SUGGESTIONS FOR REFORM

The U.S. is experiencing an epidemic of corporate crime that began when Enron declared bankruptcy in late 2001. After Enron, the news was dominated by unfolding revelations of fraud and abuse at Adelphia, Tyco, WorldCom, Harken, Halliburton, and so forth.

According to the General Accounting Office (GAO) one in ten publicly traded companies had to restate their earnings in between 1997 and 2002 because of accounting irregularities. ("Financial Statement Restatements: Trends, Market Impacts, Regulatory Responses and Remaining Challenges," GAO-03-138, October 2002).

It's not clear what the total damage to investors, pensioners and employees has been from all of these scandals. But it's certain that the bad news played a significant role in bursting a market bubble that lasted most of the previous decade. According to Wilshire Associates, the markets lost half of their value -- $8.4 trillion - between their March 2000 peak and October 2002. U.S. retirement plans for public employees, corporate pensions and endowments lost $1 trillion in the last three years, according to one survey released in February.

The scandals continued into 2003. Bloomberg News reported in April that "U.S. prosecutors are investigating possible fraud by executives at about 130 public companies and are likely to file new criminal charges in dozens of those cases. 'We had thought that maybe this corporate fraud crisis had reached a peak, but we continue to have new investigations and new allegations on companies on a regular basis,' said Keith Slotter, chief of the FBI's financial-crimes section. 'At this point, it has not shown any sign of ebbing.'"

There has been little fundamental change in the conditions that led to Enron and the other scandals. The mantra of deregulation continues to pore forth from market pundits. And efforts to press for reform have stalled in Washington. While Sarbanes-Oxley created some modest reforms, it clearly did not do enough. Not only did it not address some obvious issues (e.g. options, the role of banks), it continued to allow for conflicts in the accounting industry, such as the ability of accounting firms to provide tax consulting services to the clients they were auditing. Most of the reforms that came out of corporations themselves were incremental corporate governance changes that diverted from fundamental questions about unaccountable corporate power.

Below is a list of reforms that we offer as suggestions of what more could be done.

CRACK DOWN ON CORPORATE CRIME

1. Force Corporate Crooks to Pay it Back
2. Toughen the Punishments for Corporate Crooks and Crooked Corporations
3. Increase the Corporate Crime Investigation and Prosecution Budget.
4. Track the Cost and Extent of Corporate Crime
5. Punish the Aiders and Abettors of Corporate Crime
6. Crack Down on International Corporate Bribery.

PROTECT WORKERS AND INVESTORS

CRACK DOWN ON CORPORATE CRIME

1. **Force Corporate Crooks to Pay it Back.**

The Problem:

According to the Financial Times, 208 executives and directors from the 25 largest U.S. companies that filed for bankruptcy protection between January 2001 and July 2002 walked away with gross earnings of $3.3 billion, most of it in the form of revenues from stock sold before the company collapsed. (See "The Barons of Bankruptcy," Financial Times, July 31, 2002.) Fortune also reported that executives and directors of 1,035 corporations whose stock price fell by at least 75 percent from the highs they reached during the bubble years made off with a total of $66 billion. At the 25 corporations where executives cashed out the most, 466 insiders took a total haul of $23 billion. (Mark Gimein, "The Greedy Bunch," Fortune, September 2, 2002.)

Meanwhile, pensioners, small investors and workers have lost hundreds of billions of dollars as a result of the corporate crime wave.

The SEC uses a little-known and underutilized tool called disgorgement to force corporate crooks to give back their ill-gotten gains. But in 2001, the SEC collected only $27.5 million of the $530 million that the courts ordered returned (a 5 percent success rate). The main problem is that by the time the SEC wins a court order, much of the money is gone. Just like it seizes the assets of drug dealers and terrorists, the government should use extradition treaties established with offshore tax havens to seize the assets of corporate criminals.

Suggested Reforms:

1. Seize the assets of corporate criminals and make them available to the victims of corporate crime - defrauded workers, pensioners, investors and small creditors. The federal government has used asset seizure and forfeiture tools for decades in cracking down on drug dealers, organized crime and, more recently, terrorists. The assets of executives who commit fraud -- both onshore and offshore in other countries -- should be seized. Homestead laws in

states such as Florida and Texas that protect mansions and yachts from seizure should be repealed.

2. The disgorgement of ill-gotten gains should be required of ALL executives who benefit from fraudulent earnings. The retroactive time period under which executives are forced to pay back any compensation should be extended to up to 12 months prior to restatements.

3. Forcing executives to hold onto their stock for a certain period of time after they leave a company (or taxing them at a much higher rate if they sell before a year after leaving) -would act as a disincentive to executives wishing to cash out on inside information. This "golden parachute" excise tax, which would prevent executives from cashing out shortly before a stock plunge or a bankruptcy, was proposed in the Emergency Worker and Investor Protection Act of 2002 (H.R. 3622).

4. The bankruptcy laws should be rewritten so that shareholders and workers are both protected. The cap on severance pay under bankruptcy law should be raised from $4,500 to at least $14,500. Laid-off workers should be placed first in line in bankruptcy proceedings. Creditors associated with a corporation otherwise involved in the fraud should be ineligible for compensation.

2. **Toughen the Punishments for Corporate Crooks and Crooked Corporations**

The Problem:

Prosecutors have charged executives with fraud and related crimes in some of the 130 cases, including those involving Enron and WorldCom. Yet despite all the "perp walks" orchestrated for news cameras, so far not a single executive has gone to jail.

Without a strong enough deterrent, corporate executives will be tempted to enrich themselves with little regard for the long-term viability of their companies, the interests of shareholders, employees, and other affected stakeholders. As David Walker, the head of the Government Accounting Office, has said, "civil penalties will never get the job done. You've got to give some people some wide stripes."

A double standard plagues our criminal justice system. Corporate criminals serve less time than ordinary burglars and thieves. The few croosk that went to prison for the savings and loan fraud that cost Americans hundreds of billions of dollars, for example, were sentenced to an average 36.4 months. Burglars convicted for swiping $300 or less average 55.6 months (See Clifton Leaf, "Send Them to Jail," Fortune, March 18, 2002)

President Bush pledged that under his administration's corporate responsibility plan there would be "no more easy money for corporate criminals, just hard time," but so far none of the executives charged in the corporate scandals has gone to jail.

Burglars, car thieves and drug users are typically more aggressively prosecuted than corporate criminals, who play fast and loose with the retirement savings and the jobs of hundreds of thousands, are rarely brought to trial and even more rarely convicted. And until very recently, the Bureau of Prisons allowed white-collar felons to avoid spending time in prison, instead sending them to "community correction centers" or halfway houses in which inmates work in the community and visit their families on weekends - privileges not available to most prison inmates.

Meanwhile, corporations rarely suffer the penalties that individuals face for committing a crime. Individuals convicted of criminal activity can have their rights taken away from them and often have difficulties getting a job. But corporations are rarely barred from receiving government contracts as a result of having a history of corporate crime. Given that the federal government is the largest consumer in the world, with an estimated $215 billion in annual procurement, a strong debarment rule for corporate lawbreakers would be a significant deterrent to wrongdoing.

The penalties for individuals are also much more serious. The U.S. Supreme Court recently upheld California's 3 Strikes Act, for instance, which places significant penalties on repeat offenders. No such penalty currently exists for recidivist corporations, though state legislators have proposed such a law (see www.corporate3strikes.org)

Some Suggested Reforms

1. Toughen the sentencing requirements for corporate criminals and make sure the tougher sentencing provisions in the Sarbanes-Oxley Act are enforced. The U.S. Sentencing Commission voted unanimously in April to follow Congress's directive and increase the penalties for financial fraud, obstruction of justice (document shredding) and other forms of white-collar crime. The amendment to the sentencing guidelines follows the intent of the Sarbanes-Oxley Act of 2002. (For more information, see the U.S. Sentencing Commission www.ussc.gov/PRESS/rel0403.htm)

2. Stop rewarding corporate criminals with taxpayer-funded government contracts. Ban all federal, state, and local government contracts for corporations that commit the same offense twice within a three-year period. (For more information on contractor responsibility statutes see www.pogo.org and www.essentialaction.org/anti-scofflaw/)

3. Recidivist corporations that repeatedly or egregiously violate the public trust should be placed into court-supervised receivership until the corruption or wrongdoing is eradicated, the company ceases operating in areas where it has shown repeated criminal conduct, or the organizational culture is otherwise transformed and governance structures put in place to prevent recurrence. In cases where such reform is not possible or the damage is greater than the company's ability to repay the victims, the corporation should have its charter or license to conduct business revoked. The company can be placed into receivership while its assets are sold off and the proceeds distributed to the employees and others adversely impacted by the corporation's activities, including customers, suppliers and other community members. (For more information see "Chartering a New Course: Revoking a Corporation's Right to Exist," Multinational Monitor, 11/02, http://multinationalmonitor.org/mm2002/02oct-nov/oct-nov02corp1.html and Robert Benson, "Challenging Corporate Rule: The Petition to Revoke Unocal's Charter as a Guide to Citizen Action," Apex Press, 1999).

3. **Increase the Corporate Crime Investigation and Prosecution Budget**

The Problem:

After WorldCom made it obvious that the corporate crime wave was not merely the result of "a few bad apples" President Bush went to Wall Street in July, 2002 to announce a corporate responsibility plan, in which he established a new corporate fraud task force. However, the task force was given no additional staff or funding. Meanwhile, the FBI had diverted at least 59 agents with expertise in white-collar crime to counter-terrorism efforts in early 2002.

If the character of those leading the task force is any indication, then it may just be another case of the fox guarding the chicken coop. The fraud task force coordinator, Deputy Attorney General Larry Thompson, was the head of the audit and compliance committee of Providian Financial Bank at the same time the company was engaged in a $400 million fraud for predatory lending practices that broke consumer protection regulations. (Anitha Reddy, "U.S. Corporate Watchdog Served At Troubled Firm," Washington Post, July 13, 2002.)

As investigative reporter and criminologist David Burnham has observed, "Brave-sounding promises about the government's all-out war against white-collar criminals have been made by a lengthy string of attorneys general: Carter's Griffin Bell and Benjamin Civiletti made them; so did Reagan's William French Smith and Edwin Meese and [George H.W.] Bush's Dick Thornburgh and William Barr. Yet despite the repeated assurances that the war is a genuine one, the pledges ring hollow. Even a cursory examination of the Justice Department's recent record uncovers weak-kneed, politics-ridden enforcement activities that almost always concentrate on the small fish while allowing the big ones to get away." (Above the Law: Secret Deals, Political Fixes, and Other Misadventures of the U.S. Department of Justice. By David Burnham. New York: Scribner, 1996, p. 218.)

The Department of Justice and the Securities and Exchange Commission (the two government agencies responsible for prosecuting most forms of corporate crime) are woefully underfunded and unfocused when it comes to corporate crime. The prosecution of corporate crime in areas such as securities fraud and antitrust violations has gone down in recent years and even after the corporate scandals revealed an obvious epidemic of corporate crime, the Justice Department failed to make prosecution of corporate crime a priority. According to the Department of Justice's 2003 Performance Assessment, their FY 2003 White Collar Crime budget request was $1.37 billion, up only $39 million from FY2002, or less than 3 percent increase.

Although the Sarbanes-Oxley bill increased the SEC's budget for 2003 by 66 percent, it still won't be enough. The increase is vastly outmatched by the numerous responsibilities the SEC has been saddled with in recent years. The size of market activity has skyrocketed, while new regulations and laws have increased the SEC's responsibilities in other ways. (See Michael Schroeder, "Agency Budget Was Boosted 66% To Help Fight Financial Fraud, But It May Be Too Little, Too Late," Wall Street Journal August 12, 2002, page C1.)

A March, 2002 Government Accounting Office (GAO) report to Congress on SEC operations reported that critical SEC regulatory and enforcement activities suffer from limited resources and staff turnover in the face of vastly increased responsibilities. (One indication of the SEC's inability to keep up with its workload is the fact that it reviewed only 16% of the 12,000 annual financial reports that publicly traded corporations submitted in 2001.) The result is a lack of aggressive oversight, which not only means corporate criminals can get with fraud away undetected, but the economy itself can suffer. "[T]hese delays have resulted in foregone revenue and have hampered market innovation," the GAO concluded. (See "SEC Operations: Increased Workload Creates Challenges," GAO-02-302.)

Suggested Reforms:

1. Strengthen the corporate crime fighting capabilities of the SEC and Department of Justice. Establish a permanent corporate crime unit in the Justice Department with adequate staff and resources. Make the budget for fighting corporate and white-collar crime more transparent so that Congress can track these resources and the results more effectively.

4. **Track the Cost and Extent of Corporate Crime**

The Problem:

In order to deal appropriately and adequately analyze any trends in corporate crime, we need the tools to be able to analyze its scope and extent. Currently, however, the government does not track white-collar crime. The FBI's Uniform Crime Report focuses only on street crime, even though white-collar crime annually costs Americans an estimated 20 times more than all the combined thefts included in the Uniform Crime Report.

As the Justice Department admits, "Precise financial losses resulting from White Collar Crime (WCC) for consumers, government, and business are unknown since no systematic data collection exists." (U.S. DOJ, Strategic Plan 2001-2006.) Government investigative agencies, for example, are not currently required to report information on administrative and civil offenses, which comprise nearly all of the enforcement actions against corporations, to a central location. As a result, the overwhelming social significance of illegal, negligent and injurious behaviors of corporations remains a little-studied phenomenon.

The best estimates suggest that white-collar and corporate crime cost the U.S. hundreds of billions of dollars annually. Using conservative numbers issued by the U.S. Chamber of Commerce, criminologist Jeffrey Reiman estimated the total cost of white-collar crime in 1997 at $338 billion, more than 80 times the total amount stolen in all thefts reported in the FBI Uniform Crime Reports for that year. (See Jeffrey Reiman, "The Rich Get Richer and the Poor Get Prison." Boston: Allyn and Bacon, 2001, page 120)

The National Institute of Justice estimated in 1995 the cost of fraud alone exceeded $40 billion a year. It's clear that the damage done by the recent accounting fraud scandals is much greater. According to Wilshire Associates, the markets lost half of their value -- $8.4 trillion - between their March 2000 peak and October 2002. Although the scandals were not the only thing that burst the market bubble, they were certainly a factor. U.S. retirement plans for public employees, corporate pensions and endowments lost $1 trillion in the last three years, according to one survey released in February. And Investors were hard-hit who held stock in companies such as WorldCom (where investors lost over $140 billion); Tyco ($80 billion); Enron ($67 billion); Adelphia ($60 billion) and so forth.

Access to information on corporate misconduct is not just vital to the integrity of markets and confidence of investors, but it is also vital to the general public interest, as it affects a range of issues including fair pricing, public health, environmental integrity, product safety, equal employment opportunity and safe workplaces. A publicly-accessible corporate crime database would also make it easier for customers and government contractors to know the character of corporations they are considering supporting.

As far back as 1980, the Department of Justice itself recommended that a centralized database on white-collar crime be implemented. (U.S. Department of Justice, Data Sources on White Collar Law Breaking, 1980. Reported in Corporate Crime and Violence by Russell Mokhiber)

The ability of Congress to require the tracking of corporate and white-collar crime is supported by legislation requiring the central reporting of other data. Under the 1990 Hate Crime Statistics Act, for instance, the U.S. Attorney General is required to maintain a central location on "crimes that manifest evidence of prejudice based on race, religion, sexual orientation, or ethnicity."

Suggested Reforms:

1. The FBI should maintain a publicly available, online national corporate crime database, which includes all civil, criminal and administrative penalties and settlements, as well as all out-of-court settlements in which the corporation agrees to restitution.

2. The FBI should complete an annual white-collar and corporate crime report, similar to its Crime in America annual report on street crime.

3. The definition of "corporate crime" for purposes of both estimating its extent and cost and

for consideration of sentencing guidelines and assessing recidivist behavior should be extended beyond those involving financial fraud to any act committed by corporations that is punishable under administrative, civil, or criminal law.

5. **Punish the Aiders and Abetters of Corporate Crime**

The Problem:

It takes more than just a few top executives to make corporate fraud a reality. In many cases, the accountants, bankers and lawyers have been complicit by virtue of their failure to adequately carry out their responsibilities to represent the interests of shareholders and serve a check on the activities of corporate managers and executives. Accountants, for instance, failed to maintain their objectivity when they were performing audits. These failures are often traceable to conflicts of interest created by their role as consultants for the same clients. As seen in the case of Enron and WorldCom, investment analysts were compromised by extensive conflicts of interest created by other business the giant banking conglomerates do with the same companies - e.g. bank analysts issued "buy" ratings for the stock of companies who gave them their investment banking business, while often deriding the stock privately as "junk" or "a piece of crap." And corporate lawyers not only often ignore corporate fraud but sometimes even help design and perpetuate the fraud by issuing supportive opinions, writing and reviewing SEC filings, and helping executives set up various entities designed to hide debt and inflate profits.

The incentive of supporting actors to turn a blind eye to fraud was increased significantly by "tort reform" laws that passed in the 1990s. The Private Securities Litigation Reform Act (PSLRA) of 1995 and the Securities Litigation Uniform Standards Act (SLUSA) of 1998 severely limited the ability of defrauded investors to seek restitution from the aiders and abettors of financial fraud. They did this by establishing a tougher pleading requirement that forced defrauded investors to meet a higher standard of evidence before proceeding with the case; by taking away the ability of victims to gain information through legal discovery early in a case; by eliminating "joint and several liability;" by eliminating treble damages as a punishment for deliberate fraud under civil racketeering (RICO) statutes; and by requiring plaintiffs to divulge confidential sources, preventing fraud victims from gathering key evidence from confidential informants, such as whistleblowers.

Suggested Reforms:

1. Enact an investor protection statute that repeals the Private Securities Litigation Reform Act (1995) and the Securities Litigation Uniform Standards Act (1998), both of which limited liability in cases of securities fraud.

2. Give the SEC greater authority to bring civil actions against lawyers and more options for discipline. Make recklessness cause enough for civil actions brought by the SEC and private parties against lawyers.

3. State disciplinary procedures for attorneys need to be dramatically strengthened. The opinions issued in state ethics proceedings should be binding in disciplinary matters. State supreme courts should grant disciplinary counsel the authority to issue published ethics opinions. This would improve the interpretation of rules governing the regulation of the legal profession and improve public confidence in the bar's ability to police itself.

6. **Crack Down on International Corporate Bribery**

The Problem:

The Foreign Corrupt Practices Act (FCPA) makes it illegal for U.S. companies and their overseas subsidiaries to bribe public officials in other countries. Beyond its benefit as a moral standard, the FCPA promotes U.S. foreign policy and economic interests by promoting the integrity of U.S. corporations operating abroad.

Yet observers and scholars say there are two problems with the law:

First, the two bodies given authority to sue under the FCPA -- the DOJ and the SEC -- have failed to enforce it effectively. According to one report, from 1977 to 1988, the DOJ initiated only 20 anti-bribery cases under the FCPA and the SEC only three. In addition, the few cases that went to trial resulted in minimal penalties, usually consisting only of an injunction to prohibit the corporation from violating the FCPA in the future. The author attributed the weak enforcement of the law to the lack of coordination between the SEC and the DOJ, inherent difficulties in prosecuting foreign bribery cases and a lack of political support for such prosecutions. (See Daniel Pines, "Amending the Foreign Corrupt Practices Act to Include a Private Right of Action," California Law Review, January 1994.)

Second, the effectiveness of the law is compromised by vague provisions in the act itself, amendments passed that exempt certain activities, and a recent court decision that opened up a loophole making it legal for corporate executives to make payments to foreign officials for specific purposes.

Amendments to the act passed in 1988, called the "grease payments exemptions," exclude several types of payments from FCPA prosecution. The amended act allows facilitating payments as long as the purpose of the payment is to expedite or secure the performance of a routine governmental act.

Another FCPA loophole was created by a recent court decision that made it legal for corporate executives to bribe a foreign official in order to reduce a company's tax burden or customs duties in that country. The decision, handed down by Judge David Hittner in the U.S. District Court in Houston in April, 2002 involved executives from American Rice, Inc., a U.S. corporation that is now bankrupt. (See "No Kidding: anti-Bribery Law Takes a Hit," Focus on the Corporation (column) by Robert Weissman and Russell Mokhiber, April 25, 2002 - available at http://lists.essential.org/pipermail/corp-focus/2002/000114.html)

The occurrence of overseas bribery is largely the result of top-down pressure and incentives to "deliver the numbers" - the same pressures that are placed on domestic subsidiaries. As corporate crime specialists Marshall Clinard and Peter Yeager have written, "Many decisions regarding foreign bribery are made at the highest corporate levels. … Instead of closely watching the day-to-day activities of subordinates, top executives simply use such output measures as sales, market shares, or profit margins to evaluate foreign operations, all of which tend to put pressure on lower levels of management to use bribery." (Corporate Crime by Marshall B. Clinard and Peter C. Yeager, New York: The Free Press, 1980.)

The performance pressures that Clinard and Yeager describe are similar to those reportedly placed by Enron's top executives upon their subordinates. (See, Marie Brenner, "The Enron Wars," Vanity Fair, April 2002) Bribery allegations against Enron extended around the world. In India, the company was accused of bribing government officials to gain the contract build the Dabhol power plant and then sell power back to the government at grossly inflated prices. In the UK, the CEO of Enron subsidiary Wessex Water was indicted for taking $1.5 million in bribes as part of a $1.77 billion sale of the company. According to the Wall Street Journal, "claims of corruption in Enron power or water projects have arisen over the years in many countries, including Ghana, Colombia, Bolivia, Panama, Nigeria and the Dominican Republic." (See "Enron Criminal Probe Focuses On Alleged Corruption Abroad," By John R.

Wilke, Wall Street Journal, August 5, 2002)

Other companies that been investigated for accounting fraud in the U.S. have also been accused of bribing officials in other countries. Xerox, for instance, admitted in 2002 that its subsidiary in India had paid up to $700,000 to secure government contracts. (See Indrajit Basu, "India: Business at a price," Asia Times, July 10, 2002.) Business Week reported in July, 2002 that a Venezuelan subsidiary of Tyco is also being investigated for allegedly paying bribes to win a contract to build and operate an industrial water-treatment contract. (See "The Games Tyco Played," Business Week, July 1, 2002.)

Suggested Reforms:

1. Strengthen the Foreign Corrupt Practices act by closing the loopholes that exempt "grease payments."

2. Make it a criminal offense for corporate supervisors to willfully or recklessly ignore activity that results in criminal conduct by their subordinates, including bribery.

