Testimony of

The Honorable Orrin Hatch

February 6, 2002

I want to first commend you for calling this important hearing on the lessons we can learn from the Enron collapse. I appreciate the willingness of all the witnesses to testify on such short notice and I look forward to hearing all of your testimony. I would especially like to thank Washington State Attorney General Gregoire [Greg-waar] for making the trip here to the other Washington to talk about the States' pension plan lawsuits. We are all concerned and feel for the many hard-working people who lost their pensions and hard-earned savings.

Mr. Chairman, we all know about the unbelievable chain of events that led so many innocent Enron investors to lose so much so very quickly. Enron's highest trading point was $90; today, it is worth about 26 cents. Injured parties include pension funds that lost hundreds of millions of dollars, Enron employees who lost virtually the entire value of their 401Ks, and individual investors, both large and small, who have suffered losses that may include many peoples' life savings. These are not just personal tragedies; this failure of the "transparent system" meant to protect investors in our securities market is a national shame. I am glad we are here today to learn about the lawsuits being filed against Enron, the business and ethical conflicts that got us where we are today and suggested reforms to make the system work better in the future. No investor should ever lose confidence in our securities market, and no American should ever have to fear for the safety of his or her retirement savings.

As several witnesses will testify here today, in 1995 Congress overwhelmingly passed the bi-partisan "Private Securities Litigation Reform Act,"overriding a presidential veto. This law was meant to reform securities class action practices and to abate the epidemic of so-called "strike suits" that were plaguing American businesses, particularly in the nascent high-tech industry. In these suits, nominal shareholders and / or "professional plaintiffs" and their lawyers were holding American corporations hostage with causes of action based on the non-performance of publically traded stock. Every time a stock price would go down or an earnings report was off, lawyers would line up on the court house steps to allege securities fraud on the part of the corporation or its advisors. Ultimately, these class actions were not only damaging to the businesses that would get tied up in meritless suits, but also to American consumers who were losing the benefits of innovations that had to be put on hold while managers and directors were otherwise engaged in defending against frivolous litigation.

The provision of the Private Securities Litigation Reform Act that is most squarely under the jurisdiction of the Judiciary Committee is the exemption for securities fraud under the civil provisions of the Racketeer and Corrupt Organizations Act (RICO). In 1995, The Securities and Exchange Commission vigorously supported the inclusion of this provision in the PSLRA, and the former Chairman, President Clinton's appointee, Arthur Levitt, was one of its most vocal proponents. Chairman Levitt testified before Congress that: "because securities laws generally provide adequate remedies for those injured by securities fraud, it is both unnecessary and unfair

to expose defendants in securities cases to the threat of treble damages and other extraordinary remedies provided by RICO." It is important to note, especially in light of the ongoing criminal investigation of Enron, that this provision does not exempt any person from being criminally convicted under the RICO statute in connection with securities fraud.

Legislation has recently been introduced in the House, and may also be considered here in the Senate, that would remove the civil RICO exemption for securities fraud. It is my hope that we will give such legislation measured and careful consideration while studying the lessons learned from Enron. The PSLRA was designed to weed out frivolous law suits, not to prevent legitimate claims like the ones represented here today from being prosecuted. I look forward to hearing testimony from the witnesses on this matter.

I also look forward to hearing from the witnesses about the ethical questions that have been raised regarding the conduct of the attorneys who set up the Enron deals and the analysts rating Enron stock. In particular I would like to know where the lawyers were when Anderson and Enron started shredding documents? Why would any attorney allow, or even encourage, a client to commit possible obstruction of justice in the face of civil law suits and criminal investigations? I am not just talking about the law firms involved, but also the in-house counsels who are held to the same ethical standards as every other member of the bar.

The final aspect of the Enron debate that I'd like to address here today involves the proper and appropriate - and I should add Constitutional - oversight role of Congress. Of course, I am referring to the General Accounting Office's threatened lawsuit against Vice President Cheney. As I've said elsewhere, I strongly believe that the GAO's original efforts to impose disclosure of White House policy discussions and meetings raise serious constitutional and policy concerns. From a policy standpoint, I believe that the powers asserted by the GAO in initially seeking specific details of the meetings attended by the Vice President deserve our attention.

From a constitutional perspective, I strongly feel that the GAO's interpretation of its investigative powers raises substantial separation of powers questions. I have looked carefully at the legal arguments on both sides of this issue and have real concerns regarding the GAO's novel case and look forward to hearing whether the exercise of such powers by the GAO can be reconciled with the basic constitutional principles that underlie the doctrine of separation of powers.

Again, I thank the Chