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COLLAPSE OF ENRON

HEARING

BEFORE THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

ONE HUNDRED SEVENTH CONGRESS

SECOND SESSION

FEBRUARY 12, 2002

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED SEVENTH CONGRESS

SECOND SESSION

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CONTENTS

	Page
Hearing held on February 12, 2002	1
Statement of Senator Allen	23
Statement of Senator Boxer	15
Article from the San Jose Mercury News, dated February 10, 2002, entitled, Enron Collapse Strongly Felt in California; From Pensions to Energy Prices, Effect on Government Is Broad	16
Statement of Senator Breaux	9
Statement of Senator Brownback	20
Statement of Senator Burns	5
Prepared statement	6
Statement of Senator Carnahan	21
Statement of Senator Cleland	13
Statement of Senator Dorgan	2
Statement of Senator Ensign	22
Statement of Senator Fitzgerald	3
Statement of Senator Hollings	1
Article from The New York Times, dated January 13, 2002, entitled, Enron's Collapse; Complex Web of Relationships in Boom and Bust	44
Statement of Senator Hutchison	10
Statement of Senator Inouye	5
Prepared statement	5
Statement of Senator Kerry	7
Statement of Senator Lott	25
Statement of Senator McCain	1
Statement of Senator Nelson	23
Statement of Senator Smith	14
Statement of Senator Snowe	12
Statement of Senator Stevens	8
Statement of Senator Wyden	11

WITNESSES

Lay, Kenneth L., Former Chairman and CEO, Enron	25
Powers, Jr., William C., Member of the Enron Board of Directors and Chairman of the Special Investigation Committee	26
Prepared statement and executive summary	29
Letter dated February 6, 2002, from William C. Powers, Jr. to Joseph F. Berardino	69

THE COLLAPSE OF ENRON

TUESDAY, FEBRUARY 12, 2002

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The Committee met, pursuant to notice, at 9:30 a.m. in room SR–253, Russell Senate Office Building, Hon. Ernest F. Hollings, Chairman of the Committee, presiding.

OPENING STATEMENT OF HON. ERNEST F. HOLLINGS, U.S. SENATOR FROM SOUTH CAROLINA

The CHAIRMAN. The Committee will come to order. For the record, this Committee on Commerce conducted its first Enron hearing on December 18, and shortly after that hearing, Mr. Kenneth Lay, the Chairman, committed to testifying on Monday, February 4. However, on Sunday night, February 3, Mr. Lay's attorneys notified the Committee that Mr. Lay would not appear, and so we canceled that hearing, and the Committee voted unanimously on February 5 to authorize the Chairman of the Committee to issue a subpoena to compel the appearance of Mr. Lay before the Commerce Committee on February 12. The Committee was notified on Sunday night, February 10, that Mr. Lay would appear before the Committee but would assert his Fifth Amendment right against self-incrimination.

We have a vote in about an hour's time. I know the Members are anxious to make their opening statements, but the request is to please make them as brief as possible, because if we went to all 23 Members it would be about an hour and 40 minutes, and I would like to get through the opening statements and swear the witness prior to that vote.

I am going to yield from side to side here. My Ranking Member, Senator McCain.

STATEMENT OF HON. JOHN MCCAIN, U.S. SENATOR FROM ARIZONA

Senator MCCAIN. Thank you, Senator Hollings, and I will make a very brief statement.

In a speech given by Mr. Kenneth Lay on April 6, 1999, at a conference sponsored by the Center for Business Ethics entitled, "Corporate Governance: Ethics Across the Board," Mr. Lay described the qualities he demanded in a Board member. I quote: "It is no accident that we put strength of character first. Like any successful company we must have directors who start with what is right, who do not have hidden agendas, and who strive to make judgments

about what is best for the company, and not about what is best for themselves or some other constituency."

He went on to say that, "Once such a board is in place, what does a CEO—and in particular, this CEO—expect from these principled, wise, and experienced directors? Again, our corporate governance guidelines are simple and straightforward. The responsibility of our board—a responsibility which I expect them to fulfill—is to ensure legal and ethical conduct by the company and by everyone in the company. . . ."

As Enron's Chairman of the Board, and CEO since 1986, Mr. Lay was expected to live up to these principles and ensure that others in his company did the same. According to the Powers report however, senior management at Enron made a mockery of Mr. Lay's words and turned the principles he described on their head.

The Powers report indicates that for years Enron engaged in financial games, hiding massive debt from its shareholders and misrepresenting its economic conditions to the public and to many Enron employees. Yet, after years of business shenanigans, and pointed warnings that Enron was going to "implode in a wave of accounting scandals," the *New York Times* has reported that during an online chat with Enron employees, as late as September 2001, Mr. Lay called Enron's stock, "an incredible bargain," and said that, "the third quarter is looking great."

Mr. Lay, I regret that you have chosen not to explain to this Committee, to the American public, and to your former employees how you, and others in senior management and on the Board of Enron apparently failed so completely to fulfill your responsibilities.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you. Senator Dorgan.

STATEMENT OF HON. BYRON L. DORGAN, U.S. SENATOR FROM NORTH DAKOTA

Senator DORGAN. Mr. Chairman, Mr. Lay's attorneys have told us that he will invoke his Fifth Amendment right against self-incrimination, and he certainly has that right. I must say, I am disappointed by that decision. I think Mr. Lay has a story to tell. We and the American people would like to hear that story. The bankruptcy of this corporation is not a garden-variety business failure. It is a bankruptcy framed by very serious questions about the behavior of officers, directors, and the accounting firm that audited the corporation's books.

It appeared to me that we have seen a corporation here inside the records that I have seen consistently challenging and bending the rules, manipulating financial information to hide debts, and booking profits that did not exist.

Some eight weeks ago, Ms. Janice Farmer sat in our witness chair. She was an Enron employee, and she told us that the bankruptcy demolished her life-savings. On behalf of Ms. Farmer and thousands of other Enron employees who lost their retirement accounts and investors who lost their savings, we have an obligation to ask how is it that 29 Enron executives and directors at the top were able to earn over $1 billion in stock sales from 1999 through mid–2001, while people at the bottom ended up losing everything.

We know that the Enron Corporation created many secret partnerships and subsidiaries off the books. They were kept off the books, despite the fact they burdened the company with additional debt. According to the Board of Directors' report, some of the partnerships were reporting income they didn't earn and incurring debt for the Enron Corporation that was never reported.

Although it appears we will not hear from Mr. Lay today, we will receive testimony from a second panelist, Mr. William Powers, the head of the special investigative committee that was established by the Enron Corporation's Board of Directors. Mr. Powers is Dean of the University of Texas Law School. He is here today to discuss with the Committee the findings from his examination of a few of the now more infamous transactions between Enron and third party entities that eventually led to this corporation's collapse, just one of which, Mr. Chairman, the report documented and documented a number, of course.

Mr. Fastow, the CFO, invested $25,000 of his own money and 60 days later took $4½ million from the corporation. This is a publicly traded corporation. That money belongs to the American stockholders. They had trust in the executives, trust in the corporation, trust in the accounting firm, and that trust was broken in this case. We need to put the pieces together to find out what has happened, and the hearing process that we will begin in this Subcommittee is an attempt to do that, Mr. Chairman.

The CHAIRMAN. Thank you. Senator Fitzgerald.

STATEMENT OF HON. PETER G. FITZGERALD, U.S. SENATOR FROM ILLINOIS

Senator FITZGERALD. Thank you, Mr. Chairman.

Mr. Chairman, during the past several weeks I have spent a significant amount of time going over the rubble that is Enron. I was disappointed to learn that you, Mr. Lay, have no intention of testifying this morning, because I have lots of questions that I think are important to ask you. And you know what, Mr. Lay, I thought that after any role you might have played in bankrupting a $100-billion-a-year company, devastating the retirement savings of thousands of your employees, spreading fear through millions of Americans concerned about their investment, and calling into question the very integrity of our capital markets, I thought that you might think it was important to answer those questions, too, but apparently you do not. Apparently you do not think it is the least you can do.

As part of the investigation underway by my subcommittee, the Consumer Affairs Subcommittee, I have looked at literally hundreds of documents, and I have heard or read the testimony of many others, of the many others who have already testified before this Committee or other congressional committees. There is a great deal of information out there. You cannot help but get angry once you begin to put together the pieces of the puzzle.

You know what I have seen, Mr. Lay? I have seen ridiculously complex transactions that boil down to simple games. For example, over and over again, Enron would transfer questionable assets to partnerships, and the partnerships would pay Enron inflated amounts for the questionable assets, and where did the partnerships get the money they paid to Enron? The partnerships raised their money from lenders or investors who often were relying on some form of guarantee or credit support from Enron itself, sometimes in the form of Enron's own stock.

Enron seems to have installed insiders as general partners of these partnerships, perhaps because honest outsiders would not have consented to pay Enron such inflated amounts for such questionable transactions. Even though Enron was really just indirectly borrowing money, it nevertheless often appears to have reported the transactions on its income statements in a way that encouraged the false perception that these essentially borrowed proceeds were recurring earnings, all the while, of course, keeping the ballooning debt off its own balance sheet and parked precariously on the partnerships' books.

As earlier debts came due, Enron would indirectly borrow even more money, both to pay off maturing obligations and to book even more fictitious income. This game kept driving Enron's earnings per share and stock price higher and higher and making senior managers whose personal portfolios were packed full of Enron stock richer and richer. This game worked until some investors and some reporters began to ask questions. At that point, new investors and new lenders became more difficult to attract, and the pyramid began to collapse.

So what have I concluded? Mr. Lay, I have concluded that you are perhaps the most accomplished confidence man since Charles Ponzi. I would say you were a carnival barker, except that would not be fair to carnival barkers. A carnie will at least tell you up front that he's running a shell game. You, Mr. Lay, were running what purported to be the seventh largest corporation in America. What is incredible to me is how long you kept it going, and how almost nobody called you on it.

There were a couple that could not be fooled, though, weren't there? Why is it, Mr. Lay, that occasionally some people will take a stand? Sharon Watkins took a stand. Sharon Watkins, a good life, a nice house, a great kid. She had everything to lose when she essentially told you that your company was a sham. She had every reason to walk away, but she stood and spoke, and you, Mr. Lay, you have every reason to stand and speak, but you will walk away. You will raise your right hand, you will take the Fifth, and then you will walk out that door, and when you walk out that door, it will be a stunning coda to the collapse of Enron.

Mr. Chairman, I would encourage my fellow Committee Members not to allow the absence of Mr. Lay's testimony to be an impediment in our continuing search for the explanations and ramifications of this significant event.

Thank you.

The CHAIRMAN. Senator Inouye.

STATEMENT OF HON. DANIEL K. INOUYE, U.S. SENATOR FROM HAWAII

Senator INOUYE. Thank you, Mr. Chairman.

The circumstances surrounding the collapse of Enron may never be fully uncovered. However, we can clearly see that the implosion of this once-towering giant has left tens of thousands of investors with enormous financial losses, a large number of employees without jobs, and pension savings eliminated.

In the first grips of this crisis, passions are running high, even in this Committee, and it is only natural that persons and organizations of all persuasions are pressing for an immediate adoption of hastily drafted legislation. As we grapple with this sad chapter in our nation's history, we need to restore public confidence in our financial reporting and market systems, and I am certain that the Chairman will use his leadership wisely to guide us toward a rational response.

Mr. Chairman, I ask that my full statement be made a part of the record.

[The prepared statement of Senator Inouye follows:]

PREPARED STATEMENT OF HON. DANIEL K. INOUYE, U.S. SENATOR FROM HAWAII

Mr. Chairman and Members of the Committee:

There can be no doubt the full circumstances surrounding the collapse of the Enron Corporation have yet to be uncovered, and may never be fully uncovered. However, at present, we can clearly see that the implosion of this once towering giant has left tens of thousands of investors with enormous financial losses, a large number of Enron employees without jobs, and their entire pension savings eliminated. We can also see that the plummeting value of Enron stock and its resulting ripple in the financial markets has had devastating effects on other pension systems as well. Even Hawaii is not immune to such effects. In the weeks and months to come, I fear we may learn of further impacts from the Enron collapse.

The viability and confidence of our financial market systems are dependent upon accurate and reliable information. Like everyone, I am most disturbed by the allegations of reckless investment practices, false reporting and illegal accounting practices, use of off-the-book balance sheets to conceal debts and liabilities and inflation of corporate earnings. Even savvy investors failed to detect Enron's financial troubles. Obviously, the collapse speaks to the possible failures in oversight of our financial market systems.

In the first grips of this crisis, passions are running high, and it is only natural that persons and organizations of all persuasions are pressing for the immediate adoption of hastily-drafted proposals. While there can be no doubt that corrective measures to restore public confidence in our financial markets will be necessary, I believe strongly that such measures must be the product of careful study and thoughtful analysis. I am confident that the Chairman will use his leadership wisely to guide us toward a rational response.

As we grapple with this sad chapter in our nation's history, we need to restore the public confidence in our financial reporting and market systems.

The CHAIRMAN. Senator Burns.

STATEMENT OF HON. CONRAD BURNS, U.S. SENATOR FROM MONTANA

Senator BURNS. Thank you, Mr. Chairman. I want to thank my Committee Members as we try to unravel the Enron disaster. I have a complete statement that I will put in the record this morning. I do want to read a paragraph.

Congress is tasked with the responsibility to the American people. We are not here to judge or convict, but we are here to assure the American people and the American investors in circumstances such as this the folks that are at the helm do the right thing, and that is to protect the right people, in other words, the transparency in the market. We need protection from people who have little control over a situation, and I consider this an extremely important task as our nation's economy and also our basic principles of our economic systems have been jeopardized by this collapse.

We have an opportunity here today to listen from a man who was there at the building of this company, had a lot to do with its leadership, in fact everything to do with its leadership, and it was on his watch that the wreck occurred, so much knowledge that he would have to help us either determine what should be done and what should not be done, as there are many people that one could point their finger. There is enough blame to go around, from banks and partners who financed the debt, pushed them into a gray area of accounting procedures, to Arthur Andersen for not reporting the financial situation correctly, or Mr. Lay and the Board of Directors for allowing it, or stock analysts for overvaluing its worth.

That does not change a thing. We can write out a laundry list of people to blame, and Enron's employees will not suddenly have a solid future, and private investors will not magically see their stock gain in value, and retirees will not see their 401(k) plans suddenly emerge.

What we have to do is glean our way through the information here and fulfill our responsibility to the American people, to the employees and the investors, and to ensure that our system works.

I ask unanimous consent my entire statement be made a part of the record.

The CHAIRMAN. It will be included.

[The prepared statement of Senator Burns follows:]

PREPARED STATEMENT OF HON. CONRAD BURNS,
U.S. SENATOR FROM MONTANA

Thank you Mr. Chairman for holding this hearing. We have all witnessed a business failure of the largest magnitude in our history. What we have been told, and what we have learned through the press and information we have gathered has prepared us for this important hearing. We have before us today, the one person that was-in-large-part, the builder of Enron Corp. But, it was also on his same watch that the immense collapse occurred. Not many times in our history have we had a single witness who represents such a large proportion of institutional knowledge as we do today in Mr. Lay.

We welcome Mr. Lay here today. I am hopeful that the information offered today can further enlighten this Committee and the American people of the events that led to this collapse. While I respect Mr. Lay's decision to invoke his Constitutional prerogative, I am disappointed in the fact that Mr. Lay intends to utilize his Constitutional right not to answer our questions.

I am hopeful he can fill in the blanks and connect the dots. I am hopeful we can answer to the 4 W's. Not only **What,** but **When** it was apparent that there were these internal problems, **Why** management acted the way they did, and **Who** were the principals. I believe we should be here to listen and be prepared to act based on the information collected and on the facts as they are known.

Congress is tasked with a responsibility to the American people. We are not here to judge or convict but we are here to ensure the American people that when a circumstance such as this, the folks that are at the helm do the right thing and that is protect those who have little to control the situation or have the ability to protect themselves. I consider this an extremely important task as our nation's economy and the basic principles of capitalism have been jeopardized by the Enron collapse.

Not disregarding any illegal action or crime, I encourage Mr. Lay and other current and former Enron associates to assist us in our effort to re-instill public confidence in their investments. This is not about Enron executives, this is about the nation's economy.

I don't think it is out of line to ask the important question of what now? What are Enron's plans for break-up and their actions and plans for former and present employees who lost so much.

We have a business crises on our hands that has overriding implications on the corporate world and its relationship to the investing world and to the loyal employees whose talents were, in large part, used to build such an enterprise.

From what we have heard from employees and investors over the past few weeks, many conclusions can be drawn. One overwhelming conclusion is that the leadership of a huge company failed to protect their own employees and on the surface, only thought about themselves. This, my fellow Committee Members is not the sign of good leadership. If there is an overwhelming dedication from the ranks of the employees with a high degree of loyalty, then there should be no less degree of dedication and loyalty expected from their leadership.

As I believe we will hear from Mr. Powers later today, there is no shortage of people to blame. Whether we blame the banks and partners who financed Enron's debt and pushed them to use gray-area accounting procedures, or Arthur Andersen for not reporting the financial situation correctly, or Mr. Lay and the board of directors for allowing it, or stock analysts for overvaluing Enron's worth, that doesn't change anything. We can write out a laundry list of people to blame and Enron's employees won't suddenly have a solid future. Private investors won't magically see their stock gain value. Retirees' 401(k) plans won't suddenly re-appear.

One thing we can do is untangle the events that led to this point. Then we must find out which rules were bent or broken along the way, and the rules that should have been in place but did not exist. Once these important questions have been answered, we can address policy concerns at the SEC, FASB and other agencies with jurisdiction or ultimately Congress. In short, Congress WILL take action to make sure this collapse and the ramification can be prevented when such a circumstance happens again.

Neither Congress nor the federal government will ever be able to keep companies from going bankrupt. Pending national security issues, that is not the role of Congress. However, one thing the federal government should guarantee is that investors know the truth. Our entire financial system relies on the transparency of a publicly traded company's value. With Enron, it is becoming clear that was not the case.

Finally, I believe that it is important to remember we cannot legislate morality, that is something we expect of all Americans regardless of whether they are powerful corporate executives or blue collar workers working to put food on their family's table. From the perspective of American morality there should be no difference. To think otherwise is a crime of humanity.

The CHAIRMAN. Senator Kerry.

STATEMENT OF HON. JOHN F. KERRY, U.S. SENATOR FROM MASSACHUSETTS

Senator KERRY. Mr. Chairman, thank you very much.

There are so many aspects of the Enron situation that it is hard to narrow it down, but I am going to try and focus on a couple of things very quickly, but let me just say that obviously, Mr. Lay, the anger here is palpable. Companies do come and go, as I think the Vice President said at some point, and people understand that when they invest, they take risks. But, this clearly is so far beyond any normal market undertaking, or opportunity for any investor, and the implications for people who trusted in the system, trusted the nature of disclosure, the nature of audits and so forth.

As Senator Burns stated, the implications for them are deep, and obviously lives have been ruined, many lives at the top and at the bottom. That is a tragedy in and of itself, but it raises critical questions for all of us. The stewardship of a major public corporation, as Senator McCain said, the words he quoted of you, is a major trust. It is a public trust in its own way, and we in this country

spend a lot of time trying to convince other nations of the virtue of transparency, accountability. We try to sell that through the framework of our trade regime of WTO. We try to spread capitalism around the world for its virtues, and here is an example of abuse that runs deep, not just within Enron itself, but further than that.

I think it is safe to say that no Member of this Committee believes that Arthur Andersen invented this method of accounting. These accounting errors send shivers through the stock market and elsewhere in this country, as people contemplate what may be behind it.

I just want to direct my colleagues to one particular component of this that I have been harping on for a number of years, because as we fight a war on terrorism, and as we talk about holding other systems accountable so we can follow the flow of money, all of us in this Congress allowed to stand for too long a system that undermines our capacity to do that, and that is offshore subsidiaries and tax havens.

There is a fine line between tax avoidance and tax evasion. As we all know, shelters have been legal in certain structure when they do legitimate business, but countless companies—and Enron took this to the heights unparalleled—go way beyond any concept of legitimacy, and so you have Exxon–Mobil with 140 offshore subsidiaries, Wal-Mart with 12, General Motors 316, Ford 73, General Electric 24, IBM 89, AT&T 36, and Verizon 21.

I would respectfully suggest to my colleagues that all of those might bear some analysis, but Enron had 2,832—in Aruba, Barbados, Bermuda, Virgin Islands, Caymans, Turks and Caicos, Bahamas, Barbados, Bermuda—just on it goes, 2,832 entities in which they were allowed for years to hide profits, losses, move the entire accountability and transparency of a company so that they could turn around and say to the American citizen, not only did we not pay taxes, but Uncle Sam owes us over $250 million.

Now, that is the law, and it bears looking at, and it bears changing. Shame on us for allowing it to stand, but more shame on them for not understanding the virtues of real accountability, real transparency, real business, and real responsibility to the American people, and I regret very deeply we are all reduced to these opening statements, which have their own sense of futility, because questions will not be answered, because the truth will not be forthcoming today, and there is a statement of its own in that fact.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you. Senator Stevens.

STATEMENT OF HON. TED STEVENS,
U.S. SENATOR FROM ALASKA

Senator STEVENS. Mr. Chairman, I remain concerned, as you and I were last week, that five or six committees are involved and have jurisdiction over these events, and I remain convinced also we must have a select committee to investigate into this situation.

In my State, the teacher's fund, the State's permanent retirement fund suffered substantial loss, and I do believe that there has to be some way to convince the public that we are committed to honesty and integrity in our investments process, and to assure, as

Senator Kerry says, their transparency, full disclosure, but that is going to take a long time, and it is not going to get anywhere if we have five or six committees all asking Mr. Lay and others to come forward and have a Fifth Amendment taken before each committee.

I do believe we need a select committee. I would welcome seeing that our Chairman and Ranking Member of the Subcommittee being named the head of that committee, but in any event, just think Banking, Finance, Judiciary, this Committee, there are so many committees that are going to be involved here. Our duty is to try to make sure that this situation does not occur again, and to make certain that the private sector understands that we are going to be the watch dogs of the process to prevent it from happening again if it is at all possible, and so I would urge you to pursue again, as I will today at noon with the leaders, the concept of a select committee.

Thank you very much.

The CHAIRMAN. Well, I agree with you, Senator. It is heartening to see that the Intelligence Committees on both the House and the Senate side now have combined in order to bring order out of chaos with respect to our doubts of intelligence causing 9/11. I would hope we could get one. I hope somebody else, of course, would be the chairman, because it is the principal responsibility of the Banking Securities and Finance Committees here. That is what has really occurred.

Senator Breaux.

STATEMENT OF HON. JOHN B. BREAUX,
U.S. SENATOR FROM LOUISIANA

Senator BREAUX. Thank you, Mr. Chairman.

I am disappointed also that Mr. Lay is not going to be testifying. I do not think anybody in Congress or probably in Washington or anywhere else really thought that he was going to testify. If I was his attorney, I would certainly be advising him to take the Fifth Amendment, which is what he is going to do this morning, based upon the advice of counsel.

I share some of the comments I think that Senator Kerry made, and the question is, is this the tip of the iceberg? I mean, did Enron invent this process, did Arthur Andersen invent this process, or is this, in fact, a process that is being used far too often by a number of publicly traded companies in this country, and so I think we have an obligation to look at Enron, we have an obligation to look at other companies that may also be engaged in some of the practices. I doubt whether Enron was the first to invent this process.

The second question that I really think needs to be answered, and that is that is it possible that these types of transactions—over 2,800 subsidiaries, special purpose entities or partnerships that in effect were off the books in being able to hide the debts and liabilities—based upon accounting practices, or based upon the law, the federal law in many cases, whether, in fact, these were legal transactions.

I for the life of me cannot imagine the law firms that are involved in this looking at these transactions and concluding that

they were all illegal and then telling the companies to go forth and do it again. I bet they were probably saying yes, these things are legal under the current law, and they should not be. I mean, if they are, then it is our obligation to look at the law and make the changes necessary to make sure that this does not happen again in the future. It should not be legal if, in fact, it is. I am not sure whether it is or not. We should find that out, and then make recommendations on the law.

A final point is that accounting services that are doing audit practices clearly should not, cannot, must not in the future be engaged and also involving themselves with internal audits of a company, or preparing balance sheets for the company if, in fact, they are in charge of auditing the company.

There has to be a clear separation. The confidence of the capitalistic system in publicly traded companies in this country are truly at stake. If we cannot rely on outside auditors making statements about the condition of a publicly traded company, then, in fact, the whole system of how we do business in this country is at stake, and so there are a lot of things we need to investigate, and I applaud the Chairman for his work in this matter.

The CHAIRMAN. Thank you. Senator Hutchison.

STATEMENT OF HON. KAY BAILEY HUTCHISON, U.S. SENATOR FROM TEXAS

Senator HUTCHISON. Thank you, Mr. Chairman.

Mr. Chairman, I think everyone has acknowledged that Mr. Lay is going to take the Fifth Amendment today. This is not a criminal investigation. That is your right to do, but there are legitimate questions that Congress needs to have the answers to, and those are the questions that will keep from happening what happened at Enron, and I would just ask Mr. Lay to consider talking about laws that need to be changed, whether it is regarding accounting procedures—I think we are now seeing the ripple in the stock market. Every company that comes forward with an accounting practice that seems out of the ordinary is suffering for it, so what are the accounting processes that are out of the ordinary that are OK, which ones are not OK, how can we fix the accounting standards so that our stock market remains strong and the confidence of consumers remains strong?

I have introduced a pension reform bill. Others on this Committee and in other parts of Congress also have introduced pension reform bills. I would like to know what we need to do in the way of information to protect employees' 401(k)'s. These are legitimate questions for Congress to ask, and I would like to ask Mr. Lay if he would consider answering them, because our job is going to be to try to protect a company from getting out of control, but it is not a criminal investigation, and I think Congress needs to ask these questions. We do need answers.

I think we need to stabilize the stock market so there is a confidence here, and I would just also like to know what the CEO of a company could do, what should one do when they see the clear evidence? We do not know when you knew that something was wrong, but clearly, when there was a free fall in the stock, at some point the head of this company knew that it was cratering. What

can a CEO do in that instance when it is in free fall to protect employees, to protect stockholders?

I think these are legitimate questions, and I would like for Mr. Lay to try, rather than just taking the Fifth, as it is his right to do, look for the answers that he can give that do not have a criminal implication but would be helpful in giving Congress the information it needs to not overreact and not underreact, but do the right thing for the stockholders and the employees of this company and America.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Wyden.

STATEMENT OF HON. RON WYDEN, U.S. SENATOR FROM OREGON

Senator WYDEN. Thank you very much, Mr. Chairman.

Mr. Chairman, over the last couple of weeks, as this Committee and others requested the appearance of Mr. Lay and other top Enron executives, many Americans have been asking, why would these Enron executives testify? What do they have to gain by testifying? I strongly support the constitutional protections afforded Mr. Lay and all witnesses, but respectfully submit that the questions should not be, what do the Enron executives have to gain by testifying, but, rather, it is what they owe the American people at this point.

Certainly, my constituents at home in Oregon who have had their 401(k)'s go from $900,000 to $100,000 in value, their first preference is to try to put Humpty Dumpty back together again. They know that is not very probable, but now they want an explanation, and at this point, like so many Americans, I am just incredulous.

We are talking about accounting reforms, for example, now in the U.S. Congress. I wrote a law, over the opposition of the accounting profession requiring that accountants actively look for fraud and bring it to the attention of government regulators if they find any evidence that it is taking place. As far as I can tell, that law was honored more in the breach than in the observance in this case, but we will not know until we get to the facts.

The fact of the matter is, it is just not possible to determine why the Enron ship is at the bottom of the ocean unless you hear from the captain, and I am especially troubled that we will not hear today because of the headlines in this morning's paper. The headlines this morning say, for the first time that Mr. Lay had a direct role in approving one of the most controversial of all the partnerships, the transactions between Enron and LJM2, a coinvestment transaction, and for the first time now there are reports that there is a direct link between Mr. Lay and this particular partnership.

But it is not possible to piece this story together just by these newspaper headlines, so I think that given the number of Oregonians and the number of Americans that have been hurt, Mr. Chairman and colleagues, we just have to go forward and use all the investigative powers to find the facts, and I look forward that we will continue to do that in a bipartisan way.

The CHAIRMAN. Very good.

Senator Snowe.

STATEMENT OF HON. OLYMPIA J. SNOWE, U.S. SENATOR FROM MAINE

Senator SNOWE. Thank you, Mr. Chairman.

I, too, join my colleagues in expressing regret that Mr. Lay will not be testifying and, although he is invoking the Fifth Amendment, that is his right to do so, his silence and the silence of other top executives will not deter us in pursuit of the truth, because as it has already been said, this bankruptcy is not a typical bankruptcy. It is a fairly of truly Homeric proportions. $67 billion in investor money has been lost, including the $1 billion belonging to the hard-working, trusting, loyal Enron employees, more than $1 billion.

Mr. Powers testified before Congress last week. In offering his special investigative report, he said this tragedy was the result of failures at many levels and by many people, a flawed idea, self-enrichment by employees, inadequately designed controls, poor implementation, inattentive oversight, simple and not-so-simple accounting mistakes, and overreaching in a culture that appears to have encouraged pushing the limit.

This is a scathing indictment, calling into question, certainly the illegalities of Enron's actions and the failure of top executives to put in place proper safeguards for investors and employees. It certainly shows that corporate corruption can have a profound influence in undermining the public's confidence in the underpinnings of our economic institutions, so the public has a very real and vested interested in getting at the truth to know what laws may have been broken and how we prevent such a catastrophe from recurring in the future.

The chairman of the SEC said last week in testimony that our federal security laws are predicated on the philosophy that investors must be fully informed and confident that our markets are free from fraudulent, deceptive, and manipulative conduct. By every account that was not the culture, certainly not the transparency that existed with respect to Enron's bookkeeping.

The special investigative report went on to say, there is a systemic and pervasive attempt by Enron's management to misrepresent the company's financial condition. In the report's words, there is a fundamental fault of leadership and management. Leadership and management began at the top with the CEO, Ken Lay, and that is why we wanted to hear from you today, Mr. Lay, because we wanted to get to the bottom of this by starting with the man at the top, and it is all the more critical, given the serious plausibility gap that exists between the facts as we know them and the assertions that have been made by you and other top executives that you were not aware of the precarious financial structure of Enron with respect to these partnerships, and that they created that precariousness, and that you did not purposely misrepresent the company's financial picture.

The fact is, you founded Enron. You set up its structure, set the tone, you served as its chief executive officer for more than 15 years, with the exception of 6 months when you did not have your hand on the corporate helm, and even then you served as Chairman of the Board, and you may well not have known all of the details of all the financial transactions of your company, but the min-

utes do show you were at a meeting in November 1997 when the Chewco partnership was created and approved, and that partnership served as a marked departure from the previous practices of Enron and ultimately contributed to two-thirds of Enron's overstatement of income since 1997.

It has been further reported that the Board waived the code of ethics rules to allow CFO Fastow to participate in the LJM partnerships with your recommendation, and at least with one of the partnerships the Board assigned responsibility to you to represent Enron in the event of any changes in the terms of the transactions from those presented to the Board, and the report found that there were significant changes for which there were no actions by you and others.

When you factor in the sheer size of the LJM partnerships alone, it accounted for at least 40 percent of Enron's reportedly pre-tax income of $1.4 billion by the year 2000. I am just underscoring the fact that it raises serious and legitimate questions. How could you and others have not known the potential and serious financial ramifications that these partnerships posed to the company, that they obviously were critical components of Enron? They obviously contributed great wealth to those at the top.

3 years ago, a Germany company called off a merger because it found your finances so troubling. Did that not send up a red flag? And, of course, as the memo from vice president Watkins, and obviously within a week of your assuming the CEO position again in August, you met with Ms. Watkins because you obviously found her heart-stopping memo foretelling the potential implosion of your company, that her concerns were obviously serious and credible, so you met with her, but yet you did not follow her suggestions that Enron hire outside consultants and lawyers to avoid a conflict of interest.

In fact, they were told not to second-guess the accounting treatment of these partnerships, and so obviously we have a number of questions. There are a number of implausibilities that need to be addressed. You, as CEO, had the responsibility of creating a culture of honesty, responsibility, integrity, and trust, and obviously that did not happen in this instance, and now it is the employees and investors who are bearing the brunt of these massive schemes and failures.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Cleland.

STATEMENT OF HON. MAX CLELAND, U.S. SENATOR FROM GEORGIA

Senator CLELAND. Thank you, Mr. Chairman.

Mr. Lay, I truly regret your failure to appear before this Committee last week and your decision not to answer any questions today. It seems that the veil of secrecy that has surrounded Enron decisions by top executives continues. As CEO of Enron, you held your company out to the public as a successful and wise investment behind this veil of secrecy. It is high time for Enron to answer to the public for the decisions you and others at Enron made that caused so many people to lose so much.

This Committee is made up of publicly elected officials, and I believe you have a responsibility to answer to us. The real people you have the responsibility to answer to are the American people, the hundreds of thousands of people who had trust in your company and invested in it, particularly 262,000 Georgia teachers that lost $127 million when your company collapsed.

Dan Scotto, the Wall Street analyst who was dismissed from his job last year for writing an unflattering report, and now we know a realistic report on Enron, drew the appropriate comparison between Enron and the story of the emperor who paraded through town with no clothes as everyone stared, afraid to speak up. We now know Enron had no clothes.

On August 15 of last year, Enron Vice President Sharon Watkins wrote a letter to you detailing questions about accounting practices of concern, and saying, "I am incredibly nervous we will implode in a wave of accounting scandals." How right she was.

On August 29, a middle manager who had been laid off by Enron sent an e-mail to the Board of Directors saying the house of cards are falling, you are potentially facing shareholder lawsuits, employee lawsuits, heat from analysts and newspapers. The market has lost overall confidence, and it is obvious why.

How prophetic these words were. These two employees were willing to stand up and ask questions. Why weren't you and Enron's Board of Directors?

Much has been made of the lock-out period employees faced in October of last year when they were unable to transfer rapidly declining shares of Enron's stock out of their 401(k) plans. Even if the change of plan administrators that caused the lock-out had previously been scheduled, why, in the light of the announced third quarter losses and the pending FEC investigation and knowing that Enron shares were plunging, was the lock-out period not postponed? How did so many people fail to say what was needed to be said, or ask what needed to be asked?

I am looking forward to working with this Committee, as well as the Governmental Affairs Committee on which I serve, as we determine how a disaster like Enron can be prevented in the future.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Smith.

STATEMENT OF HON. GORDON SMITH, U.S. SENATOR FROM OREGON

Senator SMITH. Thank you, Mr. Chairman. As I evaluate my own feelings this morning, I have really one emotion, and that is that of sorrow. I am sorry specifically for the people of Enron and its affiliates, who have lost so much, and I am also sorry for the cause that Enron championed, which was free markets.

Oregon has a particular history with Enron, because of a merger that was concluded in 1997 with Portland General Electric. I first became acquainted with Enron as the president of the Oregon State Senate. I wondered at the time of that merger how this was going to work, because Enron's whole pitch was deregulating electrical markets, and the Pacific Northwest has a highly regulated market. Nevertheless, the merger was concluded, and Enron's offi-

cials, its representatives made a great pitch to deregulate our markets.

I had some trepidation about how this was all going to work until about a year ago today, when the California market began to experience incredible difficulties with its experience in reregulating its markets. I do not call it deregulation. But I joined with Senator Feinstein in doing something that was frankly anathema to my own beliefs, and that is government interference in markets, because I, prior to politics, believed and practiced in business a free market profession, and it seemed very clear to me that what was going on was not a free market, but the right of a few to rig a market to the harm of many people.

Now, it is one thing to hold back your product to drive up a price if nobody needs your product. It is quite another thing, and it is the very reason why we regulate our energy markets, when the product is so fundamental to the ability of people to have a job, to be warm in the winter, and to have light at night, to have a system that a few are able to game to the great harm of so many.

And so the sorrow I feel is that our confidence in free markets is so shaken by this episode, but I say to people who wonder about this, this is not capitalism. This is a conspiracy that may be a crime. The courts will determine that, not this Committee, but when I called, with Senator Feinstein, for FERC intervention in the market, I did not have the evidence that I have now. I had a strong suspicion.

It was not until I read in the New York Times an Enron official quoted on November 10, 2001, that I fully comprehended the Enron Corporation's philosophy. Said he, Enron's achievement in creating, quote, regulatory black holes, close quote, fits nicely with what he called the company's core management philosophy, which was to be the first mover into a market and make money in the initial chaos, and the lack of transparency. That is what I feared when I called for price caps. That is what I know today is what went wrong.

Others have observed, Mr. Chairman, that this has many other facets. This story, we have to figure out how to make sure that it is never repeated again, to the harm of consumers, but specifically to all the people in Enron, in PGE, and to those who purchased its stock, trusting that what they were being told was the truth, but it was not, and our job is to see that the truth is told in the future to all people who want to have and should have confidence in our free market system.

The CHAIRMAN. Very good.

Senator Boxer.

STATEMENT OF HON. BARBARA BOXER, U.S. SENATOR FROM CALIFORNIA

Senator BOXER. Thank you very much, Mr. Chairman. I want to associate myself with the remarks of Senator Smith and, of course, many of my colleagues as well, but in this I want to build on what he said, because our states really got the brunt of this, as well as, of course, the employees that were treated so terribly, and the shareholders, so in my four or five minutes I think I can tell you the story of California.

Mr. Lay, I know you are not going to talk to the Committee. You have a right not to, but I have a chance to talk to you, so that is what I am going to do, is talk to you.

I have very strong feelings about what Enron did to my state. I would like to put in the record an article that just ran in the *San Jose Mercury News* just two days ago, "Enron Collapse Strongly Felt in California." I would like to put that in the record.

The CHAIRMAN. It will be included.

[The information referred to follows:]

ENRON COLLAPSE STRONGLY FELT IN CALIFORNIA; FROM PENSIONS TO ENERGY PRICES, EFFECT ON GOVERNMENT IS BROAD

San Jose Mercury News, February 10, 2002

by Brandon Bailey and Chris O'Brien

As the nation's leading cheerleader for energy deregulation, Enron played a major role in shaping the California power market that imploded in crisis last year. Now the company's spectacular collapse is threatening to cause statewide aftershocks for years to come.

The force of Enron's collapse is being felt throughout state government, where it may affect attempts to renegotiate power contracts, to probe allegations of market manipulation, and to obtain refunds from energy companies accused of gouging.

The unfolding debacle has touched the state employees pension fund, which invested in some dubious Enron partnerships, and has helped derail expansion plans of Calpine that would have made the San Jose company the largest energy generator in the world.

State officials hope that new Enron investigations will persuade other power companies to lower prices, by giving the state leverage in renegotiating $40 billion worth of electricity contracts that were signed last year when prices were at their peak.

But some analysts warn that Enron's collapse could leave the state vulnerable to a new cycle of power shortages, by making investors reluctant to finance new power plants.

With revelations about Enron coming almost daily, the state's energy market could find itself operating under a cloud of uncertainty and turmoil for years to come.

"It's the fear factor people have about another Enron," said Gary Ackerman of the Western Power Trading Forum, an industry association. "Which company is going to be next?"

Enron was never a major producer of electricity in California. Instead, the Houston-based company carved out a role in the middle. It bought power from generators and resold it to other traders as well as to California utilities and the agencies that assumed the role of buying power when the market began to collapse last year.

Estimates of Enron's California market share vary, because most trading information is never made public. Government agencies say they are barred from releasing such data. But Enron claimed to be the West's biggest energy trader, with about 20 percent of the market nationwide.

Enron denies gouging

Enron has denied charges of price gouging in California. But the company made one agency's confidential "top 10" list of power suppliers that together reaped $500 million in excess profits during one key period of 2000.

What is clear is that Enron became an economic and political force in California—a presence both in the clubby hallways of the state Capitol and in the anonymous conference rooms where engineers and number-crunchers hammered out the state's new power system.

In the early 1990s, Enron was among the first advocates of a sweeping reorganization of California's wholesale energy market. Joining forces with the state's manufacturers and large industrial firms, which wanted lower prices, Enron and its allies succeeded in getting California to adopt deregulation.

"Enron was the leader of the pack," said Eric Woychik, an economic consultant who participated in the early discussions. "They were involved in every argument."

Once deregulation was enacted in 1996, allowing customers to buy electricity from other sources besides the state's utilities, Enron moved quickly to establish itself in the wholesale market. At the height of the power crisis, energy traders said, Enron's

Web site became the first thing they checked every morning to learn the day's opening price.

Enron gave more than $680,000 in campaign contributions to politicians of both major parties. It hired experts away from California's utilities and state energy agencies to represent its interests at regulatory hearings and in the Capitol. Its chairman, Kenneth Lay, called federal regulators and Gov. Gray Davis to promote his prescription for a free-market solution to the state's energy woes.

Critics today say the cumbersome market structure that California adopted was difficult to monitor and easy for smart traders to abuse.

Enron officials denied that was their goal. In interviews last year, they said they originally pushed for a different kind of market structure.

Others were less forgiving.

"They didn't get everything they wanted, but they got enough to make a bundle of money," said Michael Shames of the Utility Consumers Action Network. "They helped design a mechanism that they later exploited."

By the year 2000, wholesale energy prices had soared throughout California, driving Pacific Gas & Electric Co. into bankruptcy and forcing the state to take over the utilities' role of buying power for California consumers.

Davis and other critics lumped Enron with power suppliers they accused of profiteering.

But after months of investigations, state officials have been frustrated in their attempts to clearly define Enron's role in California and how it might have contributed to the crisis.

Since Enron didn't own much generating capacity, it had little leverage to influence market prices, said Severin Borenstein, director of the University of California's Energy Institute.

"To know what their role was, you have to know the whole web of contracts they signed with producers and consumers," he said. "And those are not public."

Consumer lawyer Michael Aguirre, after investigating the state's energy market for more than a year, believes Enron was able to influence prices through complex trading agreements. But unless investigators force the disclosure of detailed trading records, he said, "We'll never know exactly" what happened.

Records subpoenaed

California's attorney general and a state Senate investigative committee both have issued subpoenas for Enron records, and both say the company has dragged its feet.

While the threat of shortages has subsided, the state still is saddled with $40 billion in long-term energy contracts it signed last year. With prices much lower today, critics say the state panicked and agreed to pay too much.

California officials have had little leverage to renegotiate those deals. But last month, the chairman of the Federal Energy Regulatory Commission promised a new inquiry into whether Enron used its market power to drive up prices.

If that investigation shows market prices were artificially inflated or unreasonable, officials say, it could be grounds for invalidating other contracts. Steve Maviglio, a news officer for Davis, said officials are hoping to convince other suppliers that "it's in everybody's best interests" to renegotiate before the investigation is completed.

Enron's collapse has also sent ripples through the state's business and investment communities.

The University of California says it lost nearly $145 million on its investments in Enron stock, while two of the state's public-employee pension funds also lost nearly $90 million.

The respected California Public Employees Retirement fund, which had been known as an advocate for stronger corporate governance, was embarrassed by revelations that it had invested in one of the dubious partnerships that Enron used to hide its debt from investors.

Calpine scales back

Close to home, San Jose-based Calpine has struggled to avoid being tarred with comparisons to Enron. Its stock price has declined 68 percent since Enron declared bankruptcy. Last month, Calpine announced that it would slow a plan to build dozens of new power plants in an effort to soothe the nerves of investors.

The Enron bankruptcy also has created uncertainty for thousands of businesses and institutions that get natural gas and electricity directly from Enron, mostly under contracts they signed a few years ago when Enron was trying to build a retail business.

But many of those customers oppose a plan by state regulators that could force them back to their local utilities, which are charging higher rates. That includes the University of California and California State University systems, which use Enron power at most of their campuses.

"So far, service is continuing undisturbed and the lights are still on," said Charles McFadden, a University of California information officer. He said the university expects to save about $12 million this year on a contract it negotiated with Enron in 1998.

Notes: Investigating Enron
What Enron Left Behind

How the collapse of Enron affects California now and down the road:

- California continues to pay for electricity at prices far above market rates, under long-term contracts signed when prices peaked.
- State officials hope to prod other power companies to lower prices by giving the state leverage in renegotiating $40 billion worth of electricity contracts.
- Enron's collapse could leave the state vulnerable to a new cycle of power shortages, by making investors reluctant to finance new power plants.
- San Jose-based energy company Calpine has slowed down plans to build dozens of new power plants.
- University of California and state employees retirement funds suffered multimillion-dollar losses through Enron investments.

Senator BOXER. Mr. Lay, my state was bled dry by price-gouging. Many pension plans went under—I should not say "went under," lost hundreds of millions of dollars, because there was a limit on what they could put into Enron, I might say, a limit that I support, in 401(k) plans as well, but what you did to the employees was without conscience. That is how I feel.

I am going to tell this California story in three to four minutes, really using the words of the principals more than anything else. Originally, Enron said that California would save billions of dollars by deregulation. This is a quote from Jeffrey Skilling. Under deregulation, California, "would save about $8.9 billion per year," but that did not happen, Mr. Chairman. As a result of the market manipulation during this deregulation, California paid a huge amount for electricity and let us look at this. We went from paying $7.4 billion for all of our energy needs the next year to $27.1 billion. Look at this, a 400 percent increase, or, I should say, 266 percent increase in spending on electricity and a 4 percent increase in demand, so while the Administration was saying, you use too much electricity, we had gone up 4 percent, prices went up 266 percent.

Californians were begging for help. We were asking FERC to help us. Right before you and Senator Feinstein did your bill, Bob Filner and I did ours, the same bill, FERC, please impose some type of cost-based pricing. Nothing really happened.

What was Enron saying during this crisis? Jeffrey Skilling's quote: "We are the good guys. We are on the side of the angels." That is what he was saying in public, but what Enron was really thinking was that California was being played for a fool, and this is what he said at a conference, "You know what the difference is between the State of California and the Titanic? At least when the Titanic went down, the lights were on," so in public we are the good guys, in private making jokes that our consumers were being destroyed.

It took a long time for FERC to help us, and we spent a long time wondering why. It was almost a year. Well, the *San Francisco Chronicle* helped us to understand it.

Mr. Lay, I wanted to ask you about this. You were at a meeting with Dick Cheney, and this is what—you handed him a memo, "The Administration should reject any attempt to re-regulate wholesale power markets by adopting price caps or returning to archaic methods of determining the cost-base of wholesale power. Price caps, even if imposed on a temporary basis, will be detrimental to power markets and will discourage private investment. . . ."

And lo and behold, Vice President Cheney said when asked by the *L.A. Times* about price caps, "I do not see that as a possibility, and, in fact, any package you can wrap it in, any fancy rhetoric you can prop it up with, it does not solve the problem." So, clearly, we saw the Enron philosophy being carried out here.

Now, I also want to know who Enron spoke to at FERC. In January I wrote to FERC Commissioner Wood, asking him for a listing of all meetings and phone calls between Enron executives and FERC. I still have not received this information. They keep saying it is coming. They will not give me a date certain. I hope FERC does not stonewall us the way Enron has and, if necessary, Mr. Chairman, I may call on you to help get that information.

FERC finally acted. The business community in California was at its wit's end, Mr. Chairman. We were going under. We could not take these prices any more, and when FERC acted and they imposed soft caps. The electricity price went down, and we were doing just fine, and during that period of time. Mr. Lay, I wanted to ask you about this, because we now know, because we have seen it in your SEC filings, that during this time California was keeping you afloat with these prices, you were unloading your shares of stock during this period, millions and millions and millions of dollars during this period, telling your employees everything was great and they should buy. So Mr. Lay, we got relief. There were no more blackouts.

There is just one more piece of the puzzle, and then I am done. As soon as this happened, what did some of your allies do? I wanted to ask you about this. There was a television campaign to blame Governor Gray Davis for this crisis. They called it "gray-outs," for Gray Davis. They said, he is pointing fingers and blaming others. Gray Davis says he is not responsible for California's energy problem, but there are gray-outs from Gray Davis, so this became political.

We wanted to find out who paid for those ads. We know who headed up the group. We know who that is, but it was—I will give you the name for the record, Mr. Scott Reed, but we do not know who paid for the ads, and we have had to sue to find out, and so I wanted to ask you if you knew anything about this ad campaign which tried to take the blame away from where it belongs and to make it political and put it onto the Governor, but you know, we are going to find out, because there is a lawsuit on it.

Secrecy, as Senator Cleland says, surrounds this whole Enron disaster. We cannot even find out who paid for ads blaming our Governor for this disaster. We cannot find out much of anything,

but whether it is one committee or six—and frankly, Mr. Chairman, I do not care if it is one committee or six, if it takes six to get to the bottom of it, I am all for it. If it takes one, that is fine, too, but we will find out the truth.

Thank you.

The CHAIRMAN. Senator Brownback.

STATEMENT OF HON. SAM BROWNBACK, U.S. SENATOR FROM KANSAS

Senator BROWNBACK. Thank you, Mr. Chairman.

It is important that oversight hearings like this happen so we can get facts about what happened at Enron and why it happened, and what we can do to make sure it does not happen again. I was hopeful that we would be able to get that done today, but it appears as if we are not going to hear many facts in the testimony today, and I regret that, but I do hope it is going to be coming out in the near future.

I am concerned particularly about several issues that I want to raise here, and some of my colleagues have already raised some of these already, but I want to reiterate them, because I think they are things that are important for us as a policy determination as we move forward.

I am particularly concerned about reform, particularly in pension areas. 401(k)'s and other private sector retirement savings plans have been an important and successful part of the retirement strategy for many working Americans, and we owe it to the American public to do what we can to strengthen employee pensions and to make appropriate changes to the laws that are necessary for us to strengthen those pension plans. I think that is something that clearly the situation calls out for.