PROTECT WORKERS AND INVESTORS

1. **Strengthen Pension Protections**

The Problem:

In decades past, corporations took better care of their workers after they retired, providing them with regular pension payments in the form of defined benefits. In the last two decades, the responsibility has shifted to the employees, who must now plan their retirements individually by navigating the turbulent stock market through defined contribution plans. Employees are often encouraged to place a majority of their retirement portfolio in company stock, violating the first rule of smart investing - diversification. As we saw at Enron, where the workers' plan was locked down - this can result in disaster. (For more information, contact the Pension Rights Center: http://www.pensionrights.org)

Suggested Reforms:

1. Corporations should be responsible for the retirement security of their employees by providing defined benefits instead of defined contributions.

2. Limits should be placed on the amount of money an employee can have invested in any one stock, including the employer's stock.

3. Employees should be given a voice on pension boards.

2. **Expand Whistleblower Protections**

The Problem:

Company employees are often the first line of defense against corporate crime. But few of them "blow the whistle" and report wrongdoing because they know that to do so would be to jeopardize their jobs and often their careers. For example, until the Sarbanes-Oxley act, whistleblowers had little protection against retaliation for reporting financial fraud. Whistleblowers still need more protections for reporting other forms of corporate crime, since the Sarbanes-Oxley accounting reform act only practices whistleblowers who report fraud against shareholders.

Although private sector whistleblowers can be protected under Sarbanes-Oxley for reporting other types of violations that have the potential to materially affect the value of the company's stock, these protections should also be explicitly extended to workers who expose all types of corporate crime.

Another way that whistleblowers can be empowered is by expanding the reach of watchdog statutes such as the False Claims Act. The FCA empowers individuals with evidence of fraud to sue government contractors. If the plaintiff prevails, the government wins three times the amount that it was defrauded (triple damages), from which the plaintiff is rewarded a percentage as bounty. Under the qui tam provision of the law, the government is given the first option to litigate the suit. If it chooses not to, the original plaintiff can still pursue the case on his or her own, much like a private attorney general.

Through the FCA, the government has recovered billions of dollars while providing a financial incentive for whistleblowers and others to overcome the institutional pressures that are often impediments toward bearing witness to a crime.

Since its enactment in 1863, Congress has broadened the reach of the act to include a wider range of fraudulent activity. President Reagan, for instance, initiated amendments to the FCA in 1986 after scandals concerning defense contracts brought attention to the issue.

According to a study conducted by William L. Stringer of the University of Pennsylvania, from 1986 through 1996, taxpayers have saved from $35.6 to $71.3 billion due to the deterrent effects of the FCA. Stringer also estimates that the total amount recovered by the government through the FCA will exceed $24 billion by fiscal year 2006. (See Taxpayers Against Fraud, www.taf.org)

However, as it now stands, the FCA addresses only corporate fraud in relation to government contracts.

Suggested Reforms:

1. Building on the Sarbanes-Oxley act, extend whistleblower protection to all private sector workers who expose any form of corporate crime.

2. Enact state laws that require executives to disclose financial fraud when they see it, as California's Senate Bill 783 (2002) proposed.

3. Use the False Claims Act as a model for laws that empower whistleblowers who report securities fraud, environmental crime, and other forms of corporate crime.

3. **Protect the Rights of Shareholders**

The Problem:

Shareholders own the publicly traded corporation, but they don't control it. There are an estimated 88 million shareholders in the U.S., but they form a diffuse group that doesn't take advantage of its power. Instead, management picks its own board of directors, votes itself all kinds of pay raises, and runs the corporation with no notion of accountability to its real owners.

Suggested Reforms:

1.Empower investors to band together into nonprofit financial watchdog associations that will give investors a powerful voice in all relevant matters. For more information, visit: http://www.essential.org/features/modellaws.html. (Also contact U.S. Investors: ogim@aol.com)

2.Require that all boards be composed entirely of independent directors, as the New York Stock Exchange has proposed. (See www.nyse.com)

3.Require majority shareholder approval for significant business decisions, such as executive compensation, takeovers and mergers.

4. Allow for cumulative voting rights and confidential ballots for shareholder resolutions and board elections.

5. Limit the number of boards any individual director can serve on. Prevent brokerage firms from voting shares they hold for their customers.

4. **Curb CEO Pay**

The Problem:

One of the key symptoms of corporate corruption is runaway CEO pay, which has grown from 42 times average employee pay to 531 times average employee pay in just over a decade, creating disparities way out of line with the rest of the industrial world. Japanese CEOs, for example, make 20 times what Japanese workers earn; British CEOs 35 times. (See United For a Fair Economy/Institute for Policy Studies, Executive Excess 1999 and Executive Excess 2001)

Until recently the common rationalization for paying CEOs so lavishly was that the incentives such compensation created for CEOs to improve the company's performance aligned their interests with those of investors. But studies confirm that there is no direct relationship between executive compensation and their company's performance. (See David Leonhardt, "Options Do Not Raise Performance, Study Finds," New York Times, August 11, 2002.)

By now "the disconnect between compensation and [executive]performance" has become so obvious that SEC Chair William Donaldson suggested in a recent speech before the Economic Club of New York that it be a priority reform that corporate boards must address.

This is because a wave of corporate scandals have made it clear that the invincible CEO whose personal integrity is inextricably bound with that of the community and the interests of shareholders is a myth whose bubble has burst:

· Tyco's former CEO Dennis Koslowski and former Tyco CFO Mark Schwartz allegedly stole $600 million from company coffers through an elaborate scheme of stock fraud, unauthorized bonuses, and phony expense accounts that the executives kept secret by bribing board members and employees, according to a charges brought by Manhattan District Attorney Robert Morgenthau.
· Global Crossing's Gary Winnick sold more than $730 million in stock options before driving it into bankruptcy.
· Enron CEO Ken Lay received $67 million in compensation during the year prior to the company's bankruptcy, while Jeffey Skilling took home $40 million and CFO Andrew Fastow raked in $5.6 million. Over $680 million was paid to 140 Enron executives in the last year, an average of $4.7 million each.
· WorldCom's Bernie Ebbers was able to garnish approximately $360 million in loan guarantees from the company.

· Joe Nacchio, the CEO who presided over the loss of $100 billion in market value of Qwest, still received a $20 million severance package.

Although few now believe that the excessive executive compensation witnessed in recent years was justifiable, the trend continued all the way up to through 2001 when, according to the Guardian, CEOs of 350 of the biggest U.S. companies enjoyed a near 7% rise in their pay, despite a 13% average fall in corporate profitability during the year. (Jill Treanor, "U.S. bosses rake in 7% increase," The Guardian, August 20, 2002.)

Management guru Peter F. Drucker has warned since the 1980s that the growing pay gap between CEOs and workers threatens the credibility of leadership and that no leader should earn more than 20 times the company's lowest-paid employee.

Even robber baron J.P. Morgan espoused the opinion that CEOs should not make more than 20 times the compensation of the average employee.

Suggested Reforms:

1. Raise the minimum wage to the level of purchasing power that existed in 1968. At $5.15, the current minimum wage allows workers to purchase 33% less now in goods and services than they received 35 years ago. Congress steadfastly refuses to increase the federal minimum wage, while increasing its own salaries almost every year.

2. Limit tax deductions for executive compensation to salaries 25 times that received by the lowest paid worker, as proposed in H.R. 2691, the Income Equity Act of 2001.

3. Enact a "golden parachute" excise tax, which will apply to executives who cash out before a stock plunge or a bankruptcy, as proposed in the Emergency Worker and Investor Protection Act of 2002, H.R. 3622.

4. Require shareholder approval of all stock options and executive compensation plans.

5. **Ban or Expense Stock Options**

A number of factors led to jump in CEO pay, but the most notable has been the explosion in the use of stock options for executive compensation, which the law currently treats as tax-deductible (it counts as an expense for the IRS, but not for shareholders).

Although the defenders of options tout them as a way to spread the wealth among employees and investors, according to the National Center for Employee Ownership, the top 5 executives of most companies held 75 percent of all options outstanding in 2000, with the next 50 executives holding another 15 percent. By contrast, only 1.5 percent of all non-executive employees earning $35,000 to $50,000 per year have any options. (See http://www.nceo.org/options/index.html)

As Alan Greenspan observed, "the incentives [options] created overcame the good judgment of too many corporate managers. It is not that humans have become any more greedy than in generations past. It is that the avenues to express greed had grown so enormously." (Gretchen Morgenson, "Bush Failed to Stress Need to Rein In Stock Options," New York Times, 7/11/02.)

Even when they don't lead to fraud, options can cost companies (and therefore other shareholders) money because if the stock price rises, the company loses the difference between the value of shares that the firm could have sold on the open market and the fixed price (strike price) at which the stock is sold when the options are exercised. Options also hurt investors in two other ways: 1) they dilute the earnings value of their shares (more shares equals less earnings per share); and 2) they conceal the value of the company by hiding a key expense - compensation.

Former Federal Reserve Chair Paul Volcker has suggested that anyone interested in serious reforms in executive pay should advocate getting rid of stock options.

Short of their elimination, some leading advocates of reform have called for changes in the design of stock options in order to make them more accurately reflect and reward executive performance. Such proposals include indexing the option strike price to the Dow or Nasdaq. This way, the options would rise in value only if the stock outperformed the market. Although the proposal seems sensible on the surface, it doesn't eliminate the possibility that executives could still cook the books to artificially raise the value of their stock. ("The Greed Cycle," by John Cassidy, the New Yorker, September 23, 2002)

Suggested Reform:

1. Ban or at least expense stock options, the steroids of corporate greed.

6. **Expand Disclosure Standards**

The Problem:

The massive fraud at Tyco, Enron, WorldCom and other corporations was facilitated by weak disclosure requirements that made it difficult for investors, analysts and credit rating agencies to accurately asses the true financial condition of the corporation.

The widespread abuse of pro forma accounting is the most obvious example of poor disclosure. Pro forma reports, which were used by publicly trade companies as a kind of "hypothetical" balance sheet constructed on the basis of assumptions and estimates that are not presented to investors, allowed CEOs and their accountants to produce all kinds of fictional pictures of a company's earnings or hide the expense of massive options grants and offshore debts.

The inconsistencies between pro forma accounting and Generally Accepted Accounting Purpose (GAAP) reports often revealed the lengths to which executives and accountants would go to manipulate the perception of a company's financial condition. When Cisco Systems reported a net income of $3 billion under pro forma reporting in early 2002, for instance, it concurrently reported a net loss of $1.01 billion on a GAAP basis. "The beauty of pro forma reporting is that where GAAP rules may prevent or limit the way companies can display the benefits of financial engineering, pro forma lets them present what they need to present by packaging all the creative ideas they can imagine," explain A. Larry Elliott and Richard J. Schroth in How Companies Lie: Why Enron is Just the Tip of the Iceberg. These inconsistencies in corporate disclosure were frequently revealed when reports filed with the IRS are compared with reports for investors that are filed with the SEC.

The lack of full disclosure is not a victimless offense. Nor is the damage limited to shareholders, who find out about liabilities and other problems after company insiders know them. Corporations routinely conceal hidden liabilities regarding defective products, environmental damage and other activities that can harm the broader public interest in numerous ways. The lack of disclosure can result in workplace deaths or the exposure of consumers and the environment to health-threatening chemicals or other hazards. (See www.offthebooks.com and the Corporate Sunshine Working Group, www.corporatesunshine.org)

Expanding disclosure to these areas asks bigger questions about the duties of a corporation. If we want to view corporations as having broader responsibilities to employees, communities and the environment, then expanded disclosure would serve to quantify some of those responsibilities. As accountant Ralph Estes (author of The Tyranny of the Bottom Line: Why Corporations Make Good People Do Bad Things) puts it: "You manage what you measure. Of if you don't count it, it doesn't count."

Thus improvements in disclosure should go far beyond accounting practices and reporting of a portion of the corporation's tax returns. Investors, particularly socially responsible investors, want to know about corporations' social and environmental liabilities, as well as what crimes they have committed. So do consumers, employees, and potentially affected communities.

Arguments for strengthening broad corporate disclosure requirements have been around for some time. Former SEC chairman Harvey Pitt himself wrote a 1971 law review article that concluded that SEC disclosure laws could be used to advance corporate social responsibility, contending that "[t]he Commission has within its power the wherewithal to make corporations socially responsible and afford a substantially higher degree of investor and public protection." (Theodore Sonde & Harvey l. Pitt, Utilizing the Federal Securities Laws to "Clear the Air! Clean the Sky! Wash the Wind!" 16 Howard Law Journal 831 (1971))

Measures that expand the requirements upon corporate officers to improve disclosure can also help make markets more efficient and reflective of societal concerns by giving investors an informed choice. The more information that investors have, especially those who identify themselves as part of the growing sector of socially responsible investors, the greater ability they have to invest in and help accelerate the development and use of socially responsible policies and environmentally sustainable technologies. Voluntary codes of conduct and public relations-generated assertions by corporate executives about a company's social and environmental responsibilities are not enough. Enron CEO Ken Lay wrote a long letter to shareholders in the company's 2001 annual report, which addressed the integrity and high standards at Enron. Lay claimed the company was sponsoring a wide range of activities to ensure the social responsibility of the firm and otherwise protect shareholders and employees. There was no standard by which to measure the difference between reality and pure fantasy. The ability of investors and others to do due diligence before investing in companies that make such claims is supported only when their right to know is supported by verifiable data.

Increased disclosure of corporate activities almost always results in benefits for shareholders as well as the public. The Toxic Release Inventory, created by community right-to-know laws passed in 1986 in the wake of the Union Carbide accident in Bhopal, vastly increased corporate disclosure of toxic waste generation and emissions. This increased disclosure requirement forced corporations to identify the source of pollution, and often resulted in the evaluation of safer, more efficient alternatives whose deployment has helped a number of companies avoid the expense of complying with command-and-control regulations. Since this right-to-know law was passed, toxic emissions have decreased by at least 40 percent. (See www.scorecard.org.) And as study after study have reported, companies that have conducted waste audits in order to accurately disclose their emissions have in the process often found ways to save money through pollution prevention strategies that save on raw materials, increase energy efficiency, and avoid the need for investments in pollution control equipment. (See Prosperity Without Pollution: the Prevention Strategy for Industry and Consumers by Joel Hirschhorn et al.)

Markets function more efficiently when the parties involved are given equivalent accurate and complete information so they can reward good behavior and punish bad behavior. In a fair market every investor and pensioner is entitled to a clear, comprehensive financial statement. The new Sarbanes-Oxley accounting reform law requires expanded disclosure of insider trading and off-balance-sheet transactions and relationships with unconsolidated entities or other persons. But more can and should be done to improve corporate disclosure, particularly in the areas of corporate taxation and social and environmental disclosure. (See www.corporatesunshine.org for more information)

Suggested Reforms:

1. The SEC should require thorough and clear disclosure of all civil settlements and penalties, punitive fines and criminal convictions, as well as social, environmental, and human rights impacts in corporate shareholder reports.

2. Congress or the SEC should require that a portion of corporate tax returns be made public. The vast difference between what corporations report to the IRS and to shareholders often reflects attempts to hide the financial health of a company's core business.

6. **Stop Corporate Tax Dodgers**

The Problem:

A growing number of corporations have discovered a very simple way to save tens of millions of dollars in annual tax returns by reincorporating in an offshore tax haven without actually moving any operations offshore. All it takes is a post office box and some paperwork. These companies, however, still benefit from government services that the taxes of others continue to finance, such as law enforcement, national security, and most notably, government contracts. These moves also have an adverse affect on shareholders, who end up with fewer rights under the jurisdiction of offshore tax havens. And shareholders can also take an unexpected capital gains tax hit as the stock is converted.

