Portland Press Herald

JULY 23, 2002

Rebuild safeguards to halt business fraud

● Corporations need better government oversight, and Congress is working to provide it.

By TOM ALLEN

ABOUT THE AUTHOR

Rep. Tom Allen, a Democrat, represents Maine's 1st congressional district.

MAINE VOICES

Remember the motto of Gordon Gekko, the amoral anti-hero of Oliver Stone's 1987 film, "Wall Street"?

"Greed is good," Gekko told the shareholders of a company he had targeted for a corporate takeover and a raid on its large employee pension fund. Now Alan Greenspan, the Federal Reserve chairman, warns that "It is not that humans have become any more greedy than in generations past. It is that the avenues to express greed have grown so enormously."

Fallout from the shenanigans of corporate managers and their "independent" accountant accomplices has hit Main Street hard. Today, the majority of Americans own stock. The precipitous drop in the market value of pension funds and individual accounts set aside for retirement or a college education is causing justifiable concern and anger.

Why have those "avenues to express greed" grown so tremendously? I believe the answers lie both in the failure of government and our diminished sense of civic and social responsibility.

Beginning in the 1980s, when government was labeled "the problem, not the solution," safeguards to prevent or punish securities fraud, developed over several decades following the Great Depression, were dismantled or underfunded. Regulations were weakened and repealed, foxes were appointed to regulatory posts to guard the roost.

The budgets of the agencies charged with enforcing these laws – particularly the SEC – have been cut. The ability of the courts to hold corporate miscreants liable was weakened by Supreme Court decisions and through 1995 legislation passed over President Clinton's veto. That law shields outside accountants and law firms from liability for false corporate reporting and limits the ability of shareholders to sue companies for illicit practices.

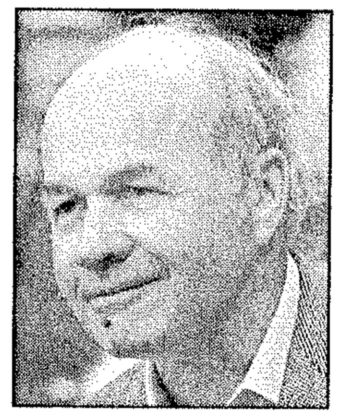
In 1854, Abraham Lincoln wrote that "the legitimate object of government is to do for the people what needs to be done, but which they cannot, by individual effort, do at all, or do so well, for themselves."

One hundred years ago, Teddy Roosevelt, leading the first significant effort to control robber barons and lawless corporations, asserted that "the biggest corporation, like the humblest private citizen, must be held to strict compliance with the will of the people."

Americans now have a better understanding that for the market to work well, government must set and enforce fair ground rules. The Enron scandal pushed Congress and the Administration into finally enacting a campaign finance reform law. Continuing revelations of corporate crime have propelled overwhelming support for Sen. Paul Sarbanes' legislation (languishing until recently) to reinvigorate the watchdog role of government over the securities and accounting industries.

That bill would help plug the "new avenues to express greed."

The Sarbanes measure would create an oversight board with the power to discipline auditors, perform regular inspections of accounting firms and set auditing rules. Securities fraud is made a criminal offense, whistleblowers would be protected, and SEC funding would be significantly increased.



AP Photo

Enron's Ken Lay: A real-life Gordon Gekko?

The proposed legislation further seeks to eliminate conflicts of interest that encourage corporate greed.

For example, the bill would prohibit accounting firms from providing a wide range of consulting services to the companies they audit and from auditing a public company if that company's chief executive or top financial officials had been employed by the accounting firm in the previous year.

The House has passed its own bills, but their provisions are weaker in several important respects. For example, they do not prohibit corporate auditors from providing non-audit services for the corporation, and the accounting oversight board is only part-time and lacks the authority to set auditing and ethical standards.

I hope, therefore, that the conference committee will produce a bill that closely tracks the Sarbanes proposal.

While the owners of businesses in a place like Maine feel accountable to their workers and the community, the managers of such mega-companies as Enron and WorldCom do not. Self-policing of publicly traded companies is insufficient.

Swift passage of the Sarbanes bill is a necessary first step to protect the economic security of Americans, but more will have to be done. The problem of stock options must be addressed. Too often, they have provided management with an incentive to exaggerate earnings in order to drive up share values until the truth comes out.

Reform of corporate governance and more aggressive oversight by the SEC should help restore public confidence in Wall Street. Rejecting the idea that "greed is good" would help as well.

— Special to the Press Herald