Nearly half of all Americans invested directly or indirectly in the equity market's corporate financial community, and the regulators need to restore the public's trust in our capital markets, and continue to provide financial leadership. More importantly, the thousands of Enron retirees and employees whose savings were wiped out and the millions of anxious investors in the United States and around the world demand that leadership.

Now, the threat of new laws and regulations should not be the sole motive here. Rather, the corporate community's own desire to win back the public's confidence should be the driving force. It has to demonstrate quickly and effectively in their own initiative why the average investors should trust them again with their money.

As it has already been reported by the special investigative committee from Enron, the collapse of Enron is a result of a management team and its Board, together with the auditors, failing to do the right thing. I wish we could hear more specifically about that today from the CEO of the company. These include bad investments and new economy ventures, off-balance-sheet entities being set up with creative accounting to hide massive losses from such ventures—most of these ventures were collateralized by Enron stock—and finally, the true financial picture being hidden from the investment community through obscure reporting.

Actions like these led to the collapse of confidence in reporting and integrity in the management. No company, however strong its

business model, can survive that kind of catastrophe, those failures in internal controls. The corporate community should take some immediate steps in several areas.

First, I call on corporate boards to strengthen the requirements for financial experts on audit committees. Audit committees need to be proactive and engaged, and willing to challenge management and the auditors. We should also review various proposals for reform of the Financial Accounting Standards Board. There are going to be some accounting issues we need to look at as well.

Mr. Chairman, I appreciate you holding this hearing, and Mr. Lay, I know you can feel a palpable sense of disappointment, anger that a number of us have heard from our constituents who have lost millions of dollars in this. They want answers. We want answers. We were hopeful we were going to get some of those today so we could move forward with the public policymaking process. I would hope at some point in time we are going to get those.

Thank you.

The CHAIRMAN. Very good. Senator Carnahan.

STATEMENT OF HON. JEAN CARNAHAN, U.S. SENATOR FROM MISSOURI

Senator CARNAHAN. Thank you, Mr. Chairman. The reason the scandal is so offensive to most of us is that Enron's conduct violated the most basic of moral principles, principles that all of us tried to instill in our children—honesty, integrity, trust, fair play, and personal responsibility. These are the core values for most American values, and the foundation on which our nation is built. When these core values are shattered, America is weakened.

Any institution without moral bearings is like a ship without a rudder. In light of recent events, idealistic young people once drawn to a career in business or finance might well have reason to reconsider. Enron has given pause to investors wondering where to place their savings for safe and reasonable return.

Mr. Lay, we are all stunned and confused by Enron's behavior, and especially by your unwillingness to come clean with the American people. We want to know how one of the nation's largest corporations under your watch evaporated in a matter of months. We want to know, or have an explanation for why the man who was at the helm of the ship allowed it to sink. Like passengers aboard the Titanic, thousands were blissfully unaware that hidden below the waterline lurked a danger over which they had no control.

Surely you have some explanation for this unparalleled corporate tragedy and erosion of moral values, but all we have heard is the one explanation offered by Mr. Skilling. He told Congress that he was unaware of the true condition of Enron, that he was unfamiliar with the financial schemes being used to hide the company's losses and to mask its debts, but I find ignorance a difficult defense. You and the top executives at Enron were paid enormous sums of money presumably because of your financial and management expertise. It was your job to understand what the company was doing. It was your job to approve or disapprove of its course. Your failure has disheartened employees and investors alike.

My heart goes out to the thousands of loyal Enron workers who lost not only their jobs but their life savings. They trusted you, and

you told them that they should invest in Enron stock, and they trusted you when you told them to hold onto those investments. Enron's so-called aggressive accounting practices not only produced four years of false financial statements, it created a legacy of lost confidence. Fortunately, America's premier businesses, both small and large, do not look at what they can get away with through the use of cavalier accounting methods. They want to do the right thing for their employees and shareholders, and the right thing for their communities and the nation.

Somehow, Enron got off course, and I am sorry you have chosen not to help us uncover what went wrong, because in failure there are always lessons to be learned, but despite your unwillingness to speak, I will continue to ask the question that I find so terribly haunting, a question that gets to those core values that define us as Americans. I want to know why no one in authority at Enron stood up and said, this is wrong.

The CHAIRMAN. Thank you. Senator Ensign.

STATEMENT OF HON. JOHN ENSIGN,
U.S. SENATOR FROM NEVADA

Senator ENSIGN. Thank you, Mr. Chairman.

Mr. Chairman, I think that it is critical that the Congress take its time to examine this important issue. Many times we react because the emotions are high, and I think it is critical that we take the time to find out all of the facts in this case, because while we want to find out what happened here, this is more of an academic process at this point, but also a legal process for the Congress to find out what happened in an effort to prevent this from happening again. It is critical that we restore our confidence in our financial markets, our public markets, in the accounting profession and in the legal profession.

The public must know when they are investing in their 401(k) plans that they have the confidence in transparent, reliable information. The facts presented on a financial statement must be true. Right now, there are a lot of questions in people's minds, that when they are reading these public companies' financial statements, is anything else going on like what happened at Enron?

Mr. Lay, last year at a shareholders meeting you said some of your best and your brightest people could actually bring your company down, because some of their best ideas—while they had some of the best ideas—also could have some of the worst ideas. You said, because of that, it was critical that you and your management team watch closely and know what your employees were doing. I think this is critical for any effective management organization.

You also said at that time that in an interview I saw last night on television, or it was during the shareholders' meeting, you talked about your corporate culture, and how integrity was one of the most important parts of your corporate culture, and integrity had been slipping a bit.

Mr. Lay, I think that as a manager, as a CEO, you had an incredible responsibility of such a large company to the public, to your employees, to your customers, and as CEO, you ultimately were responsible for Enron corporate culture, because it is set at the top. As any CEO understands, and it is I think deplorable, (1)

that either you did not know what was going on, or (2) that if you knew what was going on. How did you think that you could get away with it?

It seems so obvious to anyone who looks at it that this was a pyramid scheme that was doomed to fail. You cannot set up false earnings and expect that not to be found out at some point. At some point you have to pay the piper, as they say.

Senator Kerry mentioned earlier about how we want to, and we try to go into emerging markets and talk about the wonderful things that capitalism has done for our country, and we talk about the rule of law, and transparency, and how it is so important for people to be able to have confidence in how they are investing in the free market system.

Mr. Lay, I believe you bear a great deal of responsibility for shaping the confidence of us being able to export capitalism, of us being able to tell our story, and it is going to be a challenge for the Congress, regulators, everybody involved, and the accounting profession, for us to bring that confidence back to what it was.

I hope that you decide at some point to do the right thing. You know, everybody makes mistakes in life, and I hope you learn from your mistakes, and you are willing to try to make up for those mistakes by taking full responsibility for what happened, telling your story, and helping us prevent it from happening in the future.

Thank you, Mr. Chairman.

The CHAIRMAN. Very good. Senator Nelson.

STATEMENT OF HON. BILL NELSON,
U.S. SENATOR FROM FLORIDA

Senator NELSON. Thank you, Mr. Chairman. It is a tough time for you, Mr. Lay. It is a tough time for the nation. I wanted to ask you just a quick question about the Florida retirement system. It was one of 33 pension funds, and it is the one that got hit the hardest.

When the stock was dropping after the SEC had announced its investigation, the money manager for the Florida retirement system, whose former manager still sits on the Enron Board, that money manager was purchasing about 3 million shares as the stock was dropping, which begs the question, what was the communication, if any, from the company or those around the company to the fourth largest pension fund in the country about acquiring the stock, and why was that stock acquired?

Mr. Chairman, that is what I would ask. Thank you.

The CHAIRMAN. Very good. Senator Allen.

STATEMENT OF HON. GEORGE ALLEN,
U.S. SENATOR FROM VIRGINIA

Senator ALLEN. Thank you, Mr. Chairman.

While Mr. Lay most likely will be not answering any questions today, exercising his Fifth Amendment rights, I will not comment on the exercise of those rights, or that legal judgment. I do share the sorrow and the aggravation and the frustration and the sentiments of all of my colleagues who have spoken before me. This Enron situation and the questions surrounding this financial im-

plosion have shaken the credibility of the current system of security standards.

It has brought to bear questions as to the ethics, the accuracy of accountants' reports, those of consultants, lawyers, and corporate boards, as well as questioning even the safeguards and the people who were supposed to ensure that whether they were employees and retirees or other investors have accurate information and all of this we see with the evaporation of people's retirement savings, with the collapse of the Enron stock.

Moreover, it has been said by Senator Smith, Senator Ensign and others that what you have here, Mr. Lay, is something that when I speak to Boy Scout groups and others—I do not know who the quote is from, but here is where the sadness is. There is a saying that when wealth is lost, a little bit is lost, when health is lost, something significant is lost, but when character is lost, all is lost.

Officers of publicly traded companies have a primary responsibility and duty to serve honestly. The owners of the company, the shareholders, clearly the chief officers of Enron failed in their duty, and shamefully breached that trust. That is a sad situation, and it is a responsibility you will bear, maybe not in this Committee, but in your conscience and I know when you go to sleep every night.

I am confident, though, Mr. Chairman, that through careful examination of the facts and information that we learn from these hearings, as well as what we read, we will be able to come to proper safeguards for the future. The public and this Congress will learn the truth, what went wrong, and work to ensure that it does not occur again.

It is my hope that Mr. Lay will not escape liability, whether that his criminal or civil, for any violations of law or fiduciary duties. As I said when we had this subpoena vote, let us be realistic and understand that all of these allegations of whether there is destruction of evidence, insider trading, fraud or other illegalities will be prosecuted and published to the maximum extent of the law in the courts. I and other members of this Committee need to be focused on prevention in the future so that such fraud, such misleading statements, such neglect or breach of fiduciary responsibility as to the financial condition of a company does not occur in the future.

Knowledge and information are very powerful tools that all investors need to have. I am optimistic, Mr. Chairman—maybe at this time when people are frustrated we should not be optimistic, but I am optimistic that there is enough goodwill and good effort here on a bipartisan basis in this Congress, as well as those in other branches, to work together on retirement security changes, put in proper safeguards, make sure that employees who work hard and save for their future do not have it swindled.

Mr. Lay, you will be held accountable in another venue. As far as the Senate and the House and others, we will work carefully and hopefully, also responsibly to prevent such actions and activities from occurring in the future.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Lott.

STATEMENT OF HON. TRENT LOTT, U.S. SENATOR FROM MISSISSIPPI

Senator LOTT. Mr. Chairman, thank you. I know there have been a lot of opening statements, and I have reviewed a lot of what has been said, and I do not want to attempt to add to all of that. I think it is appropriate we have this hearing. This clearly is a tragedy, and a lot of innocent people have been hurt, and we need to find out why that happened and how it happened, and what we can do to prevent this sort of thing in the future.

I hope the administration will pursue what happened aggressively both at the Justice Department and the Securities and Exchange Commission, and I hope that we, after appropriate hearings, which is our role, will move as quickly as possible to see if we can develop legislation that would be more helpful to the employees and the stockholders in a situation like this, and also take a serious look at the accounting rules on the books.

So while I am sure it will be easy to do a lot of political positioning on this, and I am not accusing anybody of doing that, I hope that what will come out of it is not just finger-pointing but some results, and I would like to be a part of that.

Thank you, Mr. Chairman.

The CHAIRMAN. Very good.

Well, much has been said about the development of a culture of corporate corruption, but there is also the culture of political corruption, and maybe we can get some good out of this whole situation in that there is no better example than Kenny boy for cash and carry government. I hope that this shames us into acting over on the House side and then on the Senate side and send a campaign reform bill to the President. We have got to clean up our own and maybe that is the good we will get out of this situation.

Mr. Lay, would you please take the witness chair there and let me swear you in. Would you raise your right hand, please? Do you swear that the testimony that you give to this Committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. LAY. I do.

The CHAIRMAN. Thank you. Mr. Lay, do you have a statement for the Committee?

STATEMENT OF KENNETH L. LAY, FORMER CHAIRMAN AND CEO, ENRON

Mr. LAY. A very brief statement, Mr. Chairman.

Mr. Chairman, I come here today with a profound sadness about what has happened to Enron, its current and former employees, retirees, shareholders, and other stakeholders. I also wanted to respond to the best of my knowledge and recollection to the questions you and your colleagues have about the collapse of Enron. I have, however, been instructed by my counsel not to testify based upon my Fifth Amendment constitutional rights.

I am deeply troubled about asserting these rights, because it may be perceived by some that I have something to hide, but after agonizing consideration I cannot disregard my counsel's instructions. Therefore, I must respectfully decline to answer on Fifth Amendment grounds all the questions of this Committee and Sub-

committee, and of those of any other congressional committee and subcommittee.

When providing their instruction, my counsel referred me to an excerpt from a unanimous Supreme Court decision of less than a year ago. Quote: "One of the Fifth Amendment's basic functions is to protect innocent men." I respectfully ask you not to draw a negative inference because I am asserting my Fifth Amendment constitutional protection on instruction of counsel.

Thank you, Mr. Chairman.

The CHAIRMAN. Well, under that circumstance, Mr. Lay, the Committee excuses you, and I want to turn the investigation over to the Chairman of our Consumer Subcommittee, Senator Dorgan.

Senator DORGAN. Mr. Chairman, thank you very much. We have a series of three votes that will begin in about five minutes. I believe it would be best if the Committee takes a brief recess. We will reconvene at 11:30 a.m.

[Recess.]

Senator DORGAN. The hearing will reconvene. If we can have people take their seats and close the door, my colleagues will be here momentarily. We had a series of three votes, as I previously announced. They took longer than expected, and I apologize for the delay. As I indicated previously, we were going to be hearing from Mr. William Powers, Jr. He is now at the witness table. Mr. Powers is a member of the Enron Board of Directors, I believe made a member of the Board of Directors last fall, and Chairman of the Special Investigative Committee that was enabled by the Board of Directors to evaluate what had happened in a number of areas with respect to the Enron Corporation.

Mr. Powers, you have testified previously on the U.S. House side of this Capitol, and we now ask for your appearance today before the Senate. Our colleagues will be appearing shortly, but what I would like to do is to ask you to provide us with your statement today, following which we will ask a series of questions. Mr. Powers, your entire statement will be made a part of the permanent record of the Committee, and we would ask you summarize, but we want you to take as much time as you feel is necessary, as well.

STATEMENT OF WILLIAM C. POWERS, JR., MEMBER OF THE ENRON BOARD OF DIRECTORS AND CHAIRMAN OF THE SPECIAL INVESTIGATION COMMITTEE

Mr. POWERS. Thank you, Mr. Chairman. Mr. Chairman, distinguished Members of the Committee, my name is William Powers. I am the Dean of the University of Texas Law School. For the past three months, I have served as Chairman of the Special Investigative Committee of the Board of Directors of Enron Corporation. I appreciate the opportunity, Mr. Chairman, to come here today and testify to the Committee.

As you know, during October of last year, questions were being raised about Enron's transactions with partnerships that were being controlled by its Chief Financial Officer, Andrew Fastow. In the middle of October, Enron announced that it was taking an after-tax charge of more than $500 million against its earnings because of transactions with one of those partnerships. Enron also

announced a reduction in shareholder equity of more than a billion dollars.

At the end of October, the Enron Board established a special committee to investigate these matters, and then asked me if I would join the Board for the purpose of chairing that committee and conducting that investigation. With the help of counsel from Wilmer, Cutler & Pickering here in Washington, and professional accounting advisors from Deloitte & Touche, we have spent the last three months conducting that investigation.

Our committee's report was filed on February 2. It covers a lot of ground and it will, I hope, be a helpful starting point, but only a starting point, for the necessary further investigations by congressional committees, by the Securities & Exchange Commission, and by the Department of Justice. A copy of the executive summary to that report is attached to my statement here.

Many questions are currently part of the public discussion, such as questions related to the employees' retirement savings plans, as Senator Hutchison and many others made in their remarks this morning, and sales of Enron securities by insiders. All of those are important issues. They are matters of vital importance, but they went beyond the charge that we were given here.

The employees loss to their retirement plans is a tragic story, but again, we did not address that or any of those other matters in our report. We were charged with investigating transactions between Enron and partnerships controlled by its Chief Financial Officer, or people who worked in his department. That is what our report discusses.

Mr. Chairman, as I have said before, what we found in our investigation was absolutely appalling. First, we found that Fastow and other Enron employees involved in these partnerships enriched themselves in the aggregate by tens of millions of dollars they should have never received. Fastow got at least $30 million, Michael Kopper at least $10 million, and two others, $1 million each, and still two more amounts that we believe were in the hundreds of thousands of dollars.

Second, we found that some transactions were improperly structured from an accounting point of view. It is important to note that if these transactions had been structured correctly, or properly, Enron could have kept assets and liabilities, especially debt, off of its balance sheet, but Enron did not follow the proper accounting rules.

But beyond these, we found something even more troubling than those individual instances of misconduct, or failures to follow the accounting rules. We found a systematic and pervasive attempt by Enron's management to misrepresent the company's financial condition. Enron management used these partnerships to enter into transactions that it could not or would not do with unrelated commercial entities. Many of the most significant transactions apparently were not designed to achieve any bona fide economic objectives. They were designed to affect how Enron reported its earnings to its shareholders and the public.

As our report demonstrates, these transactions were extremely complex, and I will not try to describe them in any detail here, but I do think it would be useful to give just one example. It involves

efforts by Enron to hedge against losses on investments that Enron had made. Enron was not just a pipeline and energy trading company. It also had large investments in other businesses, some of which appreciated substantially in value. These were volatile investments, and Enron was concerned because it had recognized the gains when these investments appreciated, and it did not want to recognize the losses if the investments declined in value, so Enron purported to enter into certain hedging transactions in order to avoid recognizing losses from these investments.

The problem was, these hedges were not real. The idea of a hedge is normally to contract with a creditworthy outside partner that is prepared, for a price, to take on the economic risk of an investment. If the value of the investment goes down, that outside party will bear the loss. That is not what happened here, though. Essentially, Enron in these transactions was hedging with itself.

The outside parties with which Enron hedged were the so-called Raptors. The purported outside investor in them was a Fastow partnership. In reality, these were entities in which only Enron had any real economic stake, and whose main assets were Enron's own stock. The notes of Enron's corporate secretary from the meeting of the Finance Committee regarding the Raptors captures the reality. Those notes say, "does not transfer economic risk, but transfers P&L volatility."

These were not real economic hedges. They just affected Enron's earnings statements by allowing Enron to avoid reporting losses on its investments. As it turned out, the value of Enron's investments fell at the same time the value of Enron's stock fell, and the Raptors became unable to meet their obligations on the supposed hedges, but even if the hedges had not failed in the sense I just described, the Raptors would have paid Enron with the stock that Enron had provided in the first place. Enron would simply have paid itself back.

This raises an important point that is easy to miss in the thicket of these very complex transactions. There has been a great deal of discussion about who understood what about Fastow, and about Fastow's partnerships, but there is no question that virtually everyone, everyone from the Board of Directors on down, virtually everyone understood that the company was seeking to offset its investment losses with its own stock. That is not the way it is supposed to work. Real earnings are supposed to be compared to real losses.

As a result of these transactions, Enron improperly inflated its reported earnings for a 15-month period, from the third quarter of 2000 through the third quarter of 2001, by more than $1 billion. That means that more than 70 percent of Enron's reported earnings for this period were not real.

How could this have happened? The tragic consequences of the related party transactions and accounting errors were the result of failures at many levels, and by many people. There was a flawed idea, self-enrichment by employees, inadequately designed controls, poor implementation, inattentive oversight, simple and not-so-simple accounting mistakes, and overreaching in a culture that appears to have encouraged pushing the limits.

Whenever this many things go wrong, it is not just the active one or two people. There was misconduct by Fastow and other senior employees of Enron, terrible misconduct. There were failures in the performance of Enron's outside advisors, and there was a fundamental default of leadership and management.

Leadership and management begin at the top with the CEO, Ken Lay. In this company, leadership and management depended as well on the Chief Operating Officer, Jeff Skilling, and it depended on the Board of Directors. In the end, this is a tragedy that could have and should have been avoided.

Mr. Chairman, I hope that our report and the work of this Committee will at least help reduce the danger that this will happen again to some other company.

Thank you, Mr. Chairman.

[The prepared statement and executive summary of Mr. Powers follow:]

PREPARED STATEMENT OF WILLIAM C. POWERS, JR., MEMBER OF THE ENRON BOARD OF DIRECTORS AND CHAIRMAN OF THE SPECIAL INVESTIGATION COMMITTEE

Mr. Chairman and distinguished Members of the Committee. My name is William Powers. I am the Dean of the University of Texas Law School. For the past three months, I have served as Chairman of the Special Investigative Committee of the Board of Directors of Enron Corporation. I appreciate the opportunity to come and testify before you today.

As you know, during October of last year, questions were being raised about Enron's transactions with partnerships that were controlled by its Chief Financial Officer, Andrew Fastow. In the middle of October, Enron announced that it was taking an after-tax charge of more than $500 million against its earnings, because of transactions with one of those partnerships. Enron also announced a reduction in shareholder equity of more than a billion dollars. At the end of October, the Enron Board established a Special Committee to investigate these matters, and then asked me if I would join the Board for the purpose of chairing that Committee, and conducting that investigation. With the help of counsel from Wilmer, Cutler & Pickering and professional accounting advisors from Deloitte & Touche, we have spent the last three months conducting that investigation.

Our Committee's Report was filed on February 2. It covers a lot of ground and will, I hope, be a helpful starting point for the necessary further investigations by Congressional Committees, by the Securities and Exchange Commission, and by the Department of Justice. A copy of the Executive Summary is attached to my Statement here.

Many questions currently part of public discussion—such as questions relating to the employees' retirement savings and sales of Enron securities by insiders—are beyond the scope of the charge we were given. These are matters of vital importance. The employees' loss of their retirement plans is a tragic story. But we did not address these matters in our Report.

We were charged with investigating transactions between Enron and partnerships controlled by its Chief Financial Officer, or people who worked in his department. That is what our Report discusses. Mr. Chairman, as I have said before: What we found was appalling.

First, we found that Fastow—and other Enron employees involved in these partnerships—enriched themselves, in the aggregate, by tens of millions of dollars they should never have received. Fastow got at least $30 million, Michael Kopper at least $10 million, two others $1 million each, and still two more amounts we believe were at least in the hundreds of thousands of dollars.

Second, we found that some transactions were improperly structured from an accounting point of view. It is important to note that, if they had been structured correctly, Enron could have kept assets and liabilities (especially debt) off of its balance sheet. But Enron did *not* follow the accounting rules.

But we found something even more troubling than those individual instances of misconduct, and failures to follow accounting rules. We found a systematic and pervasive attempt by Enron's Management to misrepresent the Company's financial condition. Enron Management used these partnerships to enter into transactions that it could not, or would not, do with unrelated commercial entities. Many of the

most significant transactions apparently were not designed to achieve bona fide economic objectives. They were designed to affect how Enron reported its earnings.

As our Report demonstrates, these transactions were extremely complex. I won't try to describe them in detail here. But I do think it would be useful to give just one example. It involves efforts by Enron to "hedge" against losses on investments it had made.

Enron was not just a pipeline and energy trading company. It also had large investments in other businesses, some of which had appreciated substantially in value. These were volatile investments, and Enron was concerned because it had recognized the gains when these investments appreciated, and it didn't want to recognize the losses if the investments declined in value. So Enron purported to enter into certain "hedging" transactions in order to avoid recognizing losses from its investments. The problem was that the hedges weren't real. The idea of a hedge is normally to contract with a credit-worthy outside party that is prepared—for a price—to take on the economic risk of an investment. If the value of the investment goes down, that outside party will bear the loss. That is not what happened here. Essentially, Enron was hedging with itself.

The outside parties with which Enron "hedged" were the so-called "Raptors." The purported outside investor in them was a Fastow partnership. In reality, these were entities in which only Enron had a real economic stake, and whose main assets were Enron's own stock. The notes of Enron's corporate secretary, from a meeting of the Finance Committee regarding the Raptors, capture the reality: "Does not transfer economic risk but transfers P+L volatility." These were not real economic hedges; they just affected Enron's earnings statement by allowing Enron to avoid reporting losses on its investments.

As it turned out, the value of Enron's investments fell at the same time that the value of Enron stock fell, and the Raptors became unable to meet their obligations on the "hedges." But even if the hedges had not failed in the sense I just described, the Raptors would have paid Enron with the stock that Enron had provided in the first place; Enron would simply have paid itself back.

This raises an important point that is easy to miss in the thicket of these very complex transactions. There has been much discussion about who understood what about Fastow and his partnerships. But there is no question that virtually everyone, from the Board of Directors on down, understood that the company was seeking to offset its investment losses with its own stock. That is not the way it is supposed to work. Real earnings are supposed to be compared to real losses.

