

107. *Id.*

108. *Id*. For contrast purposes it is interesting to note that in May 1985, 55% of the public thought that most corporate executives were not honest. *Id.* at 12 (survey by CBS News). By July 2002, 67% of those surveyed thought most executives were not honest. *Id.* However, the public perception of whether "people who run most companies" were "honest and ethical" had increased to 54% by June 2002. *Id.* at 11 (survey by the Gallup Organization/UBS).

109. Pollsters asked the following:

> Which of following statements comes closer to your view: 'Cases of wrongdoing among chief executives of major corporations represent a problem of a few corrupt individuals in a system that is mostly honest and above board,' or 'Cases of wrongdoing among chief executives of major corporations is a widespread problem in which many business executives are taking advantage of a system that is failing'?

Fifty percent agreed with the latter statement, while 40% agreed with the former. *Id.* at 13 (survey by L. A. TIMES).

110. PUBLIC OPINION AFTER CORPORATE SCANDALS, *supra* note 99, at 12 (survey by Princeton Survey Research Associates). Only 2% rated the ethical and moral practices of corporate leaders as "excellent." *Id.* at 27 (survey by Princeton Survey Research Associates).

that corruption affected the "business environment" to a large or moderate extent in 2005.[111]

In a September 2002 poll, Americans were asked about the legislative response to the corporate scandals:

> As you may know, President Bush recently signed into law a measure that stiffens criminal penalties against executives who commit corporate fraud and sets new regulatory requirements for accounting firms and corporate executives. With this new law in effect and enforcement stepped up, do you think that enough will have been done to respond to the issue of corporate corruption, or should more be done?[112]

Only 24% thought that enough had been done. Seventy-one percent thought that more should be done.[113] Another poll asked Americans the following:

> Thinking for a moment about the corporate scandals that happened earlier this year at companies like Enron and WorldCom, how effective do you think the measures taken by Congress and federal regulators have been to fix these problems - very effective, somewhat effective, not too effective, or not effective at all?[114]

Only 6% thought SOX and related regulations were "very effective," and 40% thought the legislative and regulatory responses were "somewhat effective."[115] Thirty-four percent thought the legislation and regulations that responded to the Enron and WorldCom scandals were "not too effective," and 16% thought the response was "not effective at all."[116]

As the surveys described above reveal, in the first three years after SOX was enacted, many members of the American public thought that corruption in the business community was pervasive, and that business leaders were not ethical and honest. A large segment of the American public thought that the legislative and regulatory responses to the scandals could have been more effective. None of the polls that I saw asked Americans whether they were outraged by the corporate scandals. The polls, however, clearly indicate that big business had a long-standing public image problem that worsened with the advent of the 2001/2002 corporate scandals. This is no surprise. What is surprising, however, is that news coverage about the scandals was not followed more closely by more citizens. In any event, even if fewer Americans followed the story very closely than was thought

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Eighteen percent gave a rating of "good." *Id.* Forty-one percent responded "only fair," and 34% rated the ethical and moral practices of corporate leaders "poor." *Id.*

111. *Id.* at 27–28 (survey by the Gallup International Voice of the People Survey). Thirty-one percent said that corruption affected the business environment "to a moderate extent." *Id.* Forty percent said that corruption affected the business environment "to a large extent." *Id.*

112. *Id.* at 24 (survey by NBC News/WALL ST. J.).

113. *Id*.

114. *Id.* (survey by the Gallup Organization).

115. *Id*.

116. PUBLIC OPINION AFTER CORPORATE SCANDALS, *supra* note 99, at 24.

in 2002, business leaders and politicians were concerned that public regard for big business would plummet.

I found no 2006 or 2007 polls asking about the public's reaction to the Corporate Scandals and the resulting legislative and regulatory changes. I suspect, that in 2007, even fewer members of the general public, including indirect investors, who are not lawyers, accountants or members of the business community or the investing public, are following coverage about the business community's criticism of SOX, or the changes that have been made in the way the Act is implemented and interpreted. I so conclude because these stories are reported primarily in the financial press and legal literature that average Americans do not read.

VI. CONCLUSION: THE EFFECT OF THE LACK OF PUBLIC PARTICIPATION IN THE DISCOURSE ABOUT SOX

In the immediate aftermath of the Corporate Scandals, most of the general public was outraged. In 2002 and 2003, because business leaders were worried about public outrage concerning corporate malfeasance, SOX was able to change more than the details relating to financial reporting, internal controls and corporate governance in general. It changed corporate climates, at least temporarily. At least in the immediate months after its passage, the Act moved discussions about corporate ethics from the periphery of corporate discourse to the center.[117]

Congress enacted SOX to restore investor confidence, but the Act was also a legislative attempt to appease the general public and reduce the outrage of American citizens who witnessed and condemned the deplorable conduct of a few corporate executives. One of the Act's goals was to assuage the concerns of all Americans, not just investors. Business leaders, concerned about their public image, were slow to criticize SOX, and quick to respond favorably to calls for more ethical corporate climates.[118] Now, more than five years after SOX was enacted, much of the public's outrage has turned into apathy. Many average Americans are no longer paying close attention.

There is more than one potential explanation for today's public apathy and ignorance concerning SOX. Perhaps the public is confident that legislative and regulatory responses to the Corporate Scandals adequately addressed the corporate malfeasance problem. Or, Americans may feel impotent in the face of what they perceive as longstanding, continuing, and inevitable misconduct on the part of business leaders. Or, the explanation may be much simpler. Perhaps the American public is largely unaware of

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117. For example, Section 406 of the Act requires companies "to disclose whether or not, and if not, the reason therefor, [the company] has adopted a code of ethics for senior financial officers." Sarbanes-Oxley Act of 2002 § 406, 15 U.S.C.A. § 7264 (2006).

118. *See* discussion *supra* Part II.A.

the way SOX is criticized, and the small changes to its interpretation and implementation that have resulted from the criticisms, because recent news reports on this topic are not easily accessible to the general public.[119] Whatever the explanation, public attention is no longer focused on SOX or the Corporate Scandals. In a speech President George W. Bush gave on Wall Street about regulatory issues, he said that "[a] free and vibrant economy depends on *public* trust."[120] But, because there is a lack of informative media coverage that is likely to reach Americans who are not business people, accountants, lawyers or part of the investing class, the general public knows little-to-nothing about today's discussions and criticisms concerning SOX.

One observer wrote that the "lessening of public attention coupled with broadening protests on the part of business regarding"[121] SOX has resulted in the willingness of politicians and regulators to change SOX.[122] The decrease in public attention, however, impacts more than politicians and regulators and their inclination to change the Act. Today's lack of public consciousness about SOX and its critics has a significant impact on business leaders. If the public is no longer paying attention, the business community no longer needs to concern itself with its public image. This dramatically reduces the likelihood that ethical business climates will be at the forefront of discussions in the business community. The business community's criticism of SOX, coupled with the lack of public observation, has the power to change the nature of compliance with SOX in particular, and the way companies discuss and consider ethical issues in general.

Business leaders complain that SOX was hastily enacted and that its benefits are severely outweighed by its costs, thereby reducing the competitiveness of U.S. companies in the global economy. The business community's criticism has led its members to challenge the Act's legitimacy. Once individuals deem a law illegitimate, it is likely that their compliance will be marginal, or they may not comply at all.[123] This means that corporate agents' marginal compliance or noncompliance with the details of the Act's provisions is more likely. This may not be significant if SOX's detractors are right that it is unlikely that the detailed requirements under its provisions will improve financial reporting and reduce accounting fraud. But SOX's significance extends beyond its details. The value of SOX is found in the reason for its enactment: The public interest is served and

119. *See* discussion *supra* Part IV.B.

120. *See* John D. McKinnon & Christopher Conkey, *Bush Gives Hopes to Foes of Sarbanes-Oxley Law*, WALL ST. J., Feb. 1, 2007, at A4.

121. Morrison, *supra* note 88. Even Eliot Spitzer, former Governor of New York State and famous for his crusade against corporate misconduct when he was New York State's Attorney General, joined the chorus of those who say that SOX should be relaxed. *Id.*

122. *Id.*

123. *See* Donald C. Langevoort, *Someplace Between Philosophy and Economics: Legitimacy and Good Corporate Lawyering*, 75 FORDHAM L. REV. 1615, 1622–25 (2006).

investors are protected if corporate agents focus on the risk that financial statements will be materially misleading. Interpretive guidance from the SEC and PCAOB focus on this principle of risk.[124] But business leaders, because they have deemed SOX illegitimate, may ignore not only the Act's details but its underlying principles as well.

The public determines whether an organization's noncompliance or marginal compliance with law is legitimate.[125] This will not occur with respect to SOX because the public is excluded from rollback and changing interpretation and implementation discussions. Donald Langevoort writes that "the good lawyer has to be sensitive to and engage the client's agents on those aspects of the law or regulation that reflect societal expectations of appropriate behavior—that is, legitimacy."[126] The corporate lawyer must make her client aware of conduct that is inconsistent with "emerging societal expectations."[127] There may, however, be no societal expectations with respect to the legitimacy of SOX at this point, because most of the criticism of SOX is part of a discourse that plays out primarily among businesspeople, lawyers, accountants and the investing class, rather than society in general. This means that there is no societal determination of the legitimacy of marginal or cosmetic compliance with SOX. In fact, societal expectations have evolved little since 2002, the year that SOX was enacted.

Two authors called for citizens to participate in efforts to achieve ethical corporate climates by insisting that the companies in which they invest engage in good corporate governance practices, "even when markets are doing well."[128] Professor Roberta Romano wrote that it is "important to work to educate *the media*, *the public*, political leaders and agency personnel regarding the reality that Congress committed a public policy blunder in enacting SOX's corporate governance mandates and that there is a need to rectify the error."[129] SOX *should* be fixed, the media should educate the public about the need to fix it, but its repair should not occur beyond public scrutiny.

124. *See supra* notes 55–57 and accompanying text.

125. "[I]f conduct inexcusably falls short of societal demands, the firm will lose access to important resources and be disadvantaged." Langevoort, *supra* note 123, at 1625.

126. *Id*. at 1627.

127. *Id.*

128. Harshbarger & Jois, *supra* note 21, at 7.

129. Roberta Romano, *The Sarbanes-Oxley Act and the Making of Quack Corporate Governance*, 114 YALE L.J. 1521, 1603 (2005) (emphasis added).

APPENDIX A

SEARCH METHODOLOGY AND MEDIA SELECTION

I searched for articles from the *New York Times* that mentioned in the headline or lead paragraph the words "corporate scandal," "misconduct," "conduct" or "behavior" and any one of the names of the companies involved in the Corporate Scandals, i.e., Enron, WorldCom, Tyco or Global Crossings, starting December 1, 2001 and ending December 31, 2002. I found 207 articles. Most of the articles appeared on the front page of the business section (fifty-three), or within the business section (sixty-three), but thirty articles appeared on the front page of the newspaper's main section, easily seen by, and accessible to, the general public. Five articles appeared inside the main section, also easily seen by the general public. Also inside the main section were twenty-one editorials discussing some aspect of the Corporate Scandals.

Some of the *New York Times* articles appeared in sections of the paper (other than the main section) frequently read by members of the general public who are not part of the business community. The Week in Review section is likely to be read by the general public. This section appears in the Sunday edition of the *New York Times*, which is widely read by members of the general public. I found five articles on page one of the Week in Review section, and six articles inside that section. Four editorials about the Corporate Scandals were published in the Week in Review section of the Sunday edition of the *New York Times*.

Other 2002 articles appeared in other popular sections likely to be read by individuals not involved in law, accounting or business: three articles were printed on the front page of the Metropolitan section; four were printed inside the Metropolitan section; one appeared on page one of the Lifestyle section; one appeared on the front page of the Sports section (discussing the renaming of the sports stadium that had been named after Enron); one was on the front page of the New Jersey Weekly section; and one appeared on the front page of a special Working section.

I found 183 articles in the *Washington Post* with the following words in the headline or lead paragraph: "corporate scandal," "misconduct," "conduct" or "behavior" and any one of the names of the companies involved in the Corporate Scandals, i.e., Enron, WorldCom, Tyco, or Global Crossings, during the time period starting December 1, 2001 and ending December 31, 2002. Many of the 2002 *Washington Post* articles were published in the sections most likely to be seen by the general public. Unlike the *New York Times* and the *Los Angeles Times*, the *Washington Post* carried two articles about Enron in the Magazine section of its Sunday edition. Thirty-two articles appeared on the front page of the newspaper's main section; three were printed on page two of the main section; two articles on page three of the main section; and three articles on page four of the main section. Also in the *Washington Post*'s main section were sixteen articles about the Corporate Scandals, and thirteen editorials. Ten articles were printed in the *Washington Post*'s Metro section, and four editorials appeared in that section. Four items appeared in Outlook, a regular feature in the Metro section. Articles about the Corporate Scandals were printed in the widely-read Style section of the *Washington Post* in 2002. Three stories appeared on the front page of the Style section, and one on page three of that section.

I found similar results when comparing news coverage in the *Los Angeles Times* in 2002 with coverage in 2007. I searched for articles with the words "scandal," "misconduct," "conduct" or "behavior," appearing in the headline or lead paragraph of articles that also mentioned Enron, WorldCom, Tyco or Global Crossings in the headline or lead paragraph. This search included articles from December 1, 2001 to December 31, 2002. I found 216 articles. Most of them appeared in the paper's Business section. I found, however, that in 2002, forty-one articles appeared on the front page of the main section of the *Los Angeles Times*, easily seen by members of the general public who may not read the paper's Business section. Also likely to be seen by the general public were nineteen articles inside the newspaper's main section. Members of the general public who do not regularly read business news may more regularly read the *Los Angeles Times* California Metro section. In the California Metro section, one article was printed on the section's first page, and twelve articles appeared inside the California Metro section. The California Metro section also contained eleven editorials or commentaries touching on a variety of issues relating to the Corporate Scandals. One article about changing the name of Enron Field to Astros Field appeared in the Sports section.

I performed the same search for *New York Times* articles that mentioned in the headline or lead paragraph the words "corporate scandal," "misconduct," "conduct" or "behavior" and any one of the names of the companies involved in the Corporate Scandals, i.e., Enron, WorldCom, Tyco or Global Crossings, for 2007. I found only thirteen articles. Only one of the thirteen articles appeared on the front page of the main section; four were printed on the front page of the Business section; six appeared inside that section; two were editorials that appeared inside the main section. I found two additional articles when I looked for "Sarbanes" appearing in an article's headline or lead paragraph with the names Enron, WorldCom, Tyco or Global Crossings, in 2007. Both appeared inside the Business section.

As with the *New York Times* and the *Los Angeles Times*, the *Washington Post* published far fewer articles about the Corporate Scandals and their aftermath in 2007. I duplicated the search I had done in 2002 to find articles in 2007. I found eight articles about the Corporate Scandals when I searched during the time period starting January 1, 2007 and ending December 31, 2007. Seven of the eight articles appeared on the front page of the paper's Financial section; one appeared on page three of that section. When I modified my search to find "Sarbanes" in the headline or lead paragraph with the names Enron, WorldCom, Tyco or Global Crossing for the time period starting January 1, 2007 and ending December 31, 2007, I found seven articles in the *Washington Post*. Four of the articles appeared in the newspaper's Financial section, one was printed in the main section, and one editorial appeared in the main section.