Suggested Reforms:

1. Close the loophole that makes these transactions possible, as proposed in the Corporate Patriot Enforcement Act of 2002 , H.R. 3884, and S. 2119.

2. Ban all government contracts for tax escapees.

ROLL BACK THE TIDE OF DEREGULATION

Enron and the other corporate scandals were the logical outcome of fundamentalist market policies that gradually triumphed in recent decades. Those policies included: privatization, deregulation and reduced government oversight, and putting our trust in the ability of "market forces" to efficiently allocate resources and set prices.

After rapid deregulation, the barriers to the movement of capital across borders and across sectors resulted in a tremendous burst of speculative activity and investment in overcapacity. And as seen in California, deregulated markets were anything but efficient, and often subject to manipulation.

The sectors hardest hit by the corporate scandals - the telecommunications industry, electricity and energy, and banking - were all radically transformed by the thrust toward deregulation in the last decade.

For instance, after the Telecommunications Act of 1996 opened up markets including local and long-distance phone service, the telecommunications industry spent nearly half a trillion dollars building a monumental high-tech network. The industry's debt ballooned from $9 billion in 1996 to $306 billion in 2000 before it crashed. (See Karen Kaplan and Jon Healey, "Too Much, Too Soon for Telecom," Los Angeles Times, June 30, 2002).

The repeal of New Deal era laws such as the Glass-Steagall Act resulted in the transformation of the banking sector. Many corporate scandals were traceable to the inherent conflicts of interest that resulted when giant banking conglomerates such as Citigroup were created out of the consolidation of investment banking, structured finance and other services under one corporate umbrella.

Markets must be governed by certain rules of fair play to maintain competition and channel investments into socially productive directions. Until the tidal wave of deregulation is reversed, it will be difficult to prevent anticompetitive behavior from undermining markets in the future.

1. **Reverse Electricity Deregulation and Restore Local Control Over Essential Services**

The Problem:

The combination of deregulated state wholesale electricity markets, federal deregulation of commodity exchanges, and the gutting of a New Deal-era utility law -- the Public Utility Holding Company Act - removed accountability and transparency from the energy sector and left electricity consumers at the whim of greedy profiteers. California's recent energy crisis, for example, cost ratepayers an estimated $70 billion. (For more information see "Hoax: How Deregulation Let the Power Industry Steal $71 Billion From California," by the Foundation for Taxpayer and Consumer Rights, available at http://www.consumerwatchdog.org/utilities/rp/rp002193.pdf)

Suggested Reforms:

1. Stop the push to repeal New-Deal era laws (the Public Utility Holding Company Act) that protected consumers of electricity and other essential services. (See www.citizen.org/cmep for more information)

2. Amend the Federal Power Act to force the Federal Energy Regulatory Commission to revoke market-based rates.

3. Order cost-based pricing in all wholesale electricity markets.

(For more information see Public Citizen's Critical Mass Energy Project at www.citizen.org/cmep/, Restore Just Rates - www.restorejustrates.org and Local Power at http://www.local.org)

2. **Regulate Derivatives**

The Problem:

There has been an exponential rise of financial speculation in the last two decades. It is estimated that for every $1 in the productive economy, there are $50 worth of financial trades on top of that. Incredible resources are spent in speculation - the buying and selling all kinds of financial devices.

Derivatives - contracts between two or more parties whose value is derived from the underlying value of stocks, bonds, interest rates, currencies or other commodities -were originally intended to help farmers, businesses and other investors insure themselves against the risks associated with unpredictable swings in market conditions, including commodity prices, energy supply and demand, interest rates and even the weather. But the use of derivatives by core producers who view them as a "hedge" against unpredictable market conditions pales in size and volume when compared to their abuse by speculators.

In the end, Enron became an "asset-lite" company that didn't produce much of anything, making most of its profits off of derivatives and market speculation and manipulation. After the company suffered from heavy losses on real, physical investments in such assets as an electrical power plant in India and fiberoptic broadband capacity in the U.S. they turned to creative accounting, hiding debt in a web of partnerships (and off the books) and used derivatives in the creation of thse partnerships. The total notional value of Enron's derivatives position approached $700 billion before it filed for bankruptcy.

Enron was hardly an anomaly. At the time of Enron's collapse, the total value of the global derivatives market was about $100 trillion, or nearly 70 times the total value of American corporate equities markets.

Congress and regulators such as the Commodities Future Trading Commission need to address the regulatory gaps and weaknesses of oversight concerning Over the Counter (OTC) derivatives, particularly in light of the rapid growth in derivatives activity.

(For more information see the Derivatives Study Center, www.financialpolicy.org; "Fiancial Derivatives: actions Needed to Protect the Financial System," Statement of Charles A. Bowsher, Comptroller General of the United States, GAO/T-GGD-84-170, testimony before the Committee on Banking, Finance and Urban Affairs, U.S. House of Representatives, June 23, 1994; and Robert Bryce, "Corporate Steroids," Washington Post, August 24, 2002).

Suggested Reforms:

1. Ban unregulated trading in derivatives and other financial instruments. Derivatives traders should adhere to the same audit and reporting requirements as those who trade in other financial instruments, including licenses and the registration required of other securities dealers.

2. Capital and margin (collateral) requirements should be established for derivatives (as they are for other financial instruments) in order to prevent problems at one firm from affecting the broader market system.

3. **Protect Main Street From Wall Street**

The Problem:

Millions of small investors lost tens of billions of dollars because they followed the advice of investment banking analysts whose ability to provide objective advice on which stocks to invest in was compromised by the banks' other ties to the companies they were analyzing.

The problem of analysts' conflict of interest was so widespread as to be epidemic in the industry. Forty-seven of the 50 large brokerage firms covering companies that went bankrupt in the first four months of 2002 continued to recommend that investors "buy" or "hold" their shares even as companies were filing for Chapter 11. (See Weiss Ratings, "Crisis of Confidence on Wall Street," June 11, 2002; www.weissratings.com.)

The "global settlement" orchestrated by New York State Attorney General Eliot Spitzer and the SEC with the big Wall Street banks totaled a mere $1.4 billion (much of it tax deductible) - a slap on the wrist. Although the settlement required that the banking firms fund independent research (for 5 years) and severed some of the links between the research operations and other investment banking activities at the banks, it did not completely sever the structural relationships that inherently created the conflicts.

The conflicts are likely to continue so long as the giant banks are allowed to offer multiple services -- structural banking, underwriting and investment banking services -- to the same clients. As Business Week concluded last fall, "it's starting to look as though the very model of the financial conglomerate is fundamentally flawed." (See "Crisis at Citi," by Anthony Bianco and Heather Timmons, Business Week, September 9, 2002)

The conflicts were created by the gradual repeal of New Deal-era banking laws, particularly the Glass-Steagall Act, which established the strict separation between investment banking, insurance and underwriting businesses. The repeal of the law was accomplished with the help of former Treasury Secretary Robert Rubin, who went to work for Citigroup shortly after the final nail in Glass-Steagall was driven home in 1999. With the law's repeal, J.P. Morgan Chase & Co. and Citigroup, Citicorp's successor, were free to both lend and underwrite securities for Enron, WorldCom and others. Citigroup, for instance, was paid a total of $167 by Enron for various services from 1997 to 2001. And the big banks lent Enron billions in the final years before the bankruptcy, often without asking for collateral and often disguising the loans as sham energy deals. At the same time, the big banks were also pivotal players - perhaps the architects - of the offshore special purpose entities that were used to hide the company's debt and which ultimately brought the company down. (In addition, bank executives personally invested in the lucrative partnerships.) The banks also coordinated huge investment deals around the world and attempted to save Enron by arranging for a last-minute failed buyout by Dynegy.