As a result of these transactions, Enron improperly inflated its reported earnings for a 15-month period—from the third quarter of 2000 through the third quarter of 2001—by more than $1 billion. This means that more than 70 percent of Enron's reported earnings for this period were not real.

How could this have happened? The tragic consequences of the related-party transactions and accounting errors were the result of failures at many levels and by many people: a flawed idea, self-enrichment by employees, inadequately-designed controls, poor implementation, inattentive oversight, simple (and not-so-simple) accounting mistakes, and overreaching in a culture that appears to have encouraged pushing the limits.

Whenever this many things go wrong, it is not just the act of one or two people. There was misconduct by Fastow and other senior employees of Enron. There were failures in the performance of Enron's outside advisors. And there was a fundamental default of leadership and management.

Leadership and management begin at the top, with the CEO, Ken Lay. In this company, leadership and management depended as well on the Chief Operating Officer, Jeff Skilling. And it depended on the Board of Directors.

In the end, this is a tragedy that could and should have been avoided. I hope that our Report, and the work of this Committee, will help reduce the danger that it will happen to some other company.

EXECUTIVE SUMMARY AND CONCLUSIONS

The Special Investigative Committee of the Board of Directors of Enron Corp. submits this Report of Investigation to the Board of Directors. In accordance with our mandate, the Report addresses transactions between Enron and investment partnerships created and managed by Andrew S. Fastow, Enron's former Executive Vice President and Chief Financial Officer, and by other Enron employees who worked with Fastow.

The Committee has done its best, given the available time and resources, to conduct a careful and impartial investigation. We have prepared a Report that explains the substance of the most significant transactions and highlights their most impor-

tant accounting, corporate governance, management oversight, and public disclosure issues. An exhaustive investigation of these related-party transactions would require time and resources beyond those available to the Committee. We were not asked, and we have not attempted, to investigate the causes of Enron's bankruptcy or the numerous business judgments and external factors that contributed it. Many questions currently part of public discussion—such as questions relating to Enron's international business and commercial electricity ventures, broadband communications activities, transactions in Enron securities by insiders, or management of employee 401(k) plans—are beyond the scope of the authority we were given by the Board.

There were some practical limitations on the information available to the Committee in preparing this Report. We had no power to compel third parties to submit to interviews, produce documents, or otherwise provide information. Certain former Enron employees who (we were told) played substantial roles in one or more of the transactions under investigation—including Fastow, Michael J. Kopper, and Ben F. Glisan, Jr.—declined to be interviewed either entirely or with respect to most issues. We have had only limited access to certain workpapers of Arthur Andersen LLP ("Andersen"), Enron's outside auditors, and no access to materials in the possession of the Fastow partnerships or their limited partners. Information from these sources could affect our conclusions.

This Executive Summary and Conclusions highlights important parts of the Report and summarizes our conclusions. It is based on the complete set of facts, explanations and limitations described in the Report, and should be read with the Report itself. Standing alone, it does not, and cannot, provide a full understanding of the facts and analysis underlying our conclusions.

Background

On October 16, 2001, Enron announced that it was taking a $544 million after-tax charge against earnings related to transactions with LJM2 Co-Investment, L.P. ("LJM2"), a partnership created and managed by Fastow. It also announced a reduction of shareholders' equity of $1.2 billion related to transactions with that same entity.

Less than one month later, Enron announced that it was restating its financial statements for the period from 1997 through 2001 because of accounting errors relating to transactions with a different Fastow partnership, LJM Cayman, L.P. ("LJM1"), and an additional related-party entity, Chewco Investments, L.P. ("Chewco"). Chewco was managed by an Enron Global Finance employee, Kopper, who reported to Fastow.

The LJM1- and Chewco-related restatement, like the earlier charge against earnings and reduction of shareholders' equity, was very large. It reduced Enron's reported net income by $28 million in 1997 (of $105 million total), by $133 million in 1998 (of $703 million total), by $248 million in 1999 (of $893 million total), and by $99 million in 2000 (of $979 million total). The restatement reduced reported shareholders' equity by $258 million in 1997, by $391 million in 1998, by $710 million in 1999, and by $754 million in 2000. It increased reported debt by $711 million in 1997, by $561 million in 1998, by $685 million in 1999, and by $628 million in 2000. Enron also revealed, for the first time, that it had learned that Fastow received more than $30 million from LJM1 and LJM2. These announcements destroyed market confidence and investor trust in Enron. Less than one month later, Enron filed for bankruptcy.

Summary of Findings

This Committee was established on October 28, 2001, to conduct an investigation of the related-party transactions. We have examined the specific transactions that led to the third-quarter 2001 earnings charge and the restatement. We also have attempted to examine all of the approximately two dozen other transactions between Enron and these related-party entities: what these transactions were, why they took place, what went wrong, and who was responsible.

Our investigation identified significant problems beyond those Enron has already disclosed. Enron employees involved in the partnerships were enriched, in the aggregate, by tens of millions of dollars they should never have received—Fastow by at least $30 million, Kopper by at least $10 million, two others by $1 million each, and still two more by amounts we believe were at least in the hundreds of thousands of dollars. We have seen no evidence that any of these employees, except Fastow, obtained the permission required by Enron's Code of Conduct of Business Affairs to own interests in the partnerships. Moreover, the extent of Fastow's owner-

ship and financial windfall was inconsistent with his representations to Enron's Board of Directors.

This personal enrichment of Enron employees, however, was merely one aspect of a deeper and more serious problem. These partnerships—Chewco, LJM1, and LJM2—were used by Enron Management to enter into transactions that it could not, or would not, do with unrelated commercial entities. Many of the most significant transactions apparently were designed to accomplish favorable financial statement results, not to achieve *bona fide* economic objectives or to transfer risk. Some transactions were designed so that, had they followed applicable accounting rules, Enron could have kept assets and liabilities (especially debt) off of its balance sheet; but the transactions did not follow those rules.

Other transactions were implemented—improperly, we are informed by our accounting advisors—to offset losses. They allowed Enron to conceal from the market very large losses resulting from Enron's merchant investments by creating an appearance that those investments were hedged—that is, that a third party was obligated to pay Enron the amount of those losses—when in fact that third party was simply an entity in which only Enron had a substantial economic stake. We believe these transactions resulted in Enron reporting earnings from the third quarter of 2000 through the third quarter of 2001 that were almost $1 billion higher than should have been reported.

Enron's original accounting treatment of the Chewco and LJM1 transactions that led to Enron's November 2001 restatement was clearly wrong, apparently the result of mistakes either in structuring the transactions or in basic accounting. In other cases, the accounting treatment was likely wrong, notwithstanding creative efforts to circumvent accounting principles through the complex structuring of transactions that lacked fundamental economic substance. In virtually all of the transactions, Enron's accounting treatment was determined with extensive participation and structuring advice from Andersen, which Management reported to the Board. Enron's records show that Andersen billed Enron $5.7 million for advice in connection with the LJM and Chewco transactions alone, above and beyond its regular audit fees.

Many of the transactions involve an accounting structure known as a "special purpose entity" or "special purpose vehicle" (referred to as an "SPE" in this Summary and in the Report). A company that does business with an SPE may treat that SPE as if it were an independent, outside entity for accounting purposes if two conditions are met: (1) an owner independent of the company must make a substantive equity investment of at least 3% of the SPE's assets, and that 3% must remain at risk throughout the transaction; and (2) the independent owner must exercise control of the SPE. In those circumstances, the company may record gains and losses on transactions with the SPE, and the assets and liabilities of the SPE are not included in the company's balance sheet, even though the company and the SPE are closely related. It was the technical failure of some of the structures with which Enron did business to satisfy these requirements that led to Enron's restatement.

Summary of Transactions and Matters Reviewed

The following are brief summaries of the principal transactions and matters in which we have identified substantial problems:

The Chewco Transaction

The first of the related-party transactions we examined involved Chewco Investments L.P., a limited partnership managed by Kopper. Because of this transaction, Enron filed inaccurate financial statements from 1997 through 2001, and provided an unauthorized and unjustifiable financial windfall to Kopper.

From 1993 through 1996, Enron and the California Public Employees' Retirement System ("CalPERS") were partners in a $500 million joint venture investment partnership called Joint Energy Development Investment Limited Partnership ("JEDI"). Because Enron and CalPERS had joint control of the partnership, Enron did not consolidate JEDI into its consolidated financial statements. The financial statement impact of non-consolidation was significant: Enron would record its contractual share of gains and losses from JEDI on its income statement and would disclose the gain or loss separately in its financial statement footnotes, but would *not* show JEDI's debt on its balance sheet.

In November 1997, Enron wanted to redeem CalPERS' interest in JEDI so that CalPERS would invest in another, larger partnership. Enron needed to find a new partner, or else it would have to consolidate JEDI into its financial statements, which it did not want to do. Enron assisted Kopper (whom Fastow identified for the role) in forming Chewco to purchase CalPERS' interest. Kopper was the manager

and owner of Chewco's general partner. Under the SPE rules summarized above, Enron could only avoid consolidating JEDI onto Enron's financial statements if Chewco had some independent ownership with a minimum of 3% of *equity* capital at risk. Enron and Kopper, however, were unable to locate any such outside investor, and instead financed Chewco's purchase of the JEDI interest almost entirely with debt, not equity. This was done hurriedly and in apparent disregard of the accounting requirements for nonconsolidation. Notwithstanding the shortfall in required equity capital, Enron did not consolidate Chewco (or JEDI) into its consolidated financial statements.

Kopper and others (including Andersen) declined to speak with us about why this transaction was structured in a way that did not comply with the non-consolidation rules. Enron, and any Enron employee acting in Enron's interest, had every incentive to ensure that Chewco complied with these rules. We do not know whether this mistake resulted from bad judgment or carelessness on the part of Enron employees or Andersen, or whether it was caused by Kopper or others putting their own interests ahead of their obligations to Enron.

The consequences, however, were enormous. When Enron and Andersen reviewed the transaction closely in 2001, they concluded that Chewco did not satisfy the SPE accounting rules and—because JEDI's non-consolidation depended on Chewco's status—neither did JEDI. In November 2001, Enron announced that it would consolidate Chewco and JEDI retroactive to 1997. As detailed in the Background section above, this retroactive consolidation resulted in a massive reduction in Enron's reported net income and a massive increase in its reported debt.

Beyond the financial statement consequences, the Chewco transaction raises substantial corporate governance and management oversight issues. Under Enron's Code of Conduct of Business Affairs, Kopper was prohibited from having a financial or managerial role in Chewco unless the Chairman and CEO determined that his participation "does not adversely affect the best interests of the Company." Notwithstanding this requirement, we have seen no evidence that his participation was ever disclosed to, or approved by, either Kenneth Lay (who was Chairman and CEO) or the Board of Directors.

While the consequences of the transaction were devastating to Enron, Kopper reaped a financial windfall from his role in Chewco. This was largely a result of arrangements that he appears to have negotiated with Fastow. From December 1997 through December 2000, Kopper received $2 million in "management" and other fees relating to Chewco. Our review failed to identify how these payments were determined, or what, if anything, Kopper did to justify the payments. More importantly, in March 2001 Enron repurchased Chewco's interest in JEDI on terms Kopper apparently negotiated with Fastow (during a time period in which Kopper had undisclosed interests with Fastow in both LJM1 and LJM2). Kopper had invested $125,000 in Chewco in 1997. The repurchase resulted in Kopper's (and a friend to whom he had transferred part of his interest) receiving more than $10 million from Enron.

The LJM Transactions

In 1999, with Board approval, Enron entered into business relationships with two partnerships in which Fastow was the manager and an investor. The transactions between Enron and the LJM partnerships resulted in Enron increasing its reported financial results by more than a billion dollars, and enriching Fastow and his co-investors by tens of millions of dollars at Enron's expense.

The two members of the Special Investigative Committee who have reviewed the Board's decision to permit Fastow to participate in LJM notwithstanding the conflict of interest have concluded that this arrangement was fundamentally flawed.[1] A relationship with the most senior financial officer of a public company—particularly one requiting as many controls and as much oversight by others as this one did—should not have been undertaken in the first place.

The Board approved Fastow's participation in the LJM partnerships with full knowledge and discussion of the obvious conflict of interest that would result. The Board apparently believed that the conflict, and the substantial risks associated with it, could be mitigated through certain controls (involving oversight by both the Board and Senior Management) to ensure that transactions were done on terms fair to Enron. In taking this step, the Board thought that the LJM partnerships would

[1] One member of the Special Investigative Committee, Herbert S. Winokur, Jr., was a member of the Board of Directors and the Finance Committee during the relevant period. The portions of the Report describing and evaluating actions of the Board and its Committees are solely the views of the other two members of the Committee, Dean William C. Powers, Jr. of the University of Texas School of Law and Raymond S. Troubh.

offer business benefits to Enron that would outweigh the potential costs. The principal reason advanced by Management in favor of the relationship, in the case of LJM1, was that it would permit Enron to accomplish a particular transaction it could not otherwise accomplish. In the case of LJM2, Management advocated that it would provide Enron with an additional potential buyer of assets that Enron wanted to sell, and that Fastow's familiarity with the Company and the assets to be sold would permit Enron to move more quickly and incur fewer transaction costs.

Over time, the Board required, and Management told the Board it was implementing, an ever-increasing set of procedures and controls over the related-party transactions. These included, most importantly, review and approval of all LJM transactions by Richard Causey, the Chief Accounting Officer; and Richard Buy, the Chief Risk Officer; and, later during the period, Jeffrey Skilling, the President and COO (and later CEO). The Board also directed its Audit and Compliance Committee to conduct annual reviews of all LJM transactions.

These controls as designed were not rigorous enough, and their implementation and oversight was inadequate at both the Management and Board levels. No one in Management accepted primary responsibility for oversight; the controls were not executed properly; and there were structural defects in those controls that became apparent over time. For instance, while neither the Chief Accounting Officer, Causey, nor the Chief Risk Officer, Buy, ignored his responsibilities, they interpreted their roles very narrowly and did not give the transactions the degree of review the Board believed was occurring. Skilling appears to have been almost entirely uninvolved in the process, notwithstanding representations made to the Board that he had undertaken a significant role. No one in Management stepped forward to address the issues as they arose, or to bring the apparent problems to the Board's attention.

As we discuss further below, the Board, having determined to allow the related party transactions to proceed, did not give sufficient scrutiny to the information that was provided to it thereafter. While there was important information that appears to have been withheld from the Board, the annual reviews of LJM transactions by the Audit and Compliance Committee (and later also the Finance Committee) appear to have involved only brief presentations by Management (with Andersen present at the Audit Committee) and did not involve any meaningful examination of the nature or terms of the transactions. Moreover, even though Board Committee-mandated procedures required a review by the Compensation Committee of Fastow's compensation from the partnerships, neither the Board nor Senior Management asked Fastow for the amount of his LJM-related compensation until October 2001, after media reports focused on Fastow's role in LJM.

From June 1999 through June 2001, Enron entered into more than 20 distinct transactions with the LJM partnerships. These were of two general types: asset sales and purported "hedging" transactions. Each of these types of transactions was flawed, although the latter ultimately caused much more harm to Enron.

Asset Sales. Enron sold assets to LJM that it wanted to remove from its books. These transactions often occurred close to the end of financial reporting periods. While there is nothing improper about such transactions if they actually transfer the risks and rewards of ownership to the other party, there are substantial questions whether any such transfer occurred in some of the sales to LJM.

Near the end of the third and fourth quarters of 1999, Enron sold interests in seven assets to LJM1 and LJM2. These transactions appeared consistent with the stated purpose of allowing Fastow to participate in the partnerships—the transactions were done quickly, and permitted Enron to remove the assets from its balance sheet and record a gain in some cases. However, events that occurred after the sales call into question the legitimacy of the sales. In particular: (1) Enron bought back five of the seven assets after the close of the financial reporting period, in some cases within a matter of months; (2) the LJM partnerships made a profit on *every* transaction, even when the asset it had purchased appears to have declined in market value; and (3) according to a presentation Fastow made to the Board's Finance Committee, those transactions generated, directly or indirectly, "earnings" to Enron of $229 million in the second half of 1999 (apparently including one hedging transaction). (The details of the transactions are discussed in Section VI of the Report.) Although we have not been able to confirm Fastow's calculation, Enron's reported earnings for that period were $570 million pre-tax) and $549 million (after-tax).

We have identified some evidence that, in three of these transactions where Enron ultimately bought back LJM's interest, Enron had agreed in advance to protect the LJM partnerships against loss. If this was in fact the case, it was likely inappropriate to treat the transactions as sales. There also are plausible, more innocent explanations for some of the repurchases, but a sufficient basis remains for further examination. With respect to those transactions in which risk apparently did not

pass from Enron, the LJM partnerships functioned as a vehicle to accommodate Enron in the management of its reported financial results.

Hedging Transactions. The first "hedging" transaction between Enron and LJM occurred in June 1999, and was approved by the Board in conjunction with its approval of Fastow's participation in LJM1. The normal idea of a hedge is to contract with a creditworthy outside party that is prepared—for a price—to take on the economic risk of an investment. If the value of the investment goes down, that outside party will bear the loss. That is not what happened here. Instead, Enron transferred its own stock to an SPE in exchange for a note. The Fastow partnership, LJM1, was to provide the outside equity necessary for the SPE to qualify for non-consolidation. Through the use of options, the SPE purported to take on the risk that the price of the stock of Rhythms NetConnections Inc. ("Rhythms"), an interact service provider, would decline. The idea was to "hedge" Enron's profitable merchant investment in Rhythms stock, allowing Enron to offset losses on Rhythms if the price of Rhythms stock declined. If the SPE were required to pay Enron on the Rhythms options, the transferred Enron stock would be the principal source of payment.

The other "hedging" transactions occurred in 2000 and 2001 and involved SPEs known as the "Raptor" vehicles. Expanding on the idea of the Rhythms transaction, these were extraordinarily complex structures. They were funded principally with Enron's own stock (or contracts for the delivery of Enron stock) that was intended to "hedge" against declines in the value of a large group of Enron's merchant investments. LJM2 provided the outside equity designed to avoid consolidation of the Raptor SPEs.

The asset sales and hedging transactions raised a variety of issues, including the following:

Accounting and Financial Reporting Issues. Although Andersen approved the transactions, in fact the "hedging" transactions did not involve substantive transfers of economic risk. The transactions may have looked superficially like economic hedges, but they actually functioned only as "accounting" hedges. They appear to have been designed to circumvent accounting rules by recording hedging gains to offset losses in the value of merchant investments on Enron's quarterly and annual income statements. The economic reality of these transactions was that Enron never escaped the risk of loss, because it had provided the bulk of the capital with which the SPEs would pay Enron.

Enron used this strategy to avoid recognizing losses for a time. In 1999, Enron recognized after-tax income of $95 million from the Rhythms transaction, which offset losses on the Rhythms investment. In the last two quarters of 2000, Enron recognized revenues of $500 million on derivative transactions with the Raptor entities, which offset losses in Enron's merchant investments, and recognized pre-tax earnings of $532 million (including net interest income). Enron's reported pre-tax earnings for the last two quarters of 2000 totaled $650 million. "Earnings" from the Raptors accounted for more than 80% of that total.

The idea of hedging Enron's investments with the value of Enron's capital stock had a serious drawback as an economic matter. If the value of the investments fell at the same time as the value of Enron stock fell, the SPEs would be unable to meet their obligations and the "hedges" would fail. This is precisely what happened in late 2000 and early 2001. Two of the Raptor SPEs lacked sufficient credit capacity to pay Enron on the "hedges." As a result, in late March 2001, it appeared that Enron would be required to take a pre-tax charge against earnings of more than $500 million to reflect the shortfall in credit capacity. Rather than take that loss, Enron "restructured" the Raptor vehicles by, among other things, transferring more than $800 million of contracts to receive its own stock to them just before quarter-end. This transaction apparently was not disclosed to or authorized by the Board, involved a transfer of very substantial value for insufficient consideration, and appears inconsistent with governing accounting rules. It continued the concealment of the substantial losses in Enron's merchant investments.

However, even these efforts could not avoid the inevitable results of hedges that were supported only by Enron stock in a declining market. As the value of Enron's merchant investments continued to fall in 2001, the credit problems in the Raptor entities became insoluble. Ultimately, the SPEs were terminated in September 2001. This resulted in the unexpected announcement on October 16, 2001, of a $544 million after-tax charge against earnings. In addition, Enron was required to reduce shareholders' equity by $1.2 billion. While the equity reduction was primarily the result of accounting errors made in 2000 and early 2001, the charge against earnings was the result of Enron's "hedging" its investments—not with a creditworthy counter-party, but with itself.

Consolidation Issues. In addition to the accounting abuses involving use of Enron stock to avoid recognizing losses on merchant investments, the Rhythms

transaction involved the same SPE equity problem that undermined Chewco and JEDI. As we stated above, in 2001, Enron and Andersen concluded that Chewco lacked sufficient outside equity at risk to qualify for non-consolidation. At the same time, Enron and Andersen also concluded that the LJM1 SPE in the Rhythms transaction failed the same threshold accounting requirement. In recent Congressional testimony, Andersen's CEO explained that the firm had simply been wrong in 1999 when it concluded (and presumably advised Enron) that the LJM1 SPE satisfied the non-consolidation requirements. As a result, in November 2001, Enron announced that it would restate prior period financials to consolidate the LJM1 SPE retroactively to 1999. This retroactive consolidation decreased Enron's reported net income by $95 million (of $893 million total) in 1999 and by $8 million (of $979 million total) in 2000.

Self-Dealing Issues. While these related-party transactions facilitated a variety of accounting and financial reporting abuses by Enron, they were extraordinarily lucrative for Fastow and others. In exchange for their passive and largely risk-free roles in these transactions, the LJM partnerships and their investors were richly rewarded. Fastow and other Enron employees received tens of millions of dollars they should not have received. These benefits came at Enron's expense.

When Enron and LJM1 (through Fastow) negotiated a termination of the Rhythms "hedge" in 2000, the terms of the transaction were extraordinarily generous to LJM1 and its investors. These investors walked away with tens of millions of dollars in value that, in an arm's-length context, Enron would never have given away. Moreover, based on the information available to us, it appears that Fastow had offered interests in the Rhythms termination to Kopper and four other Enron employees. These investments, in a partnership called "Southampton Place," provided spectacular returns. In exchange for a $25,000 investment, Fastow received (through a family foundation) *$4.5 million* in approximately two months. Two other employees, who each invested $5,800, each received *$1 million* in the same time period. We have seen no evidence that Fastow or any of these employees obtained clearance for those investments, as required by Enron's Code of Conduct. Kopper and the other Enron employees who received these vast returns were all involved in transactions between Enron and the LJM partnerships in 2000—some representing Enron.

Public Disclosure

Enron's publicly-filed reports disclosed the existence of the LJM partnerships. Indeed, there was substantial factual information about Enron's transactions with these partnerships in Enron's quarterly and annual reports and in its proxy statements. Various disclosures were approved by one or more of Enron's outside auditors and its inside and outside counsel. However, these disclosures were obtuse, did not communicate the essence of the transactions completely or clearly, and failed to convey the substance of what was going on between Enron and the partnerships. The disclosures also did not communicate the nature or extent of Fastow's financial interest in the LJM partnerships. This was the result of an effort to avoid disclosing Fastow's financial interest and to downplay the significance of the related-party transactions and, in some respects, to disguise their substance and import. The disclosures also asserted that the related-party transactions were reasonable compared to transactions with third parties, apparently without any factual basis. The process by which the relevant disclosures were crafted was influenced substantially by Enron Global Finance (Fastow's group). There was an absence of forceful and effective oversight by Senior Enron Management and in-house counsel, and objective and critical professional advice by outside counsel at Vinson & Elkins, or auditors at Andersen.

The Participants

The actions and inactions of many participants led to the related-party abuses, and the financial reporting and disclosure failures, that we identify in our Report. These participants include not only the employees who enriched themselves at Enron's expense, but also Enron's Management, Board of Directors and outside advisors. The factual basis and analysis for these conclusions are set out in the Report. In summary, based on the evidence available to us, the Committee notes the following:

Andrew Fastow. Fastow was Enron's Chief Financial Officer and was involved on both sides of the related-party transactions. What he presented as an arrangement intended to benefit Enron became, over time, a means of both enriching himself personally and facilitating manipulation of Enron's financial statements. Both of these objectives were inconsistent with Fastow's fiduciary duties to Enron and

anything the Board authorized. The evidence suggests that he (1) placed his own personal interests and those of the LJM partnerships ahead of Enron's interests; (2) used his position in Enron to influence (or attempt to influence) Enron employees who were engaging in transactions on Enron's behalf with the LJM partnerships; and (3) failed to disclose to Enron's Board of Directors important information it was entitled to receive. In particular, we have seen no evidence that he disclosed Kopper's role in Chewco or LJM2, or the level of profitability of the LJM partnerships (and his personal and family interests in those profits), which far exceeded what he had led the Board to expect. He apparently also violated and caused violations of Enron's Code of Conduct by purchasing, and offering to Enron employees, extraordinarily lucrative interests in the Southampton Place partnership. He did so at a time when at least one of those employees was actively working on Enron's behalf in transactions with LJM2.

