

The Joy of SOX

by Frank Schuchat



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The last cycle of corporate scandals from the early part of this decade seems

like very old news by now. Ken Lay has gone on to that great boardroom in the sky. Kenny Boy's Enron accomplice, Jeff Skilling, is in federal prison in Minnesota serving a 24-year sentence, with the possibility of time off for good behavior if he acts nice and pays his lawyer's last invoices.

WorldCom's former CEO Bernie Ebbers, at age 63, is in a cell in Louisiana marking off the days of his 25-year sentence. If I had been the presiding judge at Bernie's trial, I would have read him his fate in terms a telecom executive can understand. Instead of 25 years, I would have told Mr. Ebbers his sentence was 13,140,000 minutes — nights and weekends included, no roaming. (I guess that is another reason I never will be appointed to the bench.)

Finally, the venerable accounting firm of Arthur Andersen has joined the ranks of other defunct institutions we shall never hear from again, like Pan Am, TWA and New England Republicans.

So it might make some sense that the SEC has started to chip away at the Sarbanes-Oxley legislation that was enacted by Congress in July 2002 to address the scandals at companies like Enron, WorldCom and Tyco, as well as the imperative of showing toughness in advance of mid-term elections.

The SEC already has issued new regulations to reduce the more burden

some aspects of the law for smaller public companies. Some commentators even have suggested the entire Sarbanes-Oxley regime should be scrapped because it adds a layer of cost and complexity to doing business without really improving protections for investors.

Now in principle I am not opposed to reasonable reforms. But before we go too far with this I think someone needs to ask the critical question: How will this affect lawyers?

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likes of some poor fellow who knocked off a 7-11 for a couple hundred bucks and a carton of Winstons. Martha Stewart might not be a bad cellmate, especially if neatness is your thing, but she has already paid her debt to society. There is a real premium these days on professional advice that will keep executives on the right side of the law and out of the slammer.

There are lawyers who have taken on large mortgages, second homes and second wives based on the expectation of these large fees continuing for the foreseeable future. And if you have even just skimmed the pages of the legislation affectionately referred to as SOX, you will appreciate that these lawyers are earning their fees the hard way.

There was a time when a challenging corporate governance assignment

Sarbanes-Oxley has been a veritable boon for corporate and securities lawyers across the United States. No CEO in his right mind wants to end up sharing a cell with Jeff Skilling or Bernie Ebbers or, heaven forbid, the

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was how to set up golf foursomes at a board meeting when the company had an odd number of directors. Now CEOs have an obligation to actually know what is in their company's SEC filings, and their lawyers have been working overtime to keep up.

Not only that, legal publishers have been churning out thick treatises on how to comply with Sarbanes-Oxley, and law firms and corporate legal departments have invested large sums to buy these tomes as well as additional shelving to house them along with rows of binders containing new SEC releases. Legal seminar companies have become flush offering expensive courses to educate practitioners on the new world of corporate governance. And airlines have added extra flights to transport lawyers to these courses.

So all I am saying is that Congress and the SEC should be careful and not do anything that could upset the

economy. After all, I would wager that there is not a single law firm in Colorado that had gross revenues in 2006 that were even close to the \$210 million severance package received by the CEO of Home Depot. And he doesn't even know how

to Shepardize a case. ▣

Frank, a partner with Schuchat, Herzog & Brenman, will be performing stand-up comedy in the Not Your Children's Comedy Tour at Jazz@Jacks in the Denver Pavilions Feb. 8. Show starts at 6:30 p.m. For information and reservations call (303) 433-1000 or www.jazzatjacks.com.