By the end, the big banks were in too deep to warn anyone else, including investors who took their analysts' advice, the big credit rating agencies and other banks to whom they had syndicated billions in loans - a fee-generating relationship that allowed them to pass on much of the risk. It's no surprise, therefore, that Rubin put in a last-minute desperate call to acquaintances at his old employer -- the Treasury Department -- including undersecretary Peter Fisher, in an attempt to prop up Enron's credit rating just before it collapsed. (Rubin was later cleared of any violation of the law by a Senate staff investigation).

The risks created by the conflicts at the big banks are not borne by investors alone. "The rationale for repealing Glass-Steagall was that it would create more diversified banks and therefore more stability," Tom Schlesinger, executive director of the Financial Markets Center told reporter William Greider. "What I see in these mega-banks is not diversification but more concentration of risk, which puts the taxpayers on the hook." ("Crime in the Suites," by William Greider, The Nation, February 4, 2002)

The lessons of deregulation and the impacts on competition seen at the banks are a lesson for other sectors as well.

Limits on cross-sector ownership in industries such the media are critical to a functioning democracy. The concentration of corporate control of the media within geographic markets and across industry sub-sectors should be viewed as a critical threat to our democracy. The number of media conglomerates has shrunk from some 50 or so that dominated the entire U.S. mass media (newspapers, books, film, radio, television, cable and recorded music) in 1983 when Ben Bagdikian first published The Media Monopoly, to less than 10 conglomerates today. And the current Federal Communications Commission continues to push for the repeal of the few remaining restraints on media cross-sectoral ownership (for more information see www.democraticmedia.org; also see Robert McChesney, "Rich Media, Poor Democracy.")

Suggested Reform:

1. Reinstate the provisions of Glass-Steagall that mandate strict separation between the investment, commercial banking, commercial banking, insurance, and investment analysis arms of banking firms.

REDUCE EXCESSIVE CORPORATE POWER AND INFLUENCE OVER GOVERNMENT

1. **Cut Corporate Welfare**

The Problem:

Corporations receive countless taxpayer subsidies and bailouts, essentially transferring public money into private hands with little to no public consent or debate. Corporations receive natural resources from federal lands at a fraction of their value. They gain countless benefits from taxpayer-funded scientific and medical research. They utilize a wide array of federal tax loopholes, debt forgiveness, loan guarantees, discounted insurance, and other benefits. At the same time, they pay a decreasing percentage of federal revenue.

Enron, for instance, paid no taxes in four of the last five years before filing for bankruptcy. (For more about Enron's taxes see Citizens for Tax Justice, www.ctj.org)
Yet Enron's rise and fall was hardly a reflection of the "genius of capitalism" as former Treasury Secretary O'Neill later characterized it. The company's growth was in large part the logical result of political favors carried out on its behalf, including the over $7 billion in subsidies and loans that it received from taxpayer-financed international finance institutions such as the Overseas Private Investment Corporation (OPIC). (See "Enron's Pawns" at www.seen.org for details about IFI support for Enron.)

Suggested Reforms:

1.Cut the subsidies, giveaways, and huge bailouts that only benefit large corporations at the expense of everyone else.

2.Eliminate government entities whose main purpose is to provide corporate welfare in the form of financial support for U.S. companies to do business overseas, most notably OPIC (Overseas Private Investment Corporation).

2. **Slow the Revolving Door Between Business and Government**

The Problem:

The Bush administration is laden with former corporate executives and lawyers. Forty one high-level Bush administrations officials, for instance, have ties to the oil and gas industry.

The corporate-government revolving door was stuffed with Enron people including Lawrence Lindsey, a former Enron consultant turned top Bush Economic advisor; Robert Zoellick, a former paid consultant to Enron is now the U.S. Trade Representative and Thomas White, former head of Enron Electricity Services, was appointed by Bush to be the Secretary of the Army (he has since been replaced). A total of over 50 high-level Bush administration officials have been identified who once had meaningful ties to Enron. (See "Enron's Shadow Government," www.americasfamilyvoices.org. Also see Public Citizen's diagram of the relationships http://www.citizen.org/documents/EnronTree.pdf)

These corporate ties make it difficult to imagine how government officials can properly enforce the law or avoid providing special treatment when it comes to their former employers objectively. In matters related to its core businesses Enron sought and wielded the greatest influence. Lay and other Enron officials used their access to privately advise Vice President

Cheney in six secret energy policy meetings. It is thus no surprise that the administration's national energy strategy heavily favors the increased reliance on natural gas (Enron's core business) and is committed to the further deregulation of the electric utility industry. As a result of Enron's largesse and the Bush Administration's receptive ear, the White House energy plan included 17 provisions that benefited Enron, including the creation of a deregulated national energy grid. (See "How the White House Energy Plan Benefited Enron," report prepared for Rep. Henry A. Waxman by the Minority Staff of the Committee on Government Reform, U.S. House of Representatives, January 16, 2002. www.house.gov/reform/min.)

Enron even entered the appointment process directly. The chair of the Federal Energy Regulatory Commission (FERC), Curtis Hebert Jr. complained that in a call that Lay made in early 2001, he told Hebert that Enron would support him continuing in his position only if he backed a national push for further electricity market deregulation. "When I told [Lay] that I didn't think it was the right thing to do and also that there was no legal basis for it under the federal power act, he told me that he and his company, Enron, could no longer support me as chairman." Hebert was subsequently replaced by Pat Wood III. ("Power Trader Tied to Bush Finds Washington All Ears," Lowell Bergman and Jeff J. Gerth, New York Times, May 25, 2002)

Enron also obtained favors from the Bush administration for its operations around the world. Top officials from the National Security Council, as well as Vice President Cheney and Secretary of State Colin Powell, pressured high government officials in India on behalf of the company in negotiations related to its Dhabol electricity plant, which even the World Bank had concluded was "not economically viable" because it would produce too much power at too high a price for the Indian state of Maharashtra. (See Rep. Henry A. Waxman, letter to the Vice President, January 25, 2002; for background on the Dhabol plant see "Enron's Pawns," by Jim Vallette, available at www.seen.org and Power Play: A Study of the Enron Project," by Abhay Mehta)

Suggested Reform:

1.Public officials should be required to recuse themselves from any investigation, enforcement action, or rule-making involving a former employer or client for as long as they hold public office.

3. **Create a Public Interest Counterweight to the Corporate Lobbyists**

The Problem:

More than ever, big money dominates politics and policy decisions in our nation's capital. The over 12,000 registered corporate lobbyists in Washington D.C. affect every major legislative battle in Congress and regulatory proceedings at virtually every federal agency. (See "Influence, Inc.," Center for Responsive Politics, www.opensecrets.org)

While regulations are often assumed to be a way to keep corporate interests in check, much corporate influence over the regulatory process, corporations end up using regulations to their advantage (and often to the disadvantage of smaller businesses without a voice in Washington). As Robert Monks and Nell Minnow explained in Power and Accountability, "The ultimate commercial accomplishment is to achieve regulation under the law that is purported to be comprehensive and preempting and is administered by an agency that is in fact captive to the industry."