Enron's Management. Individually, and collectively, Enron's Management failed to carry out its substantive responsibility for ensuring that the transactions were fair to Enron—which in many cases they were not—and its responsibility for implementing a system of oversight and controls over the transactions with the LJM partnerships. There were several direct consequences of this failure: transactions were executed on terms that were not fair to Enron and that enriched Fastow and others; Enron engaged in transactions that had little economic substance and misstated Enron's financial results; and the disclosures Enron made to its shareholders and the public did not fully or accurately communicate relevant information. We discuss here the involvement of Kenneth Lay, Jeffrey Skilling, Richard Causey, and Richard Buy.

For much of the period in question, Lay was the Chief Executive Officer of Enron and, in effect, the captain of the ship. As CEO, he had the ultimate responsibility for taking reasonable steps to ensure that the officers reporting to him performed their oversight duties properly. He does not appear to have directed their attention, or his own, to the oversight of the LJM partnerships. Ultimately, a large measure of the responsibility rests with the CEO.

Lay approved the arrangements under which Enron permitted Fastow to engage in related-party transactions with Enron and authorized the Rhythms transaction and three of the Raptor vehicles. He bears significant responsibility for those flawed decisions, as well as for Enron's failure to implement sufficiently rigorous procedural controls to prevent the abuses that flowed from this inherent conflict of interest. In connection with the LJM transactions, the evidence we have examined suggests that Lay functioned almost entirely as a Director, and less as a member of Management. It appears that both he and Skilling agreed, and the Board understood, that Skilling was the senior member of Management responsible for the LJM relationship.

Skilling was Enron's President and Chief Operating Officer, and later its Chief Executive Officer, until his resignation in August 2001. The Board assumed, and properly so, that during the entire period of time covered by the events discussed in this Report, Skilling was sufficiently knowledgeable of and involved in the overall operations of Enron that he would see to it that matters of significance would be brought to the Board's attention. With respect to the LJM partnerships, Skilling personally supported the Board's decision to permit Fastow to proceed with LJM, notwithstanding Fastow's conflict of interest. Skilling had direct responsibility for ensuring that those reporting to him performed their oversight duties properly. He likewise had substantial responsibility to make sure that the internal controls that the Board put in place—particularly those involving related-party transactions with the Company's CFO—functioned properly. He has described the detail of his expressly-assigned oversight role as minimal. That answer, however, misses the point. As the magnitude and significance of the related party transactions to Enron increased over time, it is difficult to understand why Skilling did not ensure that those controls were rigorously adhered to and enforced. Based upon his own description of events, Skilling does not appear to have given much attention to these duties. Skilling certainly knew or should have known of the magnitude and the risks associated with these transactions. Skilling, who prides himself on the controls he put in place in many areas at Enron, bears substantial responsibility for the failure of the system of internal controls to mitigate the risk inherent in the relationship between Enron and the LJM partnerships.

Skilling met in March 2000 with Jeffrey McMahon, Enron's Treasurer (who reported to Fastow). McMahon told us that he approached Skilling with serious concerns about Enron's dealings with the LJM partnerships. McMahon and Skilling disagree on some important elements of what was said. However, if McMahon's account (which is reflected in what he describes as contemporaneous talking points for the discussion) is correct, it appears that Skilling did not take action (nor did McMahon approach Lay or the Board) after being put on notice that Fastow was

pressuring Enron employees who were negotiating with LJM—clear evidence that the controls were not effective. There also is conflicting evidence regarding Skilling's knowledge of the March 2001 Raptor restructuring transaction. Although Skilling denies it, if the account of other Enron employees is accurate, Skilling both approved a transaction that was designed to conceal substantial losses in Enron's merchant investments and withheld from the Board important information about that transaction.

Causey was and is Enron's Chief Accounting Officer. He presided over and participated in a series of accounting judgments that, based on the accounting advice we have received, went well beyond the aggressive. The fact that these judgments were, in most if not all cases, made with the concurrence of Andersen is a significant, though not entirely exonerating, fact.

Causey was also charged by the Board of Directors with a substantial role in the oversight of Enron's relationship with the LJM partnerships. He was to review and approve all transactions between Enron and the LJM partnerships, and he was to review those transactions with the Audit and Compliance Committee annually. The evidence we have examined suggests that he did not implement a procedure for identifying all LJM1 or LJM2 transactions and did not give those transactions the level of scrutiny the Board had reason to believe he would. He did not provide the Audit and Compliance Committee with the full and complete information about the transactions, in particular the Raptor III and Raptor restructuring transactions, that it needed to fulfill its duties.

Buy was and is Enron's Senior Risk Officer. The Board of Directors also charged him with a substantial role in the oversight of Enron's relationship with the LJM partnerships. He was to review and approve all transactions between them. The evidence we have examined suggests that he did not implement a procedure for identifying all LJM1 or LJM2 transactions. Perhaps more importantly, he apparently saw his role as more narrow than the Board had reason to believe, and did not act affirmatively to carry out (or ensure that others carried out) a careful review of the economic terms of all transactions between Enron and LJM.

The Board of Directors. With respect to the issues that are the subject of this investigation, the Board of Directors failed, in our judgment, in its oversight duties. This had serious consequences for Enron, its employees, and its shareholders.

The Board of Directors approved the arrangements that allowed the Company's CFO to serve as general partner in partnerships that participated in significant financial transactions with Enron. As noted earlier, the two members of the Special Investigative Committee who have participated in this review of the Board's actions believe this decision was fundamentally flawed. The Board substantially underestimated the severity of the conflict and overestimated the degree to which management controls and procedures could contain the problem.

After having authorized a conflict of interest creating as much risk as this one, the Board had an obligation to give careful attention to the transactions that followed. It failed to do this. It cannot be faulted for the various instances in which it was apparently denied important information concerning certain of the transactions in question. However, it can and should be faulted for failing to demand more information, and for failing to probe and understand the information that did come to it. The Board authorized the Rhythms transaction and three of the Raptor transactions. It appears that many of its members did not understand those transactions—the economic rationale, the consequences, and the risks. Nor does it appear that they reacted to warning signs in those transactions as they were presented, including the statement to the Finance Committee in May 2000 that the proposed Raptor transaction raised a risk of "accounting scrutiny." We do note, however, that the Committee was told that Andersen was "comfortable" with the transaction. As complex as the transactions were, the existence of Fastow's conflict of interest demanded that the Board gain a better understanding of the LJM transactions that came before it, and ensure (whether through one of its Committees or through use of outside consultants) that they were fair to Enron.

The Audit and Compliance Committee, and later the Finance Committee, took on a specific role in the control structure by carrying out periodic reviews of the LJM transactions. This was an opportunity to probe the transactions thoroughly, and to seek outside advice as to any issues outside the Board members' expertise. Instead, these reviews appear to have been too brief, too limited in scope, and too superficial to serve their intended function. The Compensation Committee was given the role of reviewing Fastow's compensation from the LJM entities, and did not carry out this review. This remained the case even after the Committees were on notice that the LJM transactions were contributing very large percentages of Enron's earnings. In sum, the Board did not effectively meet its obligation with respect to the LJM transactions.

The Board, and in particular the Audit and Compliance Committee, has the duty of ultimate oversight over the Company's financial reporting. While the primary responsibility for the financial reporting abuses discussed in the Report lies with Management, the participating members of this Committee believe those abuses could and should have been prevented or detected at an earlier time had the Board been more aggressive and vigilant.

Outside Professional Advisors. The evidence available to us suggests that Andersen did not fulfill its professional responsibilities in connection with its audits of Enron's financial statements, or its obligation to bring to the attention of Enron's Board (or the Audit and Compliance Committee) concerns about Enron's internal controls over the related-party transactions. Andersen has admitted that it erred in concluding that the Rhythms transaction was structured properly under the SPE non-consolidation rules. Enron was required to restate its financial results for 1999 and 2000 as a result. Andersen participated in the structuring and accounting treatment of the Raptor transactions, and charged over $1 million for its services, yet it apparently failed to provide the objective accounting judgment that should have prevented these transactions from going forward. According to Enron's internal accountants (though this apparently has been disputed by Andersen), Andersen also reviewed and approved the recording of additional equity in March 2001 in connection with this restructuring. In September 2001, Andersen required Enron to reverse this accounting treatment, leading to the $1.2 billion reduction of equity. Andersen apparently failed to note or take action with respect to the deficiencies in Enron's public disclosure documents.

According to recent public disclosures, Andersen also failed to bring to the attention of Enron's Audit and Compliance Committee serious reservations Andersen partners voiced internally about the related-party transactions. An internal Andersen e-mail from February 2001 released in connection with recent Congressional hearings suggests that Andersen had concerns about Enron's disclosures of the related-party transactions. A week after that e-mail, however, Andersen's engagement partner told the Audit and Compliance Committee that, with respect to related-party transactions, "[r]equired disclosure [had been] reviewed for adequacy," and that Andersen would issue an unqualified audit opinion. From 1997 to 2001, Enron paid Andersen $5.7 million in connection with work performed specifically on the LJM and Chewco transactions. The Board appears to have reasonably relied upon the professional judgment of Andersen concerning Enron's financial statements and the adequacy of controls for the related party transactions. Our review indicates that Andersen failed to meet its responsibilities in both respects.

Vinson & Elkins, as Enron's longstanding outside counsel, provided advice and prepared documentation in connection with many of the transactions discussed in the Report. It also assisted Enron with the preparation of its disclosures of related-party transactions in the proxy statements and the footnotes to the financial statements in Enron's periodic SEC filings.[2] Management and the Board relied heavily on the perceived approval by Vinson & Elkins of the structure and disclosure of the transactions. Enron's Audit and Compliance Committee, as well as in-house counsel, looked to it for assurance that Enron's public disclosures were legally sufficient. It would be inappropriate to fault Vinson & Elkins for accounting matters, which are not within its expertise. However, Vinson & Elkins should have brought a stronger, more objective and more critical voice to the disclosure process.

Enron Employees Who invested in the LJM Partnerships. Michael Kopper, who worked for Fastow in the Finance area, enriched himself substantially at Enron's expense by virtue of his roles in Chewco, Southampton Place, and possibly LJM2. In a transaction he negotiated with Fastow, Kopper, and his co-investor in Chewco received more than $10 million from Enron for a $125,000 investment. This was inconsistent with his fiduciary duties to Enron and, as best we can determine, with anything the Board—which apparently was unaware of his Chewco activities—authorized. We do not know what financial returns he received from his undisclosed investments in LJM2 or Southampton Place. Kopper violated Enron's Code of Conduct not only by purchasing his personal interests in Chewco, LJM2, and Southampton, but also by secretly offering an interest in Southampton to another Enron employee.

Ben Glisan, an accountant and later McMahon's successor as Enron's Treasurer, was a principal hands-on Enron participant in two transactions that ultimately required restatements of earnings and equity: Chewco and the Raptor structures. Because Glisan declined to be interviewed by us on Chewco, we cannot speak with cer-

[2] Because of the relationship between Vinson & Elkins and the University of Texas School of Law, the portions of the Report describing and evaluating actions of Vinson & Elkins are solely the views of Troubh and Winokur.

tainty about Glisan's knowledge of the facts that should have led to the conclusion that Chewco failed to comply with the non-consolidation requirement. There is, however, substantial evidence that he was aware of such facts. In the case of Raptor, Glisan shares responsibility for accounting judgments that, as we understand based on the accounting advice we have received, went well beyond the aggressive. As with Causey, the fact that these judgments were, in most if not all cases, made with the concurrence of Andersen is a significant, though not entirely exonerating, fact. Moreover, Glisan violated Enron's Code of Conduct by accepting an interest in Southampton Place without prior disclosure to or consent from Enron's Chairman and Chief Executive Officer—and doing so at a time when he was working on Enron's behalf on transactions with LJM2, including Raptor.

Kristina Mordaunt (an in-house lawyer at Enron), Kathy Lynn (an employee in the Finance area), and Anne Yaeger Patel (also an employee in Finance) appear to have violated Enron's Code of Conduct by accepting interests in Southampton Place without obtaining the consent of Enron's Chairman and Chief Executive Officer.

* * *

The tragic consequences of the related-party transactions and accounting errors were the result of failures at many levels and by many people: a flawed idea, self-enrichment by employees, inadequately-designed controls, poor implementation, inattentive oversight, simple (and not-so-simple) accounting mistakes, and overreaching in a culture that appears to have encouraged pushing the limits. Our review indicates that many of those consequences could and should have been avoided.

Senator DORGAN. Mr. Powers, thank you very much. Your report is very helpful, and most of us on the Committee have heard your testimony in the U.S. House of Representatives. We have since that time heard testimony from others, including Mr. Skilling. I would like to ask a series of questions to begin with, and let me thank you again for being willing to appear here today.

Can you tell us again what you did not investigate, and why? We understand what you did investigate, especially with respect to Mr. Fastow and the partnerships. What did the Board of Directors ask you not to investigate, and why?

Mr. POWERS. Well, they asked us to investigate the related-party transactions, and the reason for that is that questions were being raised about them in the newspapers, and particularly *The Wall Street Journal*. At the time we started our investigation, similar questions were not being raised about other partnerships, and as several Senators this morning mentioned, there are many, many other partnerships, other than these related-party transactions. They were not being questioned, and for that reason we were not asked to go into them.

I should say it was an extremely demanding task. We had a great deal on our plate in the 3 months we had, even in these transactions.

Senator DORGAN. But those questions were raised at the time that you were conducting the investigation. As I understand the point, that they were not raised prior to the Board empaneling you, but during the conducting of your investigation all of these issues had been raised. I specifically wonder about insider trading, which also would be of great significance, and perhaps would involve the Board of Directors and key officers of the company. Did you go back to the Board and suggest that perhaps we need to also address insider trading? I am just trying to understand here the focus.

Mr. POWERS. Mr. Chairman, let me say here, those are absolutely crucial and important issues that need to be investigated. To be frank, it was all we could do, working very diligently and very

hard, to get to the bottom of these transactions, and I think we have performed a service in outlining these transactions, but we simply did not have the time or the resources to look more broadly into these other issues.

Senator DORGAN. Mr. Powers, when you looked at the related partnerships, did you ask the corporation for the names of the investors in the partnerships and, if you did, did you receive those names, and let me ask, how many partnerships did you review?

Mr. POWERS. We reviewed the LJM partnerships and Chewco, the related party, the related-party partnerships, the related-party transactions. We did not review all the other partnerships.

Senator DORGAN. Did you review, for example, Braveheart?

Mr. POWERS. No.

Senator DORGAN. So you reviewed several partnerships. Did you seek the names of all of the investors in those partnerships?

Mr. POWERS. We sought the materials from the partnerships, and the partnerships did not cooperate with us.

Senator DORGAN. The partnerships did not cooperate?

Mr. POWERS. The partnerships did not.

Senator DORGAN. How many partnerships do you estimate existed in this corporation?

Mr. POWERS. I have seen figures up close to 3,000, and you are quite right, it is an important point to note we only investigated three of them—now, they were related-party transactions, partnerships—and found these problems.

Senator DORGAN. Mr. Powers, I believe you indicated that you spoke with Mr. Lay. Your investigation had the opportunity to meet with and speak with Mr. Lay and ask him questions.

Mr. POWERS. Yes.

Senator DORGAN. Who did not speak with you that you requested to speak to in this corporation? Did you have the cooperation of all of the officers of the company and all the directors of the company, or were there those who refused to meet with you?

Mr. POWERS. Well, the people that were then currently employed by the company did cooperate with us. Kopper did not cooperate with us. Others who were no longer with the company involved in these transactions did not cooperate with us. Fastow, we had a very—about an hour interview with him, and there was very little information exchanged. It was not as though he totally refused to talk with us, but he was not cooperative in the interview.

Senator DORGAN. You met with Mr. Lay, Mr. Skilling, and Mr. Fastow?

Mr. POWERS. We met with Mr. Skilling; we had an interview with Mr. Skilling. We met with Mr. Fastow, but extremely little information was exchanged. I would say it was an uncooperative interview.

Senator DORGAN. Would you agree that, based on looking at several partnerships and telling me that you do not know who the investors in the partnerships that you looked at were, that for us to understand how you put the pieces of this puzzle together, ultimately we are going to have to evaluate what are all the partnerships and who are all the investors in these partnerships. Would you agree that is an important piece of information to understand what happened?

Mr. POWERS. I think it is a vital piece of information, and again, we see this as laying out some basic facts. It is a start, but we did not have the ability to compel testimony, we did not have subpoena power.

Senator DORGAN. Help me to understand the partnerships you did look at. For example, if Enron owned 97 percent of a partnership, they would have met the 3 percent test. But in order to have records for an auditor, would the corporation not have to have the records of that partnership, including the outside investors, because how would an auditing firm understand whether the 3 percent test has been met? And, if that is the case, and I would expect that to be the case, did you seek those records from the Enron Corporation and not get them?

Mr. POWERS. We got what we sought from Enron.

Senator DORGAN. Did you seek the names of the investors in the three partnerships that you investigated?

Mr. POWERS. I do not believe Enron had that. Enron tried to keep a distance from these LJM partnerships.

Senator DORGAN. But I am not asking what you believe. I am asking whether you sought the information and they refused to provide it, or you sought the information and they said we do not have it.

Mr. POWERS. Yes. It is the latter.

Senator DORGAN. Is that not totally implausible, that a company that has a 97 percent stake in a partnership would say to you, an investigator on behalf of the Board of Directors, or an auditing firm that would come in who said, show us the records, is it not implausible for them to say, we do not have records? That is unbelievable to me.

Mr. POWERS. Well, they did not have—the LJM partnerships would provide 3 percent equity, under this 3 percent equity test, into a transaction with which Enron was doing business, and as long as LJM showed up with the 3 percent equity, from Enron's point of view, they just dealt with the general partner of LJM.

Senator DORGAN. How would they know whether the 3 percent test is met? I mean, I am asking not just for these three partners, or these three partnerships, but we are going to need to try to understand what is the quilt that was put together here in order to understand really what is the dimension of what happened here. What are the interlocking investments made by whom? You indicated you limited your inquiry to the three partnerships, and that you were unable to get the information on who the investors were in the three partnerships because the partnerships were separate and special purpose entities, and as such, the information is deemed to be private.

Mr. POWERS. They dealt through their general partner, and Enron's position, what the Enron people we interviewed told us as to why they did not know who those investors in LJM were, was that they wanted—this is what Enron is saying to us.

Senator DORGAN. Did you believe that?

Mr. POWERS. Well, I am not sure I can pass on the credibility of it. Clearly, Fastow did not want people looking into what was going on in those partnerships. Enron's explanation was they wanted to keep a distance with those partnerships, and did not look into them

as to—or things like Fastow's compensation, and issues of that sort.

Senator WYDEN. Would the Chairman yield for just 1 second?

Senator DORGAN. I would be happy to yield.

Senator WYDEN. There was a very significant development today, Mr. Powers, and that was the newspaper account that indicates that Mr. Lay personally signed off on the LJM coinvestment deal. Did you find any evidence that that was the case, because the news today is saying this was a deal approval sheet from June of 2000, and that would, if confirmed, undercut the argument Mr. Lay has been making that he did not know much about what was going on. Can you tell us anything about this pretty significant development today?

Mr. POWERS. We note that in our report there was one instance where we were able to identify that Mr. Lay had signed off on a deal approval sheet for one of the underlying transactions with LJM, and it is on, I think, page 144 of our report.

Senator WYDEN. I thank my colleague for yielding. I think this is significant, because it is the first time at least I have seen any evidence that he had personally signed off on one of these questionable partnerships and this, in my view, directly undercuts the argument that Mr. Lay did not know what was going on. I thank my colleague very much for his courtesy in yielding.

Mr. POWERS. Senator, that is in our report. That instance is in our report.

Senator DORGAN. I have a broad range of questions, and I appreciate your patience. Our inquiry here is to try to have you help us understand this operation. Based upon what you understand, and my understanding of the records that I have seen, was it not the case that the 3 percent in some of the partnerships that you studied involved—controlled in some cases by Enron employees, and if so, the entity could not possibly have been an arm's length transaction? I am just trying to understand how we get to the names of all the investors and all the partnerships if you could not get to the names of the investors in the three you studied with the sanction of the Board of Directors to go do it.

I will come back to this question, and I also will come to a question of while you were doing this study, reports came out about shredding that was going on in Enron, and I will ask if the Board of Directors might have urged you to take a look at that, or if you asked questions of Mr. Lay, Mr. Skilling and others who authorized shredding and what documents were shredded.

The reason I will ask that is I think in order for you to do your work, you are going to want to have known as you conducted this inquiry whether the company was busy shredding documents you needed. Clearly, the Congress is very interested in whether the documents that were being shredded were documents we need for this evaluation.

So I have a range of other questions. Maybe you will want to answer the shredding question now, then I will turn to Senator Hollings.

Mr. POWERS. Well, when that first came up in the company we read about it in the newspapers, and when the FBI came in to investigate the company we cooperated, and I think we had a secure

system for the Enron documents that we had. There is surely, there may be information on those documents that were shredded that would have helped us, and surely they would help anyone else that is investigating, and especially people with subpoena power that can investigate.

We did not see a hole in the documentation for the transactions we were looking into, so we were able to figure out what these Raptor and Chewco transactions were like with the documents we had. Whether there are handwritten notes or other things on the other documents that we did not have, say, multiple documentation in similar transactions, we cannot say, and it is a serious issue.

Senator DORGAN. We will have several rounds of questioning. Senator Hollings.

The CHAIRMAN. Well, Senator Wyden asked Dean Powers about that sign-off on Jedi. Enron consolidated Jedi. There is no indication in the Board minutes that this consolidation was ever presented to the Board. Lay did not know about the consolidation, and does not recall that the consolidation was ever brought to the Board, yet his signature was there.

Mr. POWERS. His signature, which we document in the report, was on a transaction called Backbone, which was a transaction, it was a sale of some dark cable to one of the LJM, I think LJM2.

The CHAIRMAN. Well, Dean, how much does that represent? I am trying to get to the off-balance-sheet debt, and you had Jedi, LJM, and one other. I said you only got the three of them. My just quick study, that would represent about $1½ to $3 billion. What would you say it would represent, how much debt as a result of these related-party transactions? In other words, they did not appear on the balance sheet.

Mr. POWERS. I do not have the exact figure. I think the range you suggest is about right.

The CHAIRMAN. Well, I would ask the Committee to put in the record the assets and debts shown that appeared according to *The New York Times,* that record there, and it shows some $30 billion, and yet your report only covers 3 of the $20 billion.

[The information referred to follows:]

ENRON'S COLLAPSE; COMPLEX WEB OF RELATIONSHIPS IN BOOM AND BUST

The New York Times, January 13, 2002

by John Schwartz

The cast of characters in the Enron drama is lengthy, and their relationships are complex.

The Executives

Kenneth L. Lay gained national fame as the chairman and chief executive of Enron, a company that reshaped the nation's energy markets—and notoriety as the company flamed out spectacularly. A man with a doctorate in economics and an evangelical belief in free markets, Mr. Lay turned an old-fashioned gas pipeline operator into the world's biggest energy trader. But when Enron faltered, he could not explain the company's finances to the satisfaction of Wall Street or of Dynegy Inc., a rival that offered to rescue Enron but ultimately walked away from a proposed merger.

Mr. Lay's longtime No. 2, Jeffrey K. Skilling, fostered a culture at Enron described as creative and cutthroat. He led the company into new markets, setting up trading desks for paper, chemicals, water rights and high-speed Internet service.

Mr. Skilling was chief executive for six months, resigning last August. He said last month that he was stunned by the company's rapid decline.

Enron replaced its chief financial officer, Andrew S. Fastow, in October, seeking to placate investors and regulators who had begun questioning a set of unusual partnerships he arranged to shift debt off the company's books. Two weeks later, the company revised its accounting for the partnerships, wiping away about $600 million in profits it had reported over the previous five years. Mr. Fastow earned $30 million from his investments in the deals.

The Board

Enron recruited prominent people to its Board of Directors, but given the company's collapse, analysts give them low marks. The directors include Wendy L. Gramm, the former chairwoman of the Commodities Futures Trading Commission and the wife of Senator Phil Gramm, Republican of Texas.

Ms. Gramm serves on the Board's audit committee, which is responsible for the company's accounting and financial reporting. Until 1998, she owned Enron shares; when the Gramms decided that the stock presented conflict of interest issues, she sold her shares for $300,000. Since then, the company has placed her Board pay in a "deferred account" that can be tapped later.

Also on the Board is Dr. John Mendelsohn, president of the M. D. Anderson Cancer Center, one of Houston's most prestigious institutions. Enron has donated more than $600,000 to the center in the last five years. Another audit committee member, Lord John Wakeham, was in Margaret Thatcher's inner circle when she was Britain's prime minister.