I performed in 2007 the same search I did in 2002 in the *Los Angeles Times*. After searching the time frame beginning January 1, 2007 and ending December 31, 2007, I found only four articles. Each of the four articles appeared inside the Business section of the *Los Angeles Times*. When I changed the search for 2007 articles in the *Los Angeles Times* by looking for the word "Sarbanes" appearing with Enron, WorldCom, Tyco, or Global Crossings, I found seven articles, six in the Business section, and one editorial in the paper's main section.

APPENDIX B: ARTICLES PUBLISHED IN 2002

THE NEW YORK TIMES

ARTICLES APPEARING AT THE FRONT PAGE OF THE MAIN SECTION:

Gretchen Morgenson, *Enron's Collapse: News Analysis; A Bubble No One Wanted to Pop*, N.Y. TIMES, Jan. 14, 2002, at A1
Richard A. Oppel, Jr. & Kurt Eichenwald, *Enron's Collapse: The Overview; Arthur Andersen Fires an Executive For Enron Orders*, N.Y. TIMES, Jan. 16, 2002, at A1
Richard W. Stevenson & Richard A. Oppel, Jr., *Enron's Many Strands: The Overview; U.S. To Reconsider Agency Contracts in Enron Scandal*, N.Y. TIMES, Jan. 26, 2002, at A1
Alex Berenson, *The Markets: Stocks & Bonds; Bearson Prowl As Market Ends A Dreary Week*, N.Y. TIMES, July 13, 2002, at A1
Stephen Labaton, *Bush Tries to Shrink S.E.C. Raise Intended for Corporate Cleanup*, N.Y. TIMES, Oct. 19, 2002, at A1
Diana B. Henriques & Geraldine Fabrikant, *Deciding on Executive Pay: Lack of Independence Seen*, N.Y. TIMES, Dec. 18, 2002, at A1
Gretchen Morgenson & Patrick McGeehan, *Corporate Conduct: The Overview; Wall Street Firms are Ready to Pay $1 Billion in Fines*, N.Y. TIMES, Dec. 20, 2002, at A1
Elisabeth Bumiller, *Corporate Conduct: The President; Bush Signs Bill Aimed at Fraud in Corporations*, N.Y. TIMES, July 31, 2002, at A1
David E. Sanger & David E. Rosenblum, *Corporate Conduct: Washington Memo; White House Moves to Limit Corporate Scandals' Fallout*, N.Y. TIMES, July 25, 2002, at A1
Richard A. Oppel, Jr., *Corporate Conduct: The Overview; Negotiators Agree on Broad Changes in Business Laws*, N.Y. TIMES, July 25, 2002, at A1
David Leonard, *Corporate Conduct: The Impact; Is Uncertainty The Only Thing That Is Certain?*, N.Y. TIMES, July 17, 2002, at A1
David Sanger & Richard A. Oppel, Jr., *Corporate Conduct: The Overview; Senate Approves a Broad Overhaul of Business Laws*, N.Y. TIMES, July 16, 2002, at A1
Richard A. Oppel, Jr., *Corporate Conduct: Congress; G.O.P. In Congress Moving Past Bush on Business Fraud*, N.Y. TIMES, July 12, 2002, at A1
Richard A. Oppel Jr., *Corporate Conduct: The Legislation; Senate Backs Tough Measures To Punish Corporate Misdeeds*, N.Y. TIMES, July 11, 2002, at A1

David E. Sanger, *Corporate Conduct: The Overview; Bush on Wall St., Offers Tough Stance*, N.Y. TIMES, July 10, 2002, at A1
Floyd Norris, *Corporate Conduct: News Analysis; Hard Talk, Softer Plans*, N.Y. TIMES, July 10, 2002, at A1
Elisabeth Bumiller & Richard A. Oppel, Jr., *Corporate Conduct: The President; Bush Defends Sale of Stock and Vows to Enhance S.E.C.*, N.Y. TIMES, July 9, 2002, at A1
David Leonard, *Corporate Conduct: Compensation; Anger at Executives' Profits Fuels Support for Stock Curb*, N.Y. TIMES, July 9, 2002, A1
Richard W. Stevenson, *Corporate Conduct: News Analysis; Old Business In New Light*, N.Y. TIMES, July 9, 2002, A1
Richard W. Stevenson & Alison Mitchell, *Turmoil At WorldCom: The Politics; Parties Maneuver Over Risks In Growing Business Scandal*, N.Y. TIMES, June 28, 2002, at A1
Kurt Eichenwald & Simon Romero, *Turmoil at WorldCom: The Decision Making; The Latest Corporate Scandal Is Sudden, Vast and Simple*, N.Y. TIMES, June 27, 2002, at A1
Simon Romero, *Turmoil At WorldCom: The Overview; WorldCom Facing Charges Of Fraud; Inquiries Expand*, N.Y. TIMES, June 27, 2002, at A1
Simon Romero & Alex Berenson, *WorldCom Says It Hid Expenses, Inflating Cash For $3.8 Billion*, N.Y. TIMES, June 26, 2002, at A1
Stephen Labaton & Richard A. Oppel, Jr., *Enthusiasm Waning In Congress For Tougher Post-Enron Controls*, N.Y. TIMES, June 10, 2002, at A1
Kurt Eichenwald, *Andersen May Find Its Fate In Hands of the Man It Fired*, N.Y. TIMES, Mar. 25, 2002, at A1
Kurt Eichenwald, *Enron's Many Strands: News Analysis; Talk of Crime Gets Big Push*, N.Y. TIMES, Feb. 4, 2002, at A1
Gretchen Morgenson, *Enron's Collapse: News Analysis; A Bubble No One Wanted to Pop*, N.Y. TIMES, Jan. 14, 2002, at A1
Kurt Eichenwald, *Enron's Collapse; Audacious Climb to Success Ended in a Dizzying Plunge*, N.Y. TIMES, Jan. 13, 2002, at A1
Kurt Eichenwald & Jonathan D. Later, *Justice Dept. to Form Task Force To Investigate Collapse of Enron*, N.Y. TIMES, Jan. 10, 2002, at A1
Stephen Labaton, *Praise to Scorn: Mercurial Ride Of S.E.C. Chief*, N.Y. TIMES, Nov. 10, 2002, § 1, at 1.