Enron's influence over the political process was literally down to a science. By 2001, Enron had 150 staff working on state and federal government affairs. The company even used a computer program called "the matrix" that brought a scientific dimension to their effort to seduce politicians and sway bureaucrats. (The name is an interesting allusion to the movie by the same title - perhaps a telling reference to a political system that provides the illusion of democracy controlled by living beings, but is in fact a system controlled by the machinery of corporate interests.) As the Washington Post described it, "with each proposed change in federal regulations, lobbyists punched details into a computer, allowing economists in Houston to calculate just how much a rule change would cost. If the final figure was too high, executives used it as the cue to stoke their vast influence machine, mobilizing lobbyists and dialing up the politicians who had accepted some of Enron's millions in campaign contributions." ("Hard Money, Strong Arms And 'Matrix'," by Joe Stephens, Washington Post, February 10, 2002)

The interests of consumers and small investors are best protected when these groups organize and represent themselves in legislative and regulatory proceedings. Despite the major financial scandals, few groups made much of an attempt to organize the millions of investors who lost their life savings from the recent corporate scandals. (Among the groups that have helped consumers and small investors are the Consumer Federation of America: www.consumerfederation.org; Consumer's Union, www.consumersunion.org; U.S. PIRG www.uspirg.org; Council of Institutional Investors, www.cii.org; and The Corporate Library, www.thecorporatelibrary.org. See also www.usinvestors.org).

It is time for Congress to do something to level the playing field: by providing citizens, in their roles as consumers, homeowners and small-business owners, with better representation in the halls of Washington. At a minimum, Congress should create a federal "Consumer Protection Agency" charged to serve as a standing, nimble advocate for consumer interests in the opaque regulatory proceedings where they are so outgunned today. Such an agency might have prevented some of the more egregious forms of deregulation that led to the recent financial scandals. (For model legislation that would create a Consumer Protection Agency, see: www.csrl.org/modellaws/protection.html) The CPA would not add a new layer of federal bureaucracy and would have no power to regulate business activity. Instead, it would investigate, develop facts and present consumer interests to legislators, regulators and courts. It would participate in federal agency proceedings and challenge agencies that neglect to enforce statutes passed by Congress.

For more information and model legislation for the proposed financial consumer watchdog association see http://www.essential.org/features/modellaws.html.

Suggested Reform:

1. Create a federal "Consumer Protection Agency" to advocate for consumer interests, investigate, develop facts, participate in federal agency proceedings, challenge agencies that neglect to enforce statutes passed by Congress, and present consumer interests to legislators, regulators and courts. For more info, see www.csrl.org/modellaws/protection.html.

4. **Get Corporations Out of Our Elections**

I again recommend a law prohibiting all corporations from contributing to the campaign expenses of any party. … Let individuals contribute as they desire; but let us prohibit in effective fashion all corporations from making contributions for any political purpose, directly or indirectly. - Theodore Roosevelt, 1906

The Problem:

Enron epitomizes how corporations have come to dominate the U.S. political process and what they get as a result of the significant financial contributions they make to electoral candidates.

Enron was the largest career backer of George W. Bush. The relationship goes back to the company's earliest days as a Texas-based natural gas producer. (See "Bush-Lay Ties Based on Shared Priorities," by Hanna Rosin, Washington Post, March 24, 2002)

After Bush announced his candidacy for president in 1999, Lay co-chaired a record-breaking $21 million fund-raiser for Bush, and was a Bush "Pioneer" (raising $100,000 personally for the campaign). Lay sent a letter to 200 executives at the company encouraging them to "voluntarily" give money to Bush. "It was more or less required that you participate in the political action committee if you were an officer," one former executive said. Enron employees donated $623,000 to George W. Bush's 2000 campaign, making Enron Bush's largest single funding source.

The company did much more. Lay arranged for Bush campaign aides and family members to use Enron jets, underwrote the 2000 GOP convention, the Florida recount and the inauguration. The intimate ties between the company and Bush's campaign strategists were demonstrated by Enron's willingness to follow campaign manager Karl Rove's request to hire right wing activist Ralph Reed. Reed put his considerable grassroots organizing ability to work for Enron, pushing for electricity deregulation in states like Pennsylvania. ("Bush 2000 Adviser Offered to Use Clout to Help Enron," by Joe Stephens, Washington Post, February 17, 2002)

After Bush won, Enron officials had plenty of access to the new administration, meeting with White House officials at least 40 times in 2001 and a total of 72 times with officials from various departments, including Commerce, Treasury, Commodity Futures Trading Commission, FERC, Export-Import Bank, the Overseas Private Investment Corporation, etc. (See "Bush Administration Contacts with Enron," minority staff report, House Committee on Government Reform, May 2002)

Of course, once Enron collapsed, Bush tried to distance himself from his old friends at Enron. "Kenny Boy" was suddenly "Mr. Lay." Bush even went so far as to describe Lay as a "supporter of my [Texas gubernatorial campaign] opponent" Ann Richards, but in reality Richards received but one-seventh of the financial support that Enron officials gave to Bush in the 1994 state gubernatorial race.

Suggested Reforms:

The corporate domination of electoral politics is established by their immense ability to fund campaigns and advertise their views on the issues, as well as the rights they are given to participate at many levels. To reclaim our democracy we must get corporations out of the election process. (For more on campaign finance reform we recommend Mark Green's book, Selling Out: How Big Corporate Money Buys Elections, Rams through Legislation, and Betrays Our Democracy)

1. Full public funding should be established for all federal elections. Models of how publicly funded elections can improve elections by expanding the diversity of candidates who run for office and the issues they run on have been succeeding in some states, including Arizona and Maine. (For more information, see www.publiccampaigns.org.)

2. The airwaves belong to all of us. They are the public's property, part of the commons. We provide broadcasters with federal licenses without charge on the condition that they agree to serve the public interest. As a condition of their license, we need to require that broadcasters provide free air time to all qualified candidates, not just those who have enough money to afford to run political campaign advertisements. (See the Alliance for Better Campaigns,

www.bettercampaigns.org).

3. Limits on campaign spending are an integral part of restoring our democracy. Without caps on campaign spending (in addition to contribution limits), money will always find a way back into the system. The doctrine that money constitutes free speech (established by the Supreme Court in Buckley v. Valeo) should be overturned. (See the National Voting Rights Institute, http://www.nvri.org/about/buckleyvvaleo.shtml)

5. **Restore Direct Citizen Control Over Corporations Through Their Charters**

The Problem:

In the early days of the Republic, for three generations after the signing of the Declaration of Independence, citizens governed corporations directly by setting rules regarding their purpose and size through their charters (the legal instruments that state governments grant to corporations, giving them the right to do business).

Over time, corporations have been able to manipulate the law to weaken the chartering process and acquire increased power through the establishment of the limited liability doctrine (thus making the corporation a legal shield for individuals who commit a harm), a release on any limits to their life span and size.

Some scholars and activists advocate reinvigorating the state chartering/licensing process as a means of restoring citizen authority over corporations. Others suggest that in addition to state charters a federal charter could be required of corporations that conduct interstate commerce. (For more information about corporate charters see www.poclad.org and http://multinationalmonitor.org/mm2002/02oct-nov/oct-nov02corp1.html. For more information on federal chartering proposals see "Taming the Giant Corporation" by Ralph Nader, Mark Green and Joel Seligman, 1976)

Suggested Reform:

1. Cancel the charters or business licenses of corporations that commit three serious crimes in one year (see www.corporate3strikes.org).

2. A Congressional commission modeled on the Temporary National Economic Committee of 1938-1941 should review the chartering process and make recommendations for its improvement. The commission should hold field hearings in at least 10 major cities to gather input from concerned citizens, and evaluate suggested reforms such proposals for a federal chartering system.

6. **End Corporate Personhood**

The Problem:

Ever since the late 1900s, U.S. courts have granted corporations - once considered mere "creatures of law" -- the status of "persons" with specific constitutional rights, such as the right of speech and protection from search and seizure. Corporations have used these rights, along with their superior economic might, to dominate various political processes and shield themselves from normal government regulatory oversight. (For more information see Thom Hartmann, Unequal Protection: The Rise of Corporate Dominance and the Theft of Human Rights, Rodale Press, 2002; www.poclad.org; www.reclaimdemocracy.org)

Suggested Reform:

1. Human beings (and not corporations) should be deemed "persons" entitled to specific privileges and immunities of citizenship such as the speech rights defined in the Constitution.

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