

## Corporate Scams on Trial – By Ken Silverstein

Two former Westar Energy executives are on trial for corporate fraud. In opening statements, federal prosecutors said the sole intent of the accused was to “loot” the company and to “enrich themselves.” If found guilty of the alleged conspiracy, wire fraud and falsifying records, former CEO David Wittig and former executive vice president Douglas Lake could receive prison terms of 10 years each and fines into the millions.

Despite efforts to curb corporate abuses in recent years, public trust in American enterprise is still lacking. Awareness, however, is keen. And toward that end, policymakers and business leaders alike have tried to outline rules and regulations as well as codes of acceptable conduct that give individual workers clear visions from which to operate. That commitment must remain paramount—a drive that applies pressures to others to conform to rational social compacts.

“A lot of people think their jobs are to create ever larger profits,” says Jeffrey Barach, professor of ethics at Tulane University in New Orleans. “But their primary goal centers on a social contract—one that emphasizes ethics over profit at any cost. If the focus is on personal gain at the cost of all else, it leads to unethical conduct. I fear we have lost the social sense of what our behavior should be.”

It’s tantamount to playing sports where teamwork is essential. If any of the individuals in a corporate setting become more concerned with their own performance at the expense of the well-being of the entire club, defeat is almost certain, says Barach. In the case of Westar, Wittig and Lake are accused of pushing through policies and procedures that were intended to raise their pay at the expense of shareholders. Prosecutors said in court this week, for example, that they used corporate money to acquire shares in companies that they had personal stakes—charges that the defendants’ lawyers deny, saying that the board of directors approved all activities.

It’s all had an affect on investor confidence. A Harris Interactive poll taken earlier this year found that 30 percent of those questioned had “hardly any” assurances in the people that run corporations. Meantime, a survey by The Committee of 200, a national organization of female business owners and executives, surveyed graduate students and MBA alumni and found that 67 percent of the females and 57 percent of the males feel that U.S. companies are not run honestly or ethically.

Oftentimes, however, the rules that govern ethical behavior are not clear cut. In such cases, Professor Barach says that a few simple questions could bring the issue into greater light: Is it wrong? If it is, then don’t do it. Does the boss think it’s wrong? If the answer is unknown, go ask. If the results of these activities were published, would that

deter one's behavior? And, finally, if in 20 years, one reflects on this behavior, would they be proud? "If you are totally a business person, then you have sacrificed some of your humanity."

## **Paying the Price**

Enron, of course, is the poster child for business ethics gone wild. The company sought the best and the brightest and gave them free reign to innovate—all in effort to boost the bottom lines of both the company and the over-achievers. Those who racked up the biggest gains were given widespread praise while those who faltered were quickly shuttled out the door. In the process, however, Enron's code of ethics was ignored and some individuals got greedy and lost their heads.

In a recent speech, former Enron accountant and whistleblower Lynn Brewer told of a time when she discovered in 1998 that the gas reserves used to secure a \$250 million bank loan didn't actually exist. Brewer, now president of Integrity Institute, reacted by sending a memo to former Chairman Ken Lay. He never replied.

Enron has since imploded but other companies are still paying the price. Two former El Paso Corp. natural gas traders have just pled guilty to reporting phony natural gas prices to indexes that track such things. Their activities were intended to inflate gas prices—and company earnings. Donald Guilbault and William Ham could receive up to five years in prison each, as well as fines of \$500,000 a piece. The investigation is ongoing, as 10 other El Paso traders have received target letters from federal prosecutors.

The Commodities Futures Trading Commission, meanwhile, has filed civil charges against several trading entities. It is alleging that such companies tried to manipulate natural gas prices by falsely reporting prices. The commission has already settled a number of existing suits, collecting \$250 million in the process. Along those lines, El Paso is continuing to cooperate with authorities to uncover such pricing schemes and has paid \$20 million over the last 18 months to settle allegations against it.

To be sure, many ethicists argue that the failings lie not with individuals who are encouraged to play hard and maximize profits but rather with institutions such as corporations, industries and government. It is the leaders who run those entities who have facilitated moral lapses by not setting good examples or by lacking the foresight to create a fair battlefield.

"I would object to putting people in situations in which they are not given sufficient guidance," says John Boatright, executive director at the Society of Business Ethics in Chicago. "Business situations are often complex and employees may not have the tools

to exercise proper judgment.” Stakeholders must know the rules and the repercussions, he insists. Otherwise, the institutions and their leaders must bear responsibility.

While corporate cultures and unclear standards are factors behind wrongdoing, individuals who participate in questionable activities must be held to account. If an area is grey, ethicists urge workers to abide by the Golden Rule. Meantime, federal regulators such as the Securities and Exchange Commission (SEC) are enacting regulations to restore integrity to the auditing and accounting professions. In fact, in the last two years, the SEC’s enforcement division has filed more than 1,000 enforcement actions and obtained orders for more than \$3 billion in penalties.

“While regulators such as the SEC can enact bright, red-line rules about what is and is not permissible behavior, we know from the course of history that human nature will push aggressive managers and organizations to continue to test new laws,” says William Donaldson, chairman of the SEC, in a speech. “Some managers will pursue questionable activity right up to technical conformity with the letter of the law, and some will step over the red line either directly or with crafty schemes and modern financial technology that facilitates deception.”

Guarantees don’t exist. That’s true not just for those who try their hand at enterprise but also for those who must try and promise investors that American business is on the up-and-up. But, an effective means of assuring that leaders and managers follow social decencies is peer pressure—a dynamic that emphasizes the overall well-being of the company above anything else. If ethics are valued more than profit at all cost, then individuals and corporations may truly enrich themselves.

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