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Patrick McGeehan, *Solomon Smith Barney Chief Ousted in Citigroup Shuffle*, N.Y. TIMES, Sept. 9, 2002, at A20

Steven Greenhouse, *Workers Are Angry and Fearful This Labor Day*, N.Y. TIMES, Sept. 2, 2002, at A12
Evelyn Nieves & Elisabeth Bumiller, *In Twin Speeches, Bush and Cheney Vow to Fight Fraud*, N.Y. TIMES, Aug. 8, 2002, at A21
Louis Uchitelle, *Enron's Many Strands: The Buzz; World Economic Forum Plays Down the Scandal*, N.Y. TIMES, Feb. 4, 2002, at A20
Paul Zielbauer, *Enron Political Scandal? In Connecticut, Hardly*, N.Y. TIMES, Apr. 7, 2002, § 1, at 32 (appearing in the widely-read Sunday edition)

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A Rudderless S.E.C., N.Y. TIMES, Dec. 3, 2002, at A30
John McCain, *The Free Market Needs New Rules*, N.Y. TIMES, July 8, 2002, at A19
Robert H. Frank, *The Case For Sanctions*, N.Y. TIMES, Aug. 24, 2002, at A13
A Bankrupt Bill, N.Y. TIMES, July 27, 2002, at A10
Lester C. Thurow, *Government Can't Make the Market Fair*, N.Y. TIMES, July 23, 2002, at A19
Kevin Phillips, *The Cycles of Financial Scandal*, N.Y. TIMES, July 17, 2002, at A19
Hedrick Smith, *Market Crisis Management*, N.Y. TIMES, June 20, 2002, at A25
Blunt Talk by an Investment Banker, N.Y. TIMES, June 7, 2002, at A26
Paul Krugman, *Greed Is Bad*, N.Y. TIMES, June 4, 2002, at A19
Reformers All, in Enron's Wake, N.Y. TIMES, Feb. 2, 2002, at A18
Bill Keller, *Enron for Dummies*, N.Y. TIMES, Jan. 26, 2002, at A15
A New Rallying Cry for Reform, N.Y. TIMES, Jan. 22, 2002, at A18
James Kunen, *Enron's Vision (and Values) Thing*, N.Y. TIMES, Jan. 19, 2002, at A19
Holding Lawyers Accountable, N.Y. TIMES, Aug. 15, 2002, at A22
Phillip L. Zweig, *Learning Old Lessons From a New Scandal*, N.Y. TIMES, Feb. 2, 2002, at A19
Arthur Levitt, *Who Audits the Auditors?*, N.Y. TIMES, Jan. 17, 2002, at A29
David Callahan, *Private Sector, Public Doubts*, N.Y. TIMES, Jan. 15, 2002, at A21
Bob Herbert, *Joined at the Hip*, N.Y. TIMES, Jan. 10, 2002, at A27
Adam Cohen, *Before WorldCom, the Funeral Industry Set the Standard for Venality*, N.Y. TIMES, Sept. 3, 2002, at A18

David Skeel & William Stuntz, *Another Attempt to Legislate Corporate Honesty*, N.Y. TIMES, July 10, 2002, at A21
Business Scandals Are About Politics, N.Y. TIMES, Feb. 23, 2002, at A14

ARTICLES APPEARING ON THE FRONT PAGE OF THE WEEK IN REVIEW SECTION

Louis Uchitelle, *In Name Only; Call It the (Pick Your Poison) Recovery*, N.Y. TIMES, July 7, 2002, § 4, at 1
Kurt Eichenwald, *The Nation: Clay Feet; Could Capitalists Actually Bring Down Capitalism?*, N.Y. TIMES, June 30, 2002, § 4, at 1
Alex Berenson, *The Nation: Scream!; Hold On for a Wild Ride*, N.Y. TIMES, July 21, 2002, § 4, at 1;
Richard L. Berke, *Ideas & Trends: Power House; Greed, Pain, Excesses. Oh, What a Lovely Issue*, N.Y. TIMES, Jan. 27, 2002, § 4, at 1
Don Van Natta Jr., *The World: School for Scandal; Trying To Pass Damage Control 101*, N.Y. TIMES, Jan. 13, 2002, § 4, at 1