The Lawyers

No corporate crisis would be complete without celebrity lawyers, and the Enron debacle has enlisted some of the biggest. David Boies, who took on Microsoft in the federal antitrust suit, is representing Mr. Fastow. Robert S. Bennett, who represented President Bill Clinton in the Paula Jones scandal, is representing Enron in Washington.

The Politicians

Mr. Lay—"Kenny Boy" to his friend George W. Bush—is a major contributor to both political parties. Mr. Lay and other Enron executives have given more than $550,000 to Mr. Bush in his political career.

Enron's executives met with Vice President Dick Cheney four times last year to discuss energy matters. When Mr. Cheney was chief executive of Halliburton, a unit of the company built Houston's new baseball stadium, Enron Field. Before he became the president's top economic counselor, Lawrence B. Lindsey was a paid adviser to Enron. Karl Rove, Mr. Bush's chief political strategist, and I. Lewis Libby, Mr. Cheney's chief of staff, were investors in the company.

The ties reach far beyond the White House. The Republican national chairman, Marc Racicot, the former governor of Montana, was a lobbyist for the company until last week. In Texas, Mr. Bush's successor, Rick Perry, has been criticized for appointing a top Enron executive to the state's Public Utility Commission.

The Accountants

Joseph F. Berardino, chief executive of the accounting firm Arthur Andersen, Enron's longtime auditor, is caught in the Enron net. In December, he told Congress that Enron might have illegally hidden information from its auditors. Last week, Andersen disclosed that its employees had destroyed documents related to its auditing of Enron—even after the government began investigating Enron's fall.

If the story seems to take on the breadth of a Cecil B. DeMille epic, that may only be appropriate. For there is a cast of thousands: the company's investors, including Enron employees who saw their retirement savings disappear virtually overnight. Their loss—and their anger—guarantee that the investigations of Enron are only beginning.

The CHAIRMAN. It says here, and I am reading from *Business Week* now, Dean Powers, Enron's bankruptcy filing shows $13 billion in debt for the parent company and an additional $18.1 billion for affiliates, but that does not include at least $20 more billion estimated to exist off the balance sheet, so you folks only looked at 3 of the $20 billion.

Mr. POWERS. That is correct, and still there were these problems we uncovered.

The CHAIRMAN. Well, this report we said will be here. We have got Dean Powers' report, so our work is done for us, not at all. That is just a cursory review at best, is that not right?

Mr. POWERS. Absolutely. It is a start, and we think you are absolutely right on that.

The CHAIRMAN. And, for example, maybe you can explain the statement on page 3. Enron utilized off-balance-sheet transactions because the company was growing quickly, and the balance sheet was not large enough to handle the growth. What do you mean, they do not have that wide a piece of paper down in Texas? What do you mean, the balance sheet was not large enough to handle the growth?

Mr. POWERS. I think they needed to take on more debt than their balance sheet would support. That actually was Lay's explanation when we interviewed Lay.

The CHAIRMAN. Well, to make only a cursory report just a bare start, Dean, you attracted the rats leaving the sinking ship. Why are you swimming toward the ship? Everybody wonders about that, and I have got the highest respect for you and the law school. In fact, I have worked with the business school down there, George Kozmeski, for years, at the University in Austin, but to take on this thing, and then be made a part of it, put on the Board for one, just to make an investigation, you are investigating the Board, then all of a sudden you are part of the Board, so a Dean of a law school ordinarily would not take on a conflict of interest, would he?

Mr. POWERS. Well, I thought when I was asked that Enron was a major company in Texas, important for the Texas economy, and getting to the bottom of these transactions, I thought I could do a service, and while I agree fully this is just a start——

The CHAIRMAN. So you are not near finding out what happened, what caused their collapse.

Mr. POWERS. Not near the bottom, I don't think.

The CHAIRMAN. And you are going to continue to work?

Mr. POWERS. The charge of the Committee has been completed. I think a lot of what——

The CHAIRMAN. You are not even near to making a conclusion and yet you do not know what happened.

Mr. POWERS. Well, we got on to get to the bottom of these transactions that were being discussed in the newspapers, these related party transactions, which do have special problems.

The CHAIRMAN. With only $17 billion not covered. Let me ask you, you said on January 16, some 12 of you met with Mr. Kenneth Lay to take his testimony as to what went on, is that not correct?

Mr. POWERS. Yes. I was at that interview.

The CHAIRMAN. Did you use a stenographer?

Mr. POWERS. We did not. We had a 17-page single-space memorandum. We have been working with the staff to provide the results of all of our interviews to the Committee.

The CHAIRMAN. Now, wait a minute, you say you did not use a stenographer, so all of you were making different notes from time to time as he testified, were you not?

Mr. POWERS. Well, somebody took notes.

The CHAIRMAN. Can you furnish those notes for us?

Mr. POWERS. Well, we turned those notes as a draft into the memorandum.

The CHAIRMAN. I understand that.

Mr. POWERS. We did not keep the notes.

The CHAIRMAN. You shredded the notes?

Mr. POWERS. Senator, there is nothing that is not in the report, and this was the standard, accepted way that has been worked by many investigators over a long period of time to do internal investigations, is to use the procedure that we used.

The CHAIRMAN. The standard procedure is not to take down the testimony of the gentleman that you are investigating and otherwise, while you took some notes, to destroy the notes, that is your testimony?

Mr. POWERS. We used those to prepare a very detailed, within 24 hours in all but a few cases, very careful, accurate, complete description of what went on in those interviews, and I do think that is standard practice in investigations of this sort.

The CHAIRMAN. Thank you, Mr. Chairman.

Senator DORGAN. Senator Fitzgerald.

Senator FITZGERALD. Thank you, Mr. Chairman. Dean Powers, I thought that the report that you did was very good, very professional. You obviously had top people working on your team, but I am very concerned that the Board limited your mandate just to related-party transactions because, as I read your report, it makes it sound like all the fake earnings were simply being caused by one rogue CFO, and as Senator Hollings has pointed out, your report only digs into those related-party transactions that involved Mr. Fastow, and there were apparently many other questionable transactions with other partnerships or SPE's that were off the books that need to be looked into.

Has your committee gone back to the Board and recommended further review of more transactions?

Mr. POWERS. Well, of course, the answer is we have not. The company is in bankruptcy. Things are being done in conjunction with the creditors' committee now. It is a very different situation than we started, and I will be candid about it, I need to return to devote my full time and efforts to the University of Texas Law School, so I am not sure I am in a position to do that.

Senator FITZGERALD. Is the Board just going to leave the rest of the investigation to the Justice Department, the SEC, and perhaps plaintiffs' attorneys?

Mr. POWERS. Well, I think those entities are investigating, and as far as I know the Board does not have——

Senator FITZGERALD. Why did the Board limit your mandate to partnerships in which you had an Enron insider as general partner of the partnership? What was the policy rationale for limiting your review in that way?

Mr. POWERS. Well, those partnerships, for the very reasons we point out in the report, are very troubling because of the conflict of interest with Fastow being on both sides of the deal, were especially troubling, and questions had been raised in the financial press, and so those were the transactions we looked into. I do not think we possibly could have done anything like this kind of investigation over a broader range of transactions, which is not to say

it is not important that those investigations be done. It is crucial that they be done.

Senator FITZGERALD. Well, I think there was one written report about the Braveheart partnership where Braveheart borrowed $115 million from Canadian Imperial Bank of Commerce. Enron guaranteed their borrowings, and then Braveheart took $110 million of that and paid it to Enron for a worthless broadband video business that had no revenues to speak of, no clients and no income. Apparently that was not a related-party partnership, and that is why you did not look into it.

Mr. POWERS. Correct.

Senator FITZGERALD. But it is possible that there were dozens, or even more other transactions wherein the valuation of the asset being transferred to the partnership is in question, and Enron could have paid an inflated price for it.

Mr. POWERS. Absolutely. We found these problems in one small area, and we do not in any way want to suggest that—much more investigation needs to be done, and especially by bodies with subpoena power, and who can compel testimony.

Senator FITZGERALD. You are aware, though, that your report just focusing on those partnerships that involved the insiders and Mr. Fastow's CFO office and Mr. Fastow himself, that that encourages the perception which I think now is kind of out there amongst the general public that all the troubles seemed to stem from just this one guy.

Mr. POWERS. Well, certainly we tried to be very careful in the report to make the point you are quite right we are making, that this looked at a very narrow part of Enron, and it does not by any means finish appropriate investigations.

Senator FITZGERALD. Now, with respect to those transactions you looked at between Enron and the Fastow partnerships, it seems to me that a big question is, who was doing the valuations of the assets being transferred from Enron to the partnerships? Your report talks about there being all sorts of asset sales where Enron would take an apparently questionable asset, transfer it to the partnership, and they would get paid a huge sum. Who was supposed to be doing the valuations?

Mr. POWERS. Well, Enron did have people who did evaluations of certain kinds of transactions like hedges, for example, but ultimately—and that is one of the problems with these transactions, is Fastow was often negotiating on one side and people that worked for him were negotiating on the other side, so these were not arm's length.

Senator FITZGERALD. There is one Board report where Fastow said, and I can't remember what asset he said he was transferring to a partnership, but he said they were going to get an opinion from Price Waterhouse Cooper that in their opinion the value being received back by Enron was more than the value that they were transferring to LJM, and I guess that should have raised some questions. Why is LJM giving more than this asset is worth? That alone did not make sense. Was Price Waterhouse Coopers involved in a lot of the valuations? Did you see them?

Mr. POWERS. In many of the evaluations of certain kinds of transactions, other transactions were negotiated.

Senator FITZGERALD. I know you referred us to page 144 and 145, where there is that Backbone transaction, and I notice at the end that was a deal that Mr. Lay had himself personally approved, but I notice that in Backbone the EBS, the Enron Broadband Services wanted to do this transaction because they felt substantial pressure to meet their second quarter numbers.

Did Mr. Lay and Mr. Skilling produce an earnings budget, and did they give that to people throughout the company and pressure them to meet their earnings numbers? Did you do any delving into that?

Mr. POWERS. Not that I know of. With the chair's indulgence, I have people who did the investigation with me, so I want to get these accurate if I may.

From interviews, different areas did have earnings targets. The connection of those particular earnings targets to Lay and Skilling is more remote.

Senator FITZGERALD. Did you find out whether Mr. Lay had hedged his own positions by entering into derivative transactions?

Mr. POWERS. I do not know whether he did or not.

Senator FITZGERALD. I gather there will be another round.

Senator DORGAN. Senator Wyden.

Senator WYDEN. Thank you, Mr. Chairman.

Mr. Powers, I want to talk to you about the role of the accountants in all of this, and I will tell you in starting, as you know, there is a great discussion around the country about the need for various accounting reforms, and people are pretty much shocked to learn that there already is a federal law on the books today that requires that accountants look for fraud and move quickly to bring it to the attention of the Securities and Exchange Commission if it was not corrected, and I spent nine years trying to get this law on the books, fighting the profession again and again.

Now, I do not want to ask you for a legal opinion here, but I want to take you through this law, because my reading of it is that an awful lot of it really did not seem to get much attention from the Houston office of Arthur Andersen. Do you have an opinion before we start in, because I am going to take you through 10(a) of the Securities and Exchange Act to get your opinion on each section of this law that is on the books right now, and do you have any sense as we begin whether 10(a) should have been triggered by what was going on?

Mr. POWERS. I do not. I tried to figure out what went on with these transactions with a lot of help, but I am not a securities law or accounting expert.

Senator WYDEN. But I guess, Dean Powers, section 2 of the law speaks specifically to related-party transactions. Did they comply with that section of the law? That was the area you zeroed in on. That firm has to have procedures to look at questionable transactions when they involve related-party transactions, and I sure as heck do not get a sense that they complied with it, do you?

Mr. POWERS. Again, I am not an expert on the law. They certainly did not oversee these related-party transactions.

Senator WYDEN. Well, that, to me, is a violation of section 10(a). I mean, it says that they have to have procedures in place to iden-

tify related-party transactions and then bring them to the attention of the company. Do you get the sense that was complied with?

Mr. POWERS. The company all the way up to the Board of Directors did know that these entities existed, and there were related-party transactions. I am not an expert on that law, and I do not have an opinion whether it was complied with. It certainly raises serious issues that people who are experts on the enforcement of that law, I agree, need to look into.

Senator WYDEN. Well, with all due respect, I do not know how you can do a thorough inquiry without putting the statute over here that is a law on the books today. If you just look at what is going on in this country, there is just hours and hours of attention being devoted to having a debate about new laws. What I just described to you is a law on the books right now to look at related-party transactions, and I still want you to tell me whether you looked at those related-party transactions in conjunction with a law that is on the books right now.

Mr. POWERS. We tried to figure out what had happened, and we did not evaluate whether the conduct violated a particular securities law or accounting law.

Senator WYDEN. Well, with respect to the related-party transactions, the ones you looked at, when it was brought to the attention of the company, did you find any evidence that they took corrective action? That is required by federal law. What did you find?

Mr. POWERS. We concluded that they did not oversee these transactions adequately.

Senator WYDEN. But, specifically on that point, when you found questionable activity in the related-party transactions, did the company, based upon your effort to examine what they did, take corrective action?

Mr. POWERS. We only delivered our report to the company, what, on February 2.

Senator WYDEN. This was required a long time before. That is what I think we have learned, was there a discussion about questionable activity, the law says you are required at that point to either get it corrected by management, or it goes directly to the SEC, and I would just like to have some sense, as you followed the related-party transactions in those three areas, whether you saw anything indicating that they took corrective action. Maybe your associates would like to get into it. It is a fairly straightforward question.

Mr. POWERS. I understand. I did not come across anything with reference to that law. I did not come across anything of that sort. We did not find anything with reference to Andersen that Andersen referred to that law, though Andersen did not fully—we were not able to interview the Andersen people. We saw some of their work papers and not others. Not to my knowledge.

Senator WYDEN. There is internal e-mail indicating that there was concern about exposure on this. When you are talking about a law that is on the books today, and that requires if questionable activity is taking place with respect to related-party transactions, I think it is important to find out if there is any evidence, when it is brought to the attention of the company, whether it was cor-

rected, and you are telling me at least at this point you have not found any evidence that it was done, is that right?

Mr. POWERS. That is correct.

Senator WYDEN. Let me ask you, with respect to the cooperation that you had from Arthur Andersen, you said you had only limited access to the work papers in the Houston office of Arthur Andersen. Do you believe there was significant relevant information you were not able to uncover?

Mr. POWERS. From Arthur Andersen? Yes. We did not have access to any of their 2001 work papers. They would have been very helpful to us.

Senator WYDEN. What questions would you have liked to ask Mr. Fastow and Michael Kopper if you had been in a position to get access to some of those documents?

Mr. POWERS. Well, we would have liked to have found out from Kopper and Fastow more about the LJM partnerships, as I answered earlier, that we were not able to get cooperation from those partnerships themselves.

Senator DORGAN. Let me just ask another question if you would yield on that point. Why were you not able to have access to the Arthur Andersen material? Did you ask for it and Arthur Andersen refused to provide it?

Mr. POWERS. We asked from the start of the investigation. We wanted to set up interviews with Andersen and look at their work papers. We negotiated with them over some period of time. We finally got access to some of their work papers. There was talk about interviews. We tried to get copies of the work papers, and did not. We, as I said, were not given access to any of the 2001 work papers as those negotiations were going on. We then—Enron discharged Arthur Andersen in January, and the lawyers for Arthur Andersen called and said we are not going to cooperate any further.

Senator DORGAN. That is surprising because Arthur Andersen was employed by the company and the Board of Directors, and was paid a significant amount of money.

Senator WYDEN. Mr. Chairman, I know my time has expired. I am concerned about these two issues. First, the question of compliance with section 10(a), and second the question of Arthur Andersen limiting your access to these critical documents—I find it just totally implausible that Arthur Andersen's office in Houston failed to understand that the purpose of these related-party transactions was to sweep debts and liabilities under the rug. I think just any other explanation strikes me as totally implausible.

I hope that we will get a chance to have another round of questioning, but I do think the combination of what looks to me like ignoring a federal law that is on the books right now that could have rooted out much of this trouble, plus the unwillingness to give you access to the documents, is the kind of one-two punch that has injured a lot of Americans, and I look forward to the next round.

Mr. POWERS. We agree. We would like to have heard Andersen's explanation of that.

Senator DORGAN. Senator Inouye.

Senator INOUYE. Thank you very much.

Dean Powers, although you were not provided access to these records and files and reports, and although the Andersen firm did

not cooperate with you, you were able to, in your executive summary on page 5, make certain conclusions. For example, that the original accounting treatment was clearly wrong, and accounting treatment was likely wrong in the other transactions, and that Enron's records show that Andersen received $5.7 million for advice over and above the regular audit fees.

You were able to reach the conclusion that they were clearly wrong. Wrong in what sense, sir?

Mr. POWERS. Well, they have admitted in their restatement some accounting errors, so clearly they were wrong in those. Our view, based upon the accounting advice that we have, was that they did not provide sufficient independent accounting advice to Enron about the nature of these transactions. They were hedging devices that were basically Enron hedging with itself, and that is inappropriate, and Andersen would be in a position to bring professional judgment and evaluation on that, and they did not do it.

Senator INOUYE. This may not be a proper question, but did you believe at any time that such advice could be criminal in nature?

Mr. POWERS. Well, we did not ourselves make an evaluation of that. It certainly is something that I know both the Justice Department and the SEC is looking into this, and I think appropriately so, but we did not ourselves try to ascertain whether there was criminal conduct.

Senator INOUYE. It is strange to see a firm such as Andersen, internationally known, providing advice that would be in your words clearly wrong in basic accounting, in the structuring of transactions and such.

In your work as Dean of the law school, have you come across other cases of this nature with accounting firms?

Mr. POWERS. No, but that is not, accounting is not my field. I teach product liability and tort law, mainly.

Senator INOUYE. Well, I just hope that Andersen and that firm can clarify this for us. In your work on the Board, were you able to interview Mr. Lay?

Mr. POWERS. Yes, we were.

Senator INOUYE. And, did he suggest to you that he was fully advised by Andersen?

Mr. POWERS. In our interview, this is what he said to us. He said that he thought these transactions were OK because Andersen had signed off on them.

Senator INOUYE. Because Andersen signed off?

Mr. POWERS. Yes. Andersen had approved them. Yes, that is what he said.

Senator INOUYE. Did the company counsel also advise Mr. Lay that Andersen was correct?

Mr. POWERS. Other people in the company, mainly the chief accounting officer who gave that advice, that is my recollection of the interview.

Senator INOUYE. So the legal counsel, the accounting counsel on the Enron management team all felt that Andersen was correct?

Mr. POWERS. I do not know whether they felt Andersen was correct. They referred to the fact that Andersen had approved many of these transactions, had reviewed and approved many of these transactions. That is what they said.

Senator INOUYE. Do you believe there is a conspiracy brewing here?

Mr. POWERS. Well, I think people, I mean, certainly in the finance group and in the accounting group understood these transactions very well.

Senator INOUYE. Did you understand these transactions to be valid, illegal?

Mr. POWERS. I think they understood the nature of the transactions. It is hard for me to see how hedging with one's own stock could be a legitimate economic hedge. As I said in my opening statement, there are, I think it is at the Finance Committee meeting, notes taken there that people understood this is hedging P&L volatility, that is the accounting aspects of it, rather than really shifting any economic risk.

Senator INOUYE. So your conclusion is that they knowingly did the wrong thing?

Mr. POWERS. They knew they were hedging with their own stock, and that was inappropriate. Whether they knew it was inappropriate, they said in their interviews they did not understand it to be inappropriate.

Senator INOUYE. Thank you very much.

Mr. POWERS. Thank you, Senator.

Senator DORGAN. Senator Carnahan.

Senator CARNAHAN. Thank you, Mr. Chairman. I would like to address a few corrective measures that you might suggest to this Committee. As you know, a record number of Americans are participating in the stock market right now through 401(k) pension plans and private investment accounts, and even online trading.

The average Americans now are becoming shareholders, and they have to rely on other people to protect their interests. They expect management to focus on implementing a successful and profitable business plan, and they can rely on boards of directors to oversee the company's management and add yet another layer of protection and, of course, they rely on various government regulators to prevent fraud and corruption. On all fronts, Enron's shareholders were poorly served.

In your opinion, what are some immediate steps that the Congress could take to give investors confidence that what transpired at Enron would not happen at other companies in the future?

Mr. POWERS. If I may preface this, I am not a securities law or accounting expert. To me, as an investor, I might add, a very modest investor, one key thing is transparency, that whatever is going on financially inside the company ought to be accessible to investors and certainly their analysts.

Not being an expert, I do not know whether that is because there were existing laws that might have been violated, or laws that need to be enhanced, but that does seem to be an important area of inquiry that committees, such as this, I think as a citizen and not as an expert, ought to look into.

I do think issues about the independence of accountants seem to be an issue that is an important one. I do not myself have a particular solution to that.

Can I just add, I do think that the tragedy of the retirees in their 401(k) plans is a serious human tragedy that I do not have the so-

lution to that, either, but also it is something that needs to be looked into.

Senator CARNAHAN. You are a relatively new member of the Enron Board of Directors, and I am sure you are aware that the Board is meant to represent the shareholders. Your report indicates that the Board of Directors failed in its oversight duties. Could you tell the Committee what reforms have been instituted among Enron's Board to ensure that it does not preside over a fraudulent management in the future?

Mr. POWERS. I was brought on the Board to conduct this investigation. I believe that the Board, in cooperation with the Creditors' Committee, will be restructuring itself. I do not know that that has taken place. I think there is a regularly scheduled Board meeting today, and that may or may not have occurred.

Senator CARNAHAN. What kind of tough questions do you think boards should be asking of accountants and executives and lawyers?

Mr. POWERS. I think one lesson I have learned from seeing the complexity of these transactions, if people on boards do not understand, or claim that they do not understand what a transaction is doing before they are asked to approve it—now, there are many things that go on in a company that boards do not manage the company, but when something comes to the board, that is in their purview, they ought to understand. If it is too complex to understand——

Senator CARNAHAN. They just accept the recommendation and give it a rubber stamp?

Mr. POWERS. If I were on a board and somebody came to me with a transaction I did not understand, I would like to think that I made sure that I understood it or not go forward with it.

Senator CARNAHAN. Thank you.

Senator DORGAN. Senator Hutchison.

Senator HUTCHISON. Thank you, Mr. Chairman.

I want to put a little bit in perspective some of the earlier questions about the processes for the internal investigation, and ask you this question. You were brought on the Board for the specific purpose of doing an internal investigation around the end of October.

Mr. POWERS. Yes, the very end of October, that is correct.

Senator HUTCHISON. And what was your process in determining what an internal investigation should accomplish, and the process that you would use to have that as differentiated from some other type of outside investigation?

Mr. POWERS. Well, actually, about, or sometime about a week, I think, or maybe a bit more than that, before I actually came on the Board to conduct the investigation, the Board had set up this special committee with different people on it and had hired Wilmer, Cutler, & Pickering, a Washington law firm.

Senator HUTCHISON. When you say different people, do you mean people off the Board or people on the Board?

Mr. POWERS. People on the Board who had been involved in the transactions, and I was brought on, as was Ray Trobe, to be a majority of the Board of people that were not there when any of these transactions took place, but the Board had hired Wilmer, Cutler &

Pickering. They had hired Deloitte and Touche—Wilmer, Cutler & Pickering is a leading firm in conducting these investigations, and I think conducted a superb investigation here, and that was how we went about structuring how this investigation would take place.

Senator HUTCHISON. So you had the law firm, then, that had done internal investigations, and the process for those was different, and was it standard in internal investigations that you interviewed with the group and then one person did a memorandum about the interview and you all approved it? Was that said to be a standard operating procedure?

Mr. POWERS. Yes, it was.

Senator HUTCHISON. Was part of that just for time purposes that you did not take transcripts and then store that?

Mr. POWERS. I think that was part of it, but remember also we did not have any subpoena power, and we had to rely upon the cooperation of witnesses, and our goal was to find out what happened, and we were not trying to replicate a criminal investigation and, for example, we did get Ken Lay to talk with us, so I think we were able to get information through this process and that is why lawyers over the years have developed these processes for internal investigations to get cooperation with people inside the company.

Senator HUTCHISON. Did the nature of your internal investigation change from October, when you started this, until early February?

Mr. POWERS. No. We kept our same task. We worked very carefully with the SEC. We provided them documents and some briefings. At some point the Justice Department did start to investigate, and we worked with them to be sure we would be providing them with any documents or information they would need, but that basic investigation to just simply find out what happened we followed through with.

Senator HUTCHISON. How did the SEC come into this? Did they ask to see the progress, the SEC?

Mr. POWERS. The SEC started an inquiry and then finally an investigation. They were, I think, willing to let us investigate. We did provide them with a lot of documents, and we were in constant contact with them to make sure that we were fulfilling our obligations to them.

Senator HUTCHISON. The last question on this point. You said that this is the end of your investigation. Do you intend to stay on the Board of Enron?

Mr. POWERS. No. I intend to resign from the Board of Enron as soon as I am assured that I have fulfilled my obligations to the SEC.

To come back to the notion that our report is just a start, but that start and our task of the special committee is over, and I need to devote full time to being the Dean of the law school.

Senator HUTCHISON. Let me just ask you again, back on the things that you have learned from which we could fashion the right approach to reform, I think there must be some reform, probably, in accounting procedures and transparency, and also on pensions. In what you saw in the transparency and accounting processes, was the information available and given to outside people, whether

it was an analyst or a Board member, that would have given them an indication that something was this wrong at Enron?

Mr. POWERS. Well, certainly not this wrong. The disclosures to the investing world did disclose that there were transactions between an entity owned by Fastow and Enron. They were not kept secret in that sense.

Senator HUTCHISON. Excuse me, but you said Mr. Fastow actually pursued an ethical clearance on those, did you not?

Mr. POWERS. Yes. The Board approved Fastow's involvement, but I was talking about, that was at the Board. The disclosure of those transactions to the public. They were disclosed in minimal terms, and as we point out in the report, they were not—there was a lot of information about those transactions that was not fully disclosed.

Senator HUTCHISON. Even when the Board was required to act, were they required to say it was OK for Mr. Fastow to have his joint role? Were they told that it was within the code of conduct?

Mr. POWERS. They made the findings. This is now disclosures to the Board. I was talking earlier about disclosures to the public, but disclosures to the Board. For example, the Board did not look into what Fastow's compensation was. They did not insist that he tell them what that compensation would be.

Senator HUTCHISON. Would there have been any reason to question that there was not added compensation for this other partnership?

Mr. POWERS. Well, by the time they got to LJM2 it was a big enough partnership that it should have raised red flags that there may be quite a bit of compensation available there just because of the size and the nature of the partnership. LJM1 did not have that much money in it.

Senator HUTCHISON. Well, I see my time is up. Is there anything else that you would say we should look at in reform on making those transparencies transparent to an average board member or analyst, or stockholder?

Mr. POWERS. I think it is absolutely crucial there be transparency to the public and to the shareholders.

Senator HUTCHISON. Of information that is made available to the board? Should it all be there?

Mr. POWERS. I think enough information should be disclosed in the financial statements in a clear enough way that makes the investing public understand, either understand the nature of the business and its financial risks, or understand that it is too complicated and they cannot understand it, but it ought to be disclosed to the public.

Senator HUTCHISON. Thank you, Mr. Chairman.

Senator DORGAN. Senator Nelson.

Senator NELSON. Thank you, Mr. Chairman. Mr. Powers, I am going to ask you a series of questions that you may, in your investigation, have come into confrontation with some of the facts that might illuminate the answers to some of these questions, but just to lay the predicate, our Florida retirement fund is one of the largest in the country. It is the fourth largest pension fund in the country, and just to give you a sense of what was happening I will

quote from a *New York Times* article that sums it up pretty quickly.

Last October, after Enron announced $1.2 billion in losses, and the SEC opened its investigation, the fund, meaning the Florida retirement fund, bought $7.1 million more of Enron stock, and after Enron's Chief Financial Officer, Fastow, was ousted on October 24, the fund bought another $16.1 million worth of stock, and when Enron announced last November that it had overstated its profits, the fund bought still another $11.7 million.

The story also reported that an Alliance Capital executive, which was the outside money manager that was buying this, Frank Savage, also is a member of Enron's Board. Do you know Frank Savage?

Mr. POWERS. I do know Frank Savage. I do not know his connection with the pension fund.

Senator NELSON. When Mr. Lay took over as CEO last August, he publicly stated that he wanted to focus on investor confidence and, during the course of your investigation, did you review any policies or communications on whether Enron executives or Board members promoted the purchase of the stock by public institutional investors, such as the Florida retirement fund?

Mr. POWERS. No, we did not look into that. It is an important issue, but we did not investigate that.

Senator NELSON. From what you observed, do you have any opinion on corporate executives or Board members soliciting the purchase of stock by employees or others?

Mr. POWERS. I do not. They should follow the legal requirements and be truthful, but I do not have an opinion on that.

Senator NELSON. Between June and November of last year, do you have any personal knowledge if any Board members or Enron executives made calls to public institutional investors to promote the stock?

Mr. POWERS. I do not have any knowledge of that.

Senator NELSON. Are you aware of any Board members with direct or indirect ties to Florida and outside money managers that purchased stock for the state pension fund?

Mr. POWERS. No, I do not, Senator.

Senator NELSON. Other than what I just told you about Mr. Savage?

Mr. POWERS. That is correct.

Senator NELSON. It is my understanding he resigned from that outside money manager in August. There had been plenty of Enron stock that had already been purchased, but it was not at this particular time when the stock was plummeting in value.

On November 19, Enron filed its quarterly report to the SEC revealing that the company owed $690 million in loans. Do you know if anyone in Enron made calls to money managers and others to stabilize the stock before the loans came due?

Mr. POWERS. I do not know.

Senator NELSON. You obviously see where my line of questioning is going, which is what I am concerned about. Does Enron have a conflict of interest policy for its Board of Directors?

Mr. POWERS. Yes.

Senator NELSON. Do you know if that conflict of interest policy would cover any of these things we are talking about here?

Mr. POWERS. I do not. I would have to look more carefully at them.

Senator NELSON. Your committee report describes hands-on participation by Arthur Andersen in structuring some of the partnerships which your committee saw as a major part of the auditor independence problems between the company and Arthur Andersen.

Mr. POWERS. Yes, that is correct.

Senator NELSON. I agree with your committee's evaluation of the auditor independence and, thus, a number of us are working on legislation to change the rules so that accountants could not perform any management consulting for firms that they audit. Do you think, on the basis of what you have seen here, that companies should consider changing their auditors, say, every 5 to 7 years?

Mr. POWERS. Well, as I said, I am not an expert in accounting, and I am reluctant to have a firm proposal. I will say the issues you are raising were surprising to me how much involvement an accounting firm could have on the audit side and what has come to be called the consulting side, although I do understand sometimes the audit function has to take place during the actual implementation of the transactions, as well.

Senator NELSON. A number of us are also interested in the Board of Directors' independence. The Council of Institutional Investors, Arthur Levitt, and others have recommended that company boards meet a strict definition of independence, and that means no additional consulting fees, use of the corporate aircraft, and support of director-connected philanthropies and institutions. Do you have any sense in Enron's case how many current Board members could meet this standard?

Mr. POWERS. I do not. I assume many of them have used the corporate jet. On the other issues, I do not know.

Senator NELSON. Like director-connected philanthropies and so forth, you just do not know that?

Mr. POWERS. Correct.

Senator NELSON. I want to look into also directing the SEC to amend disclosure rules requiring specific disclosure of any links between the directors and the company and the company executives. In your investigation, do you have a sense of how many current Board members have other relationships with the company?

Mr. POWERS. I do not, one way or the other. I do not know if they have other relationships with the company.

Senator NELSON. This Committee has requested further information from Enron on all of its partnerships. Do you have a sense of when we will be able to see any additional information from the company on the investors in these partnerships?

Mr. POWERS. I do not. I certainly—I mean, as I told Senator Hutchison, I will not be a Board member very long. I certainly would support, as has our special committee, support any information that is helpful in these investigations, but I do not know when the company's lawyers are going to be able to respond to that.

Senator NELSON. Mr. Chairman, may I ask just one quick final question? In 1999, Enron was reviewing the possibility of a merger

with a German company called Eon. Media reports indicate that the German company did not pursue the merger partially because of their concerns about the Enron partnerships that you looked into. Did your Committee look back at this failed merger and investigate why the company did not at that point review the structure and debt of those partnerships?

Mr. POWERS. We did not.

Senator NELSON. Thank you, Mr. Chairman.

Senator DORGAN. We likely will be dealing with the pension issues as the subject of a future hearing.

Senator NELSON. What issues?

Senator DORGAN. The pension fund issues you raised.

Senator NELSON. Thank you very much.

Senator DORGAN. Let me ask, Mr. Powers, I think you described this morning the purpose of the investigation was narrower than it was to look at the transactions with three partnerships. You did that and you issued a report early in February, and Mr. Lay resigned late in January.

As a Board member, did Mr. Lay resign prior to the report because he would have been dismissed when the report came out? Did Mr. Lay resign under pressure from the Board?

Mr. POWERS. I think Mr. Lay resigned with a suggestion from the creditors' committee due to the bankruptcy.

Senator DORGAN. So, if he had not resigned voluntarily, the Board was prepared to take action to vacate that?

Mr. POWERS. Well, the Board did not—we had not given the Board the report. I believe after our report came out Mr. Lay then resigned as a director also.

Senator DORGAN. As a Board member, though, knowing what you know from the report, would you have wanted Mr. Lay to remain on?

Mr. POWERS. No, and I think that was the feeling of the rest of the Board, as well.

Senator DORGAN. Let me ask, other employees now inside the Enron Corporation who have not yet been identified in your report publicly, for example, because you looked at only three partnerships, and because we know there are hundreds, perhaps thousands, as a Board member are you worried there are others inside the corporation who were involved in the construction of these partnerships who are still at their desks on the job?

Mr. POWERS. Let me first say, the huge majority of all Enron employees are honest and hard-working. Would I be worried that there might be issues elsewhere in the company? I would be worried. I have no—we did not investigate them, but it certainly would call for scrutiny.

Senator DORGAN. But because you examined only three partnerships, and you described why you choose those three, one would logically be worried, based upon what you found in those three, that there are other things happening in perhaps other partnerships.

Mr. POWERS. One of the things we point out in the report is that there was a corporate culture of extreme aggressiveness in pushing to and beyond the limits, and that would raise concerns.

Senator DORGAN. I called it a corporate culture of corruption. Would that be accurate?

Mr. POWERS. Certainly in these partnerships I think that is accurate.

Senator DORGAN. Let me ask you about Mr. Skilling's statements for a moment. Mr. Skilling testified, as you know, in the U.S. House of Representatives before a subcommittee, and Mr. Skilling stated with regard to the LJM partnerships he believed at that time there were adequate controls in place, that the controls were being complied with, and that he was discharging to the full extent of his mandate his obligations to the Board with respect to the process that as in place. Can you respond to that? Do you believe Mr. Skilling is accurate in that representation?

Mr. POWERS. Well, with respect to oversight of the transactions with the LJM partnerships, there is very strong evidence that Mr. Skilling was to play a substantial role in overseeing those transactions to make sure that they were at arm's length.

For example, at a Finance Committee meeting, the minutes discuss or show Fastow describing to the Finance Committee Skilling's role. I think Mr. Skilling said he was in and out of that meeting. The minutes show in the very next paragraph that Skilling and Fastow went on to describe more of what the benefits were, that the evidence shows that—and certainly the Board believed he was taking a much more robust oversight role than his testimony indicated, and I must say his testimony was consistent with the testimony he gave to us when we interviewed him. He said he was only vaguely familiar with the transactions.

Senator DORGAN. But in his testimony, he said, look, I did everything that was required of me. It seems to me your report says that is nonsense.

Mr. POWERS. Our conclusion is that is not true, is that he did not perform the oversight functions that the Board thought he was performing.

Senator DORGAN. Now, I want to ask a couple of other questions. One, let me just ask the question about what the Board now is doing. You are now a member of the Board of Directors. I think you recognize from the questions asked today there is much you did not investigate that perhaps, if you were on a board launching an investigation today, you would certainly say, let us look at this insider trading, and a whole series of things, but because this report does not include that, we now have a partial portrait of three partnerships, and then we have a cascade of other charges and allegations and information that is coming out. I mentioned Braveheart as one.

What is the Board doing now? Is the Board of Directors now saying, whoa, wait a second, there is a whole lot more here that we did not look at, we need on an internal basis now to take a look at these issues? Is that what the Board is thinking, or is the Board thinking, well, we just looked at these three areas and we did not ask anybody to look at anything else, so we will just wait and see what others uncover?

Mr. POWERS. I think the Board, at the Board meeting that I intended to present this report, there was a great deal of discussion of setting up a process to restructure the Board, and that given

Enron's bankruptcy needs to be done with close consultation with the creditors. It is my prediction that over a short period of time, with the cooperation of the creditors' committee, the Board will be entirely restructured, with the exception of Mr. Trobe, who was brought on, as I was, to conduct this investigation.

Senator DORGAN. What does restructure mean?

Mr. POWERS. New Board members.

Senator DORGAN. Dumping the old Board members? So the old Board members will be dumped?

Mr. POWERS. Yes.

Senator DORGAN. And replaced by new Board members?

Mr. POWERS. Yes. I think that is—I cannot say that for certain, but that process was put in place last week, I think with the anticipation that there would be a totally new Board with cooperation of the creditors.

Senator DORGAN. I suspect you do not know the answer to this, but let me ask, in recent days we have discovered that just prior to the recalculation of profits, or actually losses for the company, that about $55 million in bonuses were given to the employees in the Enron Corporation. Did you come across that information as you took a look at what was going on?

Mr. POWERS. Yes.

Senator DORGAN. Was that something that the Board of Directors was knowledgeable of and approved of?

Mr. POWERS. Yes, and the advice of the bankruptcy lawyers was that it was—and this is what they were saying, was it was important to keep the trading business operating. In fact, the trading business was sold to UBS Warburg so that there would be some asset for the creditors, including the employees, and those who were creditors of the company, and that that was a necessary thing to do in bankruptcy to keep people who would keep the profitable parts of the business running.

Senator DORGAN. Do we have a list, or did you get a list of who received those bonuses?

Mr. POWERS. I am not sure. I would have to check my records.

Senator DORGAN. If you did, would you make those available to us?

Mr. POWERS. Yes.

Senator DORGAN. I am going to extend my questions just for a few minutes, then I will recognize my two colleagues.

I want to refer you to a memo by Sharon Watkins of last August, and she wrote a memo to Mr. Lay in which she talked about, she is nervous that this will implode in a wave of accounting scandals. It will be seen as nothing but an elaborate accounting hoax.

She said, we booked the Condor and Raptor deals. We enjoyed a wonderfully high stock price and many executives sold stock, and that is the key issue here. We booked these deals, we enjoyed a wonderfully high stock price, many executives sold stock, and when we then tried to reverse or fix these deals, like robbing a bank in 1 year and trying to pay it back two years later, this and several other things in the material I have looked at from the boxes of material we have received from the company, and from the report that you have authored, suggests to me that a lot of activity occurred

here in order to boost stock value so that insiders could profit, and they did immensely, $1.1 billion in stock sales by insiders.

Now, that includes the Board of Directors and officers of the corporation. You did not take a look at that, but should one? Should one not take a hard look at that, especially inasmuch as it was not just officers, but Board of Directors of the company and, from the Watkins' memo and others, the implication seems to be that this was more than just booking some profits and so on, and the consequences of which people were able to sell stock at high prices?

The implication is that this was a scheme, this was a deliberate kind of scheme in which you could pump it up, sell a bunch of stock, get rich quick, and then you leave the cleanup to somebody else at some later date and do not worry about the consequences.

Mr. POWERS. Well, I agree that is a very serious issue that is raised by her letter, and several of the questions today about trading by insiders and, yes, my opinion is that does need to be investigated. We did not investigate it, but it does need to be investigated.

Senator DORGAN. In your report on page 73, you said LJM had—excuse me, quote, "we understand that LJM ultimately too had approximately 50 limited partners," and then you mentioned some of them, Home Assurance, Arkansas Teachers Retirement, MacArthur Foundation, Merrill Lynch, J. P. Morgan, Citicorp, First Union, DeutscheBank, GE Capital, Kleinwort Benson. The 50 limited partners, is that a population that you are certain of? Did you see the names of the 50 limited partners, or is that what you were simply told?

Mr. POWERS. I think it is what we were told, and some we knew without going into the partnership documents. If I could, with your indulgence.

Senator DORGAN. Sure.

Mr. POWERS. That—actually, that particular list came from an Andersen work paper that we were allowed to look at but not copy, and I am informed that we just wrote down that list.

Senator DORGAN. So we know that that work paper in the possession of Arthur Andersen—I am sorry. Proceed, if you want to amplify.

Mr. POWERS. We have our copy that we would be happy to provide.

Senator DORGAN. Does that have the 50 names on it?

Mr. POWERS. We do not have the paper. We have a list that we copied down, is my understanding, that we just physically wrote down, but we do have that list.

Senator DORGAN. Let me try to understand, because ultimately, as I have indicated previously, we are going to try to get to the partners, the partnerships I should say, and all the investors of LJM2. Do you feel confident that there were approximately 50 partners?

Mr. POWERS. That is the only source we have, in my understanding now, is that piece of paper in the Andersen work papers we did go look at.

Senator DORGAN. And, you believe the company did not have that information, but the accounting firm did? I am talking about the corporation.

Mr. POWERS. We were not able to find that within the company. We cannot for sure say somebody in the company did not have it, but we were not able to find that list from inside the company.

Senator DORGAN. As I indicated earlier today, I talked with Mr. Cooper, the interim CEO of the company, who has pledged to make available all of the information that he has, and especially on the investors in the partnerships, so you tell me that you received that information from Arthur Andersen, from a work paper from Arthur Andersen that you could not keep, is that right?

Mr. POWERS. That is one of them, that when we went and then wanted copies, we did not get copies, but they had written down those 50 names.

Senator DORGAN. So you have those 50 names?

Mr. POWERS. Yes.

Senator DORGAN. You will provide them to this Committee?

Mr. POWERS. Absolutely.

Senator DORGAN. Well, that is a very small start. We have been, as you know, for a month and a half on this Committee asking the corporation and asking all who are relevant to receive these requests that we need to understand what is the matrix of the investors, friends, businesses, and others who were brought into this web, this complex web of partnerships, who are they, how much did they invest, did they always make money on these investments?

It looks to me like the corporation was back-stopping everything with respect to these investments, so we need to get that information, and at least today at 1:30 in the afternoon we will get the first 50 names, and we appreciate our ability to do that, and that comes courtesy of your copying a piece of information given by Arthur Andersen but then subsequently taken back by them, so we will hope the rest of the names will not be quite so hard to receive, or to achieve, and we will see.

I have a couple of other questions, but let me go on to Senator Fitzgerald next, and then Senator Wyden.

Senator FITZGERALD. Dean Powers, your report, and I think the page is 133 if I recall correctly, is the one—I am saying it off the top of my head. I believe that is the page where you have the chart that shows how most of the company's earnings during the 15-month period were coming from the Raptor entities.

Mr. POWERS. That is correct.

Senator FITZGERALD. From the third quarter of 2000 through the third quarter of 2001, Enron reported earnings of $1½ billion, and according to your calculations of your committee, Raptor's contribution to those earnings was over $1 billion, $1.77 billion, so I calculate that to be 71 percent of Enron's earnings coming from roughly transactions with Raptors. During that 15-month period, and as your report in my judgment conclusively demonstrates, those earnings are fictitious.

Now, you previously said you only looked at transactions with three partnerships, and this is a company that has how many partnerships?

Mr. POWERS. I have read in the high 2,000's.

Senator FITZGERALD. Is it your belief that there were transactions during that period with other partnerships that you were not looking at?

Mr. POWERS. Well, there are certainly issues and transactions in following those other partnerships. I would say these partnerships in our view were designed with this, the goal you see on page 133 in mind.

Senator FITZGERALD. There is no other reason to form these partnerships?

Mr. POWERS. There is no bona fide economic purpose for the hedging transactions.

Senator FITZGERALD. I guess what I am getting to, it is possible, since you only looked at three of these, that all of Enron's earnings for that period were fictitious, because the rest, the $429 million of their earnings without transactions with Raptors could have been generated by transactions with other partnerships that were beyond the scope of your committee.

Mr. POWERS. That is correct. We did not validate the other sources of that income.

Senator FITZGERALD. My theory for a long time, and before your report came out, was that they really had a very simple scheme. They would simply borrow money, and by filtering the borrowed money through partnerships, they would report that money as earnings, and the way they would accomplish that is, they would enable the partnership to find investors or find lenders by providing some underlying credit support or guarantee from Enron, and then they would use the pretext that they were selling an asset, or as you point out, oftentimes its asset sales, other times it is hedging transactions under the pretext of doing an asset sale to one of these partnerships.

They would take some questionable asset, transfer it over to the partnership, cause the partnership to pay a huge amount for the asset, and then Enron would book that as earnings, and at the end of the day they were really just borrowing the money, and the technical reason they had to file bankruptcy, I would imagine, is all these debts caught up with them and they had billions of dollars in indebtedness that they had to repay, and they could not pay it.

I guess it is very difficult for me to believe that the senior managers of Enron could have just been floating around the office, coming in every day, working very hard, and be totally unaware that at least 71 percent of their income was coming from bogus transactions. I mean, am I missing something here? Is it plausible to you that Skilling and Lay just had no idea where even in a general sense their company was getting their earnings?

Mr. POWERS. I share your concern that you would think they would know where their earnings were coming from. I agree.

Senator FITZGERALD. And had you not just joined the Board in October, but from what I have read, for years the hit on Enron, or the criticism that some financial writers had made, and of course there is that famous Fortune Magazine article that seems very prescient now by Bethany McLain. That was about, almost a year ago, where she asked the question, can somebody just explain where Enron earns its money, and Lay and Skilling constantly had a hard time answering questions from analysts and reporters.

They could never explain simply how Enron made its money, could they? I mean, did you ask people, did your committee ask people within Enron how they thought the company earned money?

Mr. POWERS. Our company did not look into that, and I do not want to just keep repeating it, we had a very full plate over a three month period. We did not ask where the other income was coming from. We found out where $1 billion of the income was coming from with these hedge relationships.

Senator FITZGERALD. Now, did you interview Mr. McMahon?

Mr. POWERS. Yes. I did not personally, but the committee staff did.

Senator FITZGERALD. And the committee also interviewed Mr. Skilling?

Mr. POWERS. Yes.

Senator FITZGERALD. And you found, the committee found the discrepancy that was apparently last week at the House hearing between Mr. Skilling's version of what Mr.McMahon had said to him and what Mr. McMahon said he had told Skilling? Can you refresh my recollection on what your committee found Mr. McMahon said he said to Skilling?

Mr. POWERS. McMahon said that he said to Skilling, and he told us in his interview that he raised issues about these related party transactions that were more than a mere complaint about McMahon's compensation, as Skilling had tried to characterize it, and McMahon did have talking points, a copy of talking points, so that meeting——

Senator FITZGERALD. Has he turned those talking points over to you?

Mr. POWERS. Yes.

Senator FITZGERALD. Could this Committee get a copy of those, and those are represented by McMahon to be contemporaneous talking points?

Mr. POWERS. Yes.

Senator FITZGERALD. And so does your committee come to a conclusion about who was telling the truth in that situation, or are you just reporting what your interview showed?

Mr. POWERS. We tried to report what our interview showed, but I will say McMahon's version is supported by McMahon's document.

Senator FITZGERALD. Did you interview Sharon Watkins?

Mr. POWERS. We asked, and she declined to be interviewed, I must say for understandable reasons. She did not talk with us.

Senator FITZGERALD. Why would she not? What are the understandable reasons? She was the one who kind of——

Mr. POWERS. I meant to say, I do not think she thought she had something to hide. She preferred not to talk with us.

Senator FITZGERALD. Did you talk to any people down below who told you that it was widely known that something was awry in the way the company was always able to book earnings?

Mr. POWERS. Well, we certainly—I mean, that was the impact of the Watkins' letter.

Senator FITZGERALD. She knew that. Did she believe——

Mr. POWERS. We did interview—we interviewed over 60 people, I believe. We did interview people who were further down who had problems and issues with particular transactions.

Senator FITZGERALD. If I could conclude, and I am running a little bit over, and if Senator Wyden would just indulge me, I do want to followup.

One thing that is very prominent in your report is a criticism of the accounting firm, and I would stipulate that Arthur Andersen certainly should have flagged these hundreds, perhaps thousands of what appear to have been questionable transactions, but I do have a question in that it is possible that in some cases, let us say, an asset sale to a partnership, the partnership could have complied with the accounting rules for being a legitimate, off-the-books partnership, as long as it really had 3 percent ownership by bona fide outside people.

And it seems to me that the question of fraud arises specifically with respect to the valuations of the assets that were transferred from Enron to the partnerships, and I guess that I want to reiterate what I suggested earlier, that we need to know a lot more about how those valuations were done, and your report also says that sometimes Enron would sell an asset to the partnership right before the end of the quarter, clearly designed to boost their earnings, but then after the quarter was over, the partnership would sell the asset back to Enron for even more than Enron had sold the asset to the partnership in the first place, and then I imagine the partnership was booking income on its books and showing its partners that it was making a profit, while Enron was showing that it was also making a profit at the close of its reporting period. Do you know if the reporting periods of the partnerships and Enron overlapped?

Mr. POWERS. I do not. From the best of our knowledge, they were both on a calendar year, and so they were on the same schedule of reporting periods.

Senator FITZGERALD. So it does not appear that they were kiting these assets back and forth so they could both report——

Mr. POWERS. Not from what we found.

Senator FITZGERALD. Thank you very much, Dean Powers.

Senator DORGAN. Senator Wyden.

Senator WYDEN. Thank you, Mr. Chairman.

Dean Powers, the report states clearly that sweetheart deals with the partnerships enriched the insiders in a variety of ways, tens of millions of dollars, and you state that this was done, quote, "at Enron's expense." My question to you is, is this not akin to embezzlement? I mean, it looks to me like fancier legal footwork.

Mr. POWERS. I am not a criminal lawyer. I do not know the definition, the full definition of embezzlement. It is very troubling behavior that ought to be investigated to determine whether it is criminal.

Senator WYDEN. Now, with respect to my constituents and how they look at this, they look at this like there was a double standard out there that essentially people who were powerful made vast sums of money, and now people in Oregon, if you had $900,000 in a 401(k), you might have $100,000, and what they want to know is, were there adequate safeguards in place that were in force to make sure that they would be protected? Was that the case, or was this just bad luck, or was the deal stacked against them?

Mr. POWERS. We conclude there were not adequate safeguards in place to prevent this from happening.

Senator WYDEN. How was Mr. Lay's role—when he took over in August, was he active? Was he an ongoing participant in what was taking place at the company? I mean, it was clearly going down, and they were having problems. What was his role when he came on in August?

I mean, you have told us essentially that what Mr. Skilling has said, that he did not really know a whole lot about what was taking place. There are questions about that, because certainly the broad outlines were fairly apparent. You have told us there were not adequate safeguards in place. Mr. Lay comes on in August. Did he move to change any of that? Did he take steps at that point to protect the people I represent and other Americans who are just hammered as a result of this?

Mr. POWERS. Well, when Mr. Lay became the CEO again, I will say one thing he did was unwind these Raptor transactions that had been constantly propped up. That is what ended up causing the restatement in earnings in October. By that point, these Raptor transactions were unsalvagable.

Senator WYDEN. Well, I think nobody is going to quarrel with trying to deal with one transaction, but to deal with one transaction when this vessel is just plunging and taking on water everywhere is not much solace to the people I represent, and if you are telling me that he found a way to address one transaction, I guess that is one more than anybody else thinks at this point, but given the amount of pain this inflicted, it does not sound like much.

Tell me about Arthur Andersen finally. I think you have already heard me say I think the Houston office of Arthur Andersen took the public out of certified public accountant. I mean, I do not think they complied with the law. We have gone through that. They certainly did not assist you in your inquiry. I mean, you were not a hostile plaintiff's lawyer, for Pete's sake. You were somebody who was working for the Board, and they still did not cooperate with you.

And maybe you can explain to me their documents policy. They would let you look at some documents. They would not let you see other documents, and then there were some documents that they would let you copy. I mean, did they give you any explanation as to how they have put together this curious documents policy?

Mr. POWERS. Well, we were not able to—I mean, aside from the documents, we were not able to interview their accountants to get that explanation. We would have liked to have asked them those questions.

Senator WYDEN. But did they tell you how they came up with this particular policy? I mean, this firm has certainly given us lots to be curious about.

Mr. POWERS. You mean, how they decided which documents and which not?

Senator WYDEN. How they decided what they were going to let you see, what they were going to let you copy, why that was different from not cooperating at all.

Mr. POWERS. There were long negotiations as to what we were going to see and what we were not going to see, and over time we got to see some things and not others.

Senator WYDEN. Tell us about the negotiations. Tell us why they would not let you see some of the things you wanted to see.

Mr. POWERS. They did not have a very fulsome explanation. They basically made excuses that they had other demands on their time and they would get to it.

Senator WYDEN. They said they were too busy to let you see these documents?

Mr. POWERS. They dragged it on, and that was the result.

Senator WYDEN. Mr. Chairman, I think that sort of sums it up. We have now heard that these accountants, who in my view clearly ignored a federal statute that is on the books that requires that they look for fraud, report it to the SEC and others when it is found, that there is strong evidence of it now were too busy to actually cooperate with an internal Enron investigation.

This is just unbelievable. This is not somebody who is a hostile plaintiff's lawyer. This is somebody who is working for the company, and a major accounting firm in this country has said they were too busy to cooperate with an internal investigation. I think that just sums it up, and I intend to stay with you if we are going to go to a third round.

Senator DORGAN. Senator Wyden, thank you. Let me just follow on that point. Enron—excuse me. Arthur Andersen was paid $52 million in the most recent year by the corporation, I believe. Was it $25 million for auditing fees and $27 million for consulting fees?

Mr. POWERS. I believe that is approximately correct.

Senator DORGAN. So, this is a corporation that was receiving over $50 million from Enron for services, accounting and audit services and consulting services, and when you, empowered by the Board of Directors as a Board member, initiate an inquiry, that firm said to you in effect, we will not give you much cooperation, we will not allow you to have unfettered access to our records. That is what you are telling us?

Mr. POWERS. As I said earlier, the negotiations dragged out, and when Enron finally discharged them, their lawyer called and said they would not cooperate further.

Senator DORGAN. Prior to their being discharged, they were not forthcoming and cooperative with you?

Mr. POWERS. They sort of negotiated with us, and they showed us some documents, but it dragged on.

Senator DORGAN. This is an important question. The reason I am asking the question is, the CEO of Arthur Andersen is all over the news saying, look, we have nothing but respect for this process, we have tried to be available, and forthcoming and so on. In fact, I believe that they have not been very satisfied with your report. Has Arthur Andersen not spoken of your report in a way that is not entirely complementary?

Mr. POWERS. I have read that, yes.

Senator DORGAN. And so that company now, Arthur Andersen, which made a substantial amount of money from Enron, I am just trying to understand, you are saying that company did not cooper-

ate very well with you in terms of giving you access, or getting you access to the information and records you needed, is that correct?

Mr. POWERS. That is correct.

Senator DORGAN. Well, let me say that I agree with Senator Wyden, I do not have the foggiest idea why in that circumstance that Board of Directors could not look at their audit firm and their consulting firm and say, please cooperate, and the firm ought to be responding by saying, our records are yours, here they are, so that we can understand what happened. That is unfathomable to me, that you would have had difficulty trying to pull records out of that company, but we will get into that at some later point in other hearings.

Mr. POWERS. Mr. Chairman, could I—when I read that testimony, I do think—Mr. Berardino and I do disagree about the facts, and I did write him a letter telling him what I understood the facts to be. He has not responded. We would be happy to provide the Committee with a copy of that letter.

Senator DORGAN. Would you provide the Committee a copy? He is certainly entitled to his opinion. I am not suggesting he does not have a right to say whatever he wants to say about your report, but I am very surprised they were not cooperative with you. That is what surprises me.

[The information referred to follows:]

ENRON CORP.,
Austin, TX, February 6, 2002.

Mr. Joseph F. Berardino,
Managing Partner and Chief Executive Officer,
Andersen Worldwide,
Chicago, Illinois.

RE: ENRON CORP.

Dear Mr. Berardino:

In our respective testimony before Congress on Tuesday, you and I gave different accounts of the nature of Andersen's cooperation with the Special Investigative Committee of Enron's Board of Directors, which I chaired. The transcript of your testimony indicates that you said, "The committee asked to speak with some of our people. We were in the process of working out interviews when Enron fired us. We never heard from the committee again." You are also quoted as saying, "They didn't make an inquiry. We offered to help. We were very available. We begged them to talk to us."

It appears from your testimony that you may not have been made aware of all of the facts. Here are the facts on which I based my testimony.

In December, my Committee's counsel (Wilmer, Cutler & Pickering) contacted your counsel, Michael Carroll at Davis Polk & Wardwell, seeking access to Andersen's work papers relating to the transactions we were investigating. We also asked to interview Andersen personnel who had provided accounting services with respect to those transactions. Your counsel and ours had a number of conversations, without any resolution at that point.

Early in January, as the Special Committee's work was nearing completion, Bill McLucas of Wilmer Cutler had a follow-up conversation with Mr. Carroll on the same subject. Mr. McLucas asked for access to work papers and to Andersen personnel, and confirmed this in a letter dated January 4, 2002. He attached a list of the particular transactions of interest to our Committee. Mr. Carroll told Mr. McLucas that he should arrange to review the work papers with his associate, Timothy Harkness.

On January 10, 2002, Mr. Harkness told David Cohen, another attorney from Wilmer Cutler, that some of Andersen's work papers would be made available for our review, beginning Monday, January 14, 2002. Mr. Harkness also told Mr. Cohen that he would be able to make copies of documents that were of interest to the Special Committee in its investigation.

On the morning of January 14, Mr. Cohen and several accountants working with the Special Committee began reviewing the materials made available by Andersen and identifying documents that the Special Committee wanted copied.

At the end of that day, when Mr. Cohen asked to have the identified documents copied, he was told by another of your attorneys, Jill Mahonchak, that she was "not authorized" to make copies of any of Andersen's work papers for the Special Committee. Mr. Cohen then spoke with Mr. Harkness, who confirmed that your counsel was not authorized to make copies of Andersen's documents for the Special Committee.

That evening, Mr. Cohen sent a letter to Mr. Harkness and Ms. Mahonchak reminding them that the Special Committee had been promised that it could obtain copies of Andersen's work papers. Mr. Cohen wrote: "We had understood that Andersen wanted to cooperate fully with Enron's Special Investigative Committee. Needless to say, full cooperation includes permitting us to obtain copies of select documents on a timely basis."

Mr. Cohen also noted in his letter to Mr. Harkness and Ms. Mahonchak that the materials provided by Andersen for the Special Committee's review did not include any "work papers, supporting documentation [or] memorandum relating to Andersen's work regarding Enron's 10–Qs for the first, second and third quarters of 2001." Mr. Cohen specifically requested an opportunity to review those documents. No one from Davis Polk or Andersen ever responded to Mr. Cohen's letter, and Andersen never allowed the Special Committee to review any documents pertaining to work Andersen performed for Enron during 2001.

On Wednesday, January 16, Mr. McLucas and Mr. Cohen spoke with Mr. Carroll. They asked Mr. Carroll whether Andersen would allow the Special Committee to obtain copies of documents identified for copying. Mr. Carroll said that he would authorize the copying of the documents identified by the Special Committee. Mr. McLucas and Mr. Cohen also asked Mr. Carroll whether Andersen would allow the Special Committee to interview David Duncan, Debra Cash, Patty Grutzmacher and Jennifer Stevenson—Andersen personnel who were most directly involved in the transactions the Special Committee was investigating. Mr. Carroll responded that Andersen wanted to cooperate with the Special Committee but he wanted to think about the issue of interviews of personnel. He asked that the Special Committee provide a detailed list of topics that it hoped to cover in an interview, and that he would then consider whether to allow the Special Committee to interview the Andersen personnel.

The next day, Thursday, January 17, Mr. Cohen made arrangements with Ms. Mahonchak and Mr. Harkness to obtain copies of the documents identified for copying. Mr. Cohen was informed by another attorney working for Andersen that copies would be delivered either late in the day on Friday or early Saturday morning. Later that day Enron announced that its Board voted to discharge Andersen as the company's auditor.

Late in the afternoon on Friday, January 18, Ms. Mahonchak called Mr. Cohen. She told him that, because Enron had discharged Andersen, Andersen had decided that it would no longer cooperate with the Special Committee. She also said that although copies of the documents identified by the Special Committee had been made, they would not be provided to the Special Committee. The Special Committee's counsel had no further communications with counsel for Andersen.

Based on these facts, we stated in our Report, "[Andersen] permitted the Committee to review some, but not all, of its workpapers relating to Enron. It did not provide copies of those workpapers or allow the Committee to interview knowledgeable Andersen personnel." (Report at p. 34.) That seems to me to be a fair characterization of the facts, and was the basis for the testimony I gave on Tuesday.

Sincerely yours,

WILLIAM POWERS, JR.,
Member of the Enron Board of Directors and Chairman of the Special Investigative Committee.

Senator DORGAN. Let me ask a couple of questions in addition. You obviously took this report to the Board of Directors, and you are now a Board member, even if it is an interim basis. I want to know what you spoke about as a Board of Directors, because this is obviously a closed meeting, but minutes are taken. When you took this report to the Board of Directors, tell me, did you tell the Board of Directors, because they would have wanted to know, that Mr. Lay was unaware of the structure of these partnerships, or did

you tell them that you thought Mr. Lay understood what was going on, and just was complicit in trying to make it happen in order to create an architecture of partnerships that were able to inflate profits and keep debt off the books. What is it that you told the Board about your impression of Mr. Lay's activity here?

Mr. POWERS. Well, I gave the Board an oral presentation that was substantially what my testimony was here today, and emphasized the point, and it was a point I tried to emphasize in my opening statement today. There is a lot of discussion at the Board of little details of who knew this, who knew that. As I said, everyone was aware that they were using their own stock to hedge these transactions, so I told the Board, not verbatim, but I think very substantially what I told the Committee today.

Senator DORGAN. So if I were a Board member in that Board meeting and said, Mr. Powers, you have done now a three month investigation, rather exhaustive in this limited area, did Mr. Lay know what was going on with all of this, and your answer was?

Mr. POWERS. Well, I think he knew some things and he did not know other things. First, he should know more of what is going on. He was not fulfilling his responsibilities as CEO. He understood that they were hedging with their own stock. He understood that they had approved and created these partnerships with their own Chief Financial Officer. We were limited as to what we could ascertain, and as I said earlier, I do not in any way think this is a full report. We tried not to go beyond what the evidence showed, and one of the difficulties in ascertaining exactly what Lay knew is Skilling in his report, in his interview with us, denied much knowledge of these things at all, so as a consequence, did not have any recollection of any conversations with Lay.

Senator DORGAN. So a Board member in that meeting would say, Mr. Powers, you have done this extensive investigation, what did Mr. Skilling know about what was going on, did he know what was happening, and what is your answer?

Mr. POWERS. As I said, I think there is substantial evidence Mr. Skilling was involved. There are the minutes of the Finance Committee meeting going over his responsibilities that we think he did not fulfill, and with respect to the Raptor transactions, he says he kept Skilling involved. Ryan Cerick in his interview says when the Raptor restructuring had been completed, Skilling called him to congratulate him especially. I am not listing it all, but there is other substantial evidence that Skilling was more involved than his interview with us indicated.

Senator DORGAN. Just a couple of additional questions. As you know, the employees were locked into their 401(k)'s because of the change in the plan administrator. As the stock collapsed, they were unable to sell even as officers and directors were selling stock and making money, so the result was some at the top got very, very wealthy, became very wealthy as a result of this, and others lost their life savings locked into a situation they could not change.

Have the members of the Board of Directors discussed at all in recent months any kind of opportunity or plan to try to remedy that for the employees? I do not even know whether it is possible, but clearly the Board must feel, as the American people do, that it is—and as the President has indicated—fundamentally unfair for

the folks at the bottom to be locked in and unable to sell stock even as it was collapsing, while the folks at the top were selling stock at a decent price and cashing out to the tune of tens of millions of dollars. Has the Board addressed that in terms of the fundamental unfairness to the employees?

Mr. POWERS. I think the Board has discussed the plight of the employees, not—to my knowledge and with one exception, and I do not mean to trivialize it, I do think there was a discussion at the Board of—I do not know whether the Board will get fees or not, but if they do, they would donate them to the employees, and I am just trying to be accurate in my testimony here. I do not mean to trivialize that as a solution to the terrible tragedy that has befallen the employees and the retirees.

Senator DORGAN. That also is a topic for a future hearing.

Let me finally ask you, because you were employed by the Board of Directors, and because we have information about the stock sales by members of the Board of Directors over some period of time, one wonders whether even on the Board of Directors there were winks and nods about what was happening in the company, with Board members knowing full well what was going on, but thinking this was too good a ride to get off.

You were employed by the Board to do the investigation. Need there be independent corroboration of this investigation, because this, after all, is a Board of Directors product, and then tell me, if you would, did you feel and do you feel subjectively that there were members of the Board that knew exactly what was going on here and thought it was really a pretty wonderful thing for themselves personally?

Mr. POWERS. In answer to the second question, not to my knowledge, but I was not on the Board at the time when those events would have been happening.

On the question as to whether it needs to be corroborated, absolutely. We were charged with trying to bring to light as best we could what had happened in these transactions, and I think we have done it. I think it is a start. I hope the Committee will find it helpful, but yes, it is the Board's. The Board commissioned it. We did not have subpoena power. We did not have the ability to compel evidence, and other bodies in Congress and at the SEC and at the Justice Department need to corroborate and investigate.

Senator DORGAN. It is also the case you did not investigate the Board, is that correct?

Mr. POWERS. We were very critical of the Board's role in this. We say the Board failed in its oversight responsibilities.

Senator DORGAN. I understand that, but I was talking more about Board members, and whether Board members knew of the debt that was in place with these special purpose entities and so on, and whether, as I indicated to you, it became such a wonderful ride that they really did not want to get off because it was personally enriching to them.

Mr. POWERS. Well, I do think the Board was aware they were hedging with their own stock. They were aware that they created a situation where they were doing business with their own Chief Financial Officer. The Board was aware of those, and we chastised

the Board for that, but there are other things we did not look into, and they need to be looked into.

Senator DORGAN. Senator Wyden.

Senator WYDEN. One last area I wanted to talk to you about, Mr. Powers, and that is the Chewco special purpose entity, and the reason it is important is that this is the clearest evidence to date, essentially, of something that was actually illegal.

As we have been talking about this afternoon, Enron needed the independent investor to kick in at least 3 percent of the partnership's equity, but there is certainly evidence that Enron cheated on the 3 percent requirement, because Enron provided the investor with a loan guarantee of about $5½ million, then everything comes to light, and the process begins that causes the company to unravel.

My first question to you is, what is your sense of why this remained secret for four years? I mean, this is a very important fact in all of this. Do you have any sense of why this did not come to light for so many years?

Mr. POWERS. Well, I have a sense. We do not know for sure. The people who were involved in the transaction, who were involved in Chewco, had a self-interest in having Chewco continue. They were making profits off of it.

Senator WYDEN. Well, who unearthed which documents, and what produced this effort to start finding them? I mean, it just is right at the heart of all of this, that you have something that certainly is the clearest evidence thus far of illegal conduct, and it sort of takes four years for it to come to light. What can you tell us about how these documents were unearthed, and what caused people to start looking?

Mr. POWERS. Chewco was unwound at some point, but I want to be accurate on this.

Senator WYDEN. Another way you might address it, Mr. Powers, is where did you find these documents?

Mr. POWERS. My understanding was a media report about Chewco, and the Board then had internal accounting go back and dig through the Chewco documents and they found the reserve guarantees of these loans, of the Big River and Little River loans, and that was found internally, and that correction was made.

Senator WYDEN. Now, the Chewco partnership closed on December 30, 1997, and if it had not closed by the end of 1997, $700 million in debt would have appeared on the Enron balance sheet, increasing Enron's debt by approximately 10 percent.

Mr. POWERS. Yes.

Senator WYDEN. You also have given us information indicating that Enron was having problems finding outside partners. Given those facts, as I have tied them together, do you think it is plausible that people inside of Enron believed that they would clean up this transaction in 1998 and somehow this fraudulent transaction would have been in the company's interest?

Mr. POWERS. Well, the people we talked to understood that when it was first set up it did not meet the 3 percent. It was set up quickly, and then they would try to, as you quite rightly put it, clean it up. That is when the loans from Barclays came in that were supposed to be investments, and we were unable to ascertain

why that mistake was made, whether it was sloppiness, or self-interestedness, or what, because we were not able to interview the people that were involved in that part of the transaction.

Senator WYDEN. Now, only one other question on Chewco. It was created and approved at the November 5th meeting and, according to the meeting notes, you were present. Was the loan guarantee discussed at that meeting?

Mr. POWERS. I was not present at that meeting.

Senator WYDEN. I was under the impression, according to the meeting notes—excuse me. I am sorry. That was Mr. Lay. I apologize. Who then could have had the authority for that loan guarantee?

Mr. POWERS. For the loan guarantee? I am not sure whether that would be the Board. I guess the Board would have to have the authority to do that.

Senator WYDEN. Would Arthur Andersen have known about the loan guarantee?

Mr. POWERS. We were not able to ascertain that, whether they knew about that loan guarantee.

Senator WYDEN. Do any of your colleagues know who at Enron would have had the authority to initiate that loan guarantee?

Mr. POWERS. The loan guarantee in the Board minutes is a different loan guarantee. It is not the loan guarantee that backed the so-called equity investments and made them nonequity investments. It is a different loan guarantee.

Senator WYDEN. What we are trying to get out, though, is an important area, and that is that it appears that this Chewco information that is so critical seems to be buried somewhere in the Enron files, and we are wondering if you could give us a little bit more information so that we could figure out a way to go about getting it.

Mr. POWERS. All the documents that we have, we have produced to the SEC and to the Committee, and our staff would be willing to give what help necessary to sort through that.

Senator WYDEN. I would only ask, Mr. Chairman, that we continue to work with Mr. Powers and his staff on this, because I think the question of how these Chewco documents were unearthed, how it was that they remained secret for four years, when this Chewco partnership was approved, the November 5, 1997, meeting, clearly we need more information about what was discussed at that meeting and what the circumstances were by which the loan guarantee was approved, and we are going to ask you some additional questions about that, Mr. Powers.

Senator DORGAN. Mr. Powers, Chewco is essential to this because Chewco is a small little rock on the rail that threw the locomotive off the track. If you track this down, you are talking about a relatively small amount of money that eventually led to the requirement that a portion of this be put back on the books and led to a recalculation of profits or losses, and it is central to this.

Can you tell us when the recalculation was required, because they said, somebody said, oops, the 3 percent was not—was that Arthur Andersen going to the corporation, or someone in the corporation that felt they had to go to Arthur Andersen? How did that happen?

Mr. POWERS. It is my understanding it was internal accounting, that internal accounting, once they were asked by the Board to look into it, found the mistake, and then went to Andersen with that information.

Senator DORGAN. Was that prior to Vinson & Elkins taking a look at the books as a result of the request by Mr. Lay?

Mr. POWERS. That was in September, and this restatement was in October.

Senator DORGAN. So Vinson & Elkins, at the request of the CEO, evaluated what they could and found nothing wrong, apparently, is that correct?

Mr. POWERS. This was back in the Sharon Watkins' letter. My understanding is they went to Andersen—I did not participate in that part of the report, as I explained, but my understanding is, they went to Andersen and asked if the accounting was OK.

Senator DORGAN. The Watkins' letter said to Mr. Lay there is a problem here with potential accounting hoaxes, so on and so forth, and it ought to be looked into, but we specifically request Vinson & Elkins not be involved in the evaluation. That is what Watkins was saying to Mr. Lay.

Mr. Lay subsequently asked the law firm to look into it. I am just trying to understand the sequence of how this Chewco issue came up and how it was redetermined with respect to the 3 percent required to be put back on the books.

Mr. POWERS. To my knowledge, there was not a connection between those, that is correct, that these were independently caused events.

Senator DORGAN. You see, what we have got is, we have got a corporation with a Board of Directors, we have got an accounting firm, we have got law firms, and the architecture of partnerships that seem to have bent and twisted the rules, created profits that did not exist, placed debt off the books that should not have been placed on the books, and it is a case of kind of, see no evil, hear no evil, and we are trying to figure out the wrong doing and each of them says, well, it was not us.

You did an investigation on a very limited piece here. I think it is helpful to the Congress to have the results of your investigation, but as you said when you started today, it is very limited, and much remains to be known, and I assume as a current member of the Board of Directors you very much want the rest of the information unearthed, because if you do not know who the investors are, the hundreds and hundreds and hundreds of other partnerships, how do you get a handle on all of this, and how do you make sure that you have got the rot out of the apple here?

Mr. POWERS. Well, as I told Senator Hutchison, my firm desires to resign from the Board and go back and give my full attention to the law school, but we and the staff certainly will help in any way we can with the materials we have to help the Committee move forward with its very important investigation.

Senator DORGAN. Well, nobody on the Committee is going to resign any time soon. We are going to continue pushing very hard for the investigation. We wish you well as you go back to the law school. As I said, I think your report contributes to an understanding. It is limited, and has a narrower view than we would

hope, but nonetheless is a contribution, and we appreciate your willingness to testify today.

If you would like, you can for the record identify those who have accompanied you today.

Mr. POWERS. Yes, thank you. These are from Wilmer, Cutler, and Pickering: Joe Brenner; Chuck Davidow; and Bill McLucas.

Senator DORGAN. First of all, we thank you for the time today. We would like to receive the information we requested, the 50 partners and other pieces of information you indicated you would provide to us. We would like also to be able to consult with you as we proceed. If there might be additional information you have collected, that would be helpful to this Committee.

Mr. POWERS. We would be delighted to be helpful in any way we can.

Senator DORGAN. The Committee is adjourned.

[Whereupon, at 2:10 p.m., the Committee adjourned.]

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