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David Leonard, *The Nation; The Boom Was Real. But So Were Its Mirages*, N.Y. TIMES, June 9, 2002, § 4, at 4
Janny Scott, *Ideas & Trends; Once Bitten, Twice Shy: A World of Eroding Trust*, N.Y. TIMES, Apr. 21, 2002, § 4, at 5
Kurt Eichenwald, *The Nation; White-Collar Defense Stance: The Criminal-less Crime*, N.Y. TIMES, Mar. 3, 3002, § 4, at 3
Jonathan D. Later, *The Nation: Is the Law an Ass?; Corporate Greed Turns Lawyers Into Heroes*, N.Y. TIMES, Feb. 3, 2002, § 4, at 6
Kurt Eichenwald, *Business; Enron Watch*, N.Y. TIMES, Jan. 27, 2002, § 4, at 2;
Diana B. Henriques, *Ideas & Trends; Those Old-Time Shares Are Looking Good Again*, N.Y. TIMES, Aug. 18, 2002, § 4, at 6

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Andrew Kohut, *Increasingly, It's the Economy That Scares Us*, N.Y. TIMES, July 14, 2002, § 4, at 15
Underwriting Fraud, N.Y. TIMES, Aug. 25, 2002, § 4, at 8
Campaign Reform's 'Armageddon', N.Y. TIMES, Feb. 10, 2002, § 4, at 14
Other People's Money, N.Y. TIMES, May 19, 2002, § 4, at 14

OTHER 2002 ARTICLES APPEARING IN OTHER POPULAR SECTIONS LIKELY TO BE READ BY INDIVIDUALS NOT INVOLVED IN LAW, ACCOUNTING OR BUSINESS

John Tierney, *The Big City; Blame Game Has Two Sets Of Standards*, N.Y. TIMES, Jan. 18, 2002, at B1
Richard Perez-Pena, *Business Woes Add Scrutiny To Campaigns*, N.Y. TIMES, Aug. 13, 2002, at B1
Clyde Haberman, *NYC: Dark Days For Ethics Of All Stripes*, N.Y. TIMES, Aug. 16, 2002, at B1
Shaila K. Dewan, *Cuomo Calls for Restricting Corporate Political Contributions*, N.Y. TIMES, July 10, 2002, at B2
Charles V. Bagli, *Troubles at Arthur Andersen Threaten Times Square Deal*, N.Y. TIMES, March 12, 2002, at B4
Richard Perez-Pena, *Candidate for Lieutenant Governor Facing Scrutiny Over Business Dealings*, N.Y. TIMES, Aug. 10, 2002, at B2
David Kocieniewski, *Trenton to Sue Four Companies Over State Pension Fund Losses*, N.Y. TIMES, Nov. 26, 2002, at B5
Rachel Lehmann-Haupt & Warren St. John, *Corporate Bad Guys Make Many Seek the Road Less Traveled*, N.Y. TIMES, July 21, 2002, § 9, at 1 (appearing in the widely-read Sunday edition)
Edward Wong, *Baseball; Astros' Ballpark No Longer Enron Field*, N.Y. TIMES, Feb. 28, 2002, at D4
Neil Genzlinger, *Jersey; High Thoughts, Low Behavior and Tiger Bites*, N.Y. TIMES, July 21, 2002, § 14NJ, at 1
Steven Greenhouse, *The Mood at Work: Anger and Anxiety*, N.Y. TIMES, Oct. 29, 2002, at G1

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Kathleen Day, *President Names Insider to Lead SEC*, WASH. POST, Dec. 11, 2002, at A1
Christopher Stern & Brooke A. Masters, *WorldCom Agrees to Continuing Oversight*, WASH. POST, Nov. 27, 2002, at A1
David S. Hitzenrath & Shannon Henry, *SEC Chief Is Subject of Probe*, WASH. POST, Nov. 1, 2002, at A1
Eric Pianin, *Bitter Colo. Race Is All Business*, WASH. POST, Oct. 19, 2002, at A1
Jonathan Weisman, *At Firms, Dual Profit Pictures*, WASH. POST, Oct. 10, 2002, at A1
Ariana Eunjung Cha, *Corporate Scandals Tainting Donations*, WASH. POST, Sept. 15, 2002, at A1

Howard Kurtz, *Solemnity Slips Under the Covers*, WASH. POST, Sept. 2, 2002, at A1
Alec Klein & Dan Eggen, *U.S. Opens Criminal AOL Probe*, WASH. POST, Aug. 1, 2002, at A1
Juliet Eilperin & Jonathan Weisman, *Congress Targets Tax Havens; House Vote Shows Perception of Corporate Abuse*, WASH. POST, July 30, 2002, at A1
Jim VandeHei & David S. Hilzenrath, *Hill Leaders Agree on Corporate Curbs*, WASH. POST, July 25, 2002, at A1
Robert E. Pierre & Kari Lydersen, *Stocks Sliding, but Sales Aren't*, WASH. POST, July 20, 2002, at A1
David S. Hilzenrath & Helen Dewar, *Senate Votes 97-0 To Rein In Firms*, WASH. POST, July 16, 2002, at A1
Jim VandeHei & Juliet Eilperin, *Political Caution in Zeal for Reform; Hill Plays Down Its Pro-Business Past*, WASH. POST, July 13, 2002, at A1
David S. Hilzenrath & Helen Dewar, *United Senate Passes Anti-Fraud Measures*, WASH. POST, July 11, 2002, at A1
Steven Pearlstein, *Measures Not Likely to End Abuses*, WASH. POST, July 10, 2002, at A1
Jonathan Krim & Christopher Stern, *2 Key WorldCom Witnesses Silent*, WASH. POST, July 9, 2002, at A1
David S. Hilzenrath, *Senate Set For Action To Reform Audit Sector; Corporate Scandals Spur Call for Tougher Rules*, WASH. POST, July 7, 2002, at A1
Dana Milbank, *Bush SEC Delay Called 'Mix-Up'*, WASH. POST, July 4, 2002, at A1
Dana Milbank, *In Growing Bad News, Risk for Bush and GOP*, WASH. POST, June 28, 2002, at A1
Steven Pearlstein, *Corporate Scandals Taking Toll On Markets*, WASH. POST, June 26, 2002, at A1
Jackie Spinner, *Sullied Accounting Firms Regaining Political Clout*, WASH. POST, May 12, 2002, at A1
David S. Hilzenrath, *Andersen's CEO to Resign*, WASH. POST, Mar. 27, 2002, at A1
Susan Schmidt & David S. Hilzenrath, *Andersen Chared in Shredding Probe*, WASH. POST, Mar. 15, 2002, at A1
Carrie Johnson, *Enron Case Shapes Up As Tough Legal Fight*, WASH. POST, Feb. 18, 2002, at A1
Dana Milbank, *Bush Is Quiet in Campaign Bill Fight*, WASH. POST, Feb. 10, 2002, at A1
Paul Duggan & Lois Romano, *Enron Official Shaken In Days Before Suicide*, WASH. POST, Feb. 9, 2002, at A1

Peter Behr, *How Chewco Brought Down an Empire*, WASH. POST, Feb. 4, 2002, at A1
Juliet Eilperin, & Helen Dewar, *Campaign Bill Heads For a Vote In House*, WASH. POST, Jan. 25, 2002, at A1
Anne Hull, *For Enron Families, Dreams and Faith Lost*, WASH. POST, Jan. 20, 2002, at A1
Peter Behr, *Chairman Told Workers Stock Was 'Bargain'*, WASH. POST, Jan. 19, 2002, at A1
David S. Hilzenrath & Peter Behr, *Enron Chief Got Early Warning*, WASH. POST, Jan. 15, 2002, at A1
Mike Allen, *Firm's Saga Could Dog Bush in Election Year*, WASH. POST, Jan. 11, 2002, at A1

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Edward Walsh, *Hopes High in House For Campaign Reform*, WASH. POST, Feb. 11, 2002, at A2
Susan Schmidt & David S. Hilzenrath, *Enron's Watkins Advised Lay on How to Blame Others*, WASH. POST, Feb. 14, 2002, at A2
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Mary Mcgrory, *Claws for Alarm*, WASH. POST, Jan. 17, 2002, at A3
Arthur Andersen Indicted, WASH. POST, Mar. 17, 2002, at A3
Jonathan Weisman, *U.S. Deficit Ballooning, but Not as a Hot Issue*, WASH. POST, Aug. 25, 2002, at A4
Richard Morin, *More Curbs on Business Sought*, WASH. POST, July 2, 2002, at A4
Mike Allen, *Corporate Penalties Weighed; Bush to Unveil Stiffer Standards Against Fraud, Deception*, WASH. POST, July 2, 2002, at A4
Thomas B. Edsall & Dana Milbank, *Democrats, GOP Debate The Effects Of Enron*, WASH. POST, Jan. 20, 2002, at A5
Dana Milbank, *Wrapping Up Tough Questions With Foil*, WASH. POST, Jan. 22, 2002, at A13
T.R. Reid, *British Official Resigns Over Enron Role*, WASH. POST, Feb. 2, 2002, at A22
Glenn Kessler, *Enron Appears to Have Paid Taxes*, WASH. POST, Feb. 3, 2002, at A10
Juliet Eilperin, *Populist Pitch—Without the Punch; Both Parties Claim Title, but Neither Makes Full-Scale Attack on Moneyed Interests*, WASH. POST, Feb. 6, 2002, at A6
Juliet Eilperin, *Democrats Frustrated Enron Hasn't Resonated in Polls*, WASH. POST, Mar. 10, 2002, at A8
Vernon Loeb & Ellen Nakashima, *Army Secretary's Job Hinges on Answers to Enron Queries*, WASH. POST, Mar. 13, 2002, at A11

Ben White, *Lieberman Urges New Laws To Prevent Another Enron*, WASH. POST, Apr. 2, 2002, at A5
Mike Allen, *Bush Mulls New Corporate Penalties*, WASH. POST, June 29, 2002, at A11
Kristen Hays, *Watkins Quits Job At Enron*, WASH. POST, Nov. 17, 2002, at A8
Mike Allen, *Bush Offers Economic Optimism*, WASH. POST, Aug. 8, 2002, at A8
Japan, S. Korea Wary of Following U.S., WASH. POST, July 22, 2002, at A12
Dan Balz, *Democrats Assail Bush on Economy and Foreign Policy*, WASH. POST, July 30, 2002, at A5
Kathleen Day, *NASD to Toughen Penalties*, WASH. POST, July 29, 2002, at A8
Jonathan Weisman, *Returning Fire, Republicans Take Aim at Rubin*, WASH. POST, Aug. 4, 2002, at A6
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Robert J. Samuelson, *Corrosion of Confidence*, WASH. POST, June 12, 2002, at A31
Robert Samuelson, *The Search for Scapegoats*, WASH. POST, June 19, 2002, at A21
The Next Post-Enron Issue, WASH. POST, Sept. 10, 2002, at A14;
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Jo Becker, *Democrats Criticize GOP Ties to Business*, WASH. POST, July 12, 2002, at B4

Jo Becker, *Shriver Polls for Views on Own Portfolio; Candidate Attacks GOP Ties to Business*, WASH. POST, July 17, 2002, at B1
Jo Becker, *Shriver Polls to See if Stocks Are Liability*, WASH. POST, July 17, 2002, at B1
Jo Becker, *Md.'s 8th District Democrats Assail GOP Ties to Business*, WASH. POST, July 12, 2002, at B4

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David Ignatius, *Nothing Doing*, WASH. POST, Jan. 13, 2002, at B7
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David S. Broder, *Corporate Cake*, WASH. POST, Apr. 21, 2002, at B7
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Fred Barbash, *A Sorry Bunch, But Not Sorry Enough*, WASH. POST, July 7, 2002, at B1
Rob Norton, *The Cure for Lavish Pay? Shame It to Death*, WASH. POST, Sept., 29, 2002, at B1
Dan Morgan, *When the Truth Had Consequences*, WASH. POST, Aug. 11, 2002, at B1
Michael Tomasky, *Do Unto Others . . . Oh, Never Mind*, WASH. POST, Feb. 3, 2002, at B3

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Paul Farhi, *The Essentials of a Washington Scandal*, WASH. POST, Jan. 16, 2002, at C1
Howard Kurtz, *Enron-N.Y. Times Co. Deal Highlights Media's Dilemma*, WASH. POST, July 18, 2002, at C1
Jennifer Frey, *The Woman Who Saw Red; Enron Whistle-Blower Sherron Watkins Warned of the Trouble to Come*, WASH. POST, Jan. 25, 2002, at C1
Lloyd Grove, *The Reliable Source*, WASH. POST, Oct. 25, 2002, at C3

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Dave Barry, *The Trouble With Enron*, WASH. POST, Feb. 10, 2002, at W44
Howard Kurtz, *Straight Man*, WASH. POST, May 19, 2002, at W14

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Thomas S. Mulligan, *Webster Resigns Accounting Board Post*, L.A. TIMES, Nov. 13, 2002, at 1
Edmund Sanders & Megan K. Stack, *The Nation; Enron's Ex-Finance Chief Surrenders*, L.A. TIMES, Oct. 3, 2002, at 1
Walter Hamilton, *Tyco Details Extravagance of Ex-CEO*, L.A. TIMES, Sept. 18, 2002, at 1
Elizabeth Douglass, *WorldCom Discloses $3.3 billion in Improper Accounting, Bringing the Total to $7.2 billion*, L.A. TIMES, Aug. 9, 2002, at 1
Elizabeth Douglass, Josh Meyer & Tomas S. Mulligan, *Two Central Figures in the Accounting Scandal at WorldCom Become the Latest Corporate Officers to Be Publicly Detained in a Crackdown on Fraud*, L.A. TIMES, Aug. 2, 2002, at 1
Warren Vieth, *CEO Assets Now a Debit for Cheney*, L.A. TIMES, July 29, 2002, at 1
Sallie Hofmeister & Walter Hamilton, *Adelphia Founder, 2 Sons Are Charged With Fraud*, L.A. TIMES, July 25, 2002, at 1
Richard Simon, *Congress in Accord on Business Reform Bill*, L.A. TIMES, July 25, 2002, at 1
James S. Granelli & Elizabeth Douglass, *WorldCom Files for Record Bankruptcy*, L.A. TIMES, July 22, 2002, at 1
Richard Simon & Ronald Brownstein, *Senate Passes Broad Corporate Reforms*, L.A. TIMES, July 16, 2002, at 1
Michael Finnegan, *Ssimon's Success Story Is a Secret*, L.A. TIMES, July 13, 2002, at 1
Mark Fineman, *One Man's Quixotic Quest for Telecom Glory*, L.A. TIMES, July 11, 2002, at 1
Edwin Chen & Richard Simon, *Bush Urges Tougher Laws to Fight Corporate Fraud*, L.A. TIMES, July 10, 2002, at 1
Michael A. Hiltzik, Lisa Girion & Walter Hamilton, *Critics Say the President's Plan Fails to Address Core Issues*, L.A. TIMES, July 10, 2002, at 1
Edwin Chen, *Bush Defends Chief of SEC*, L.A. TIMES, July 9, 2002, at 1
Richard Simon, *Business Scandals Force GOP to Consider Broader Reforms*, L.A. TIMES, July 8, 2002, at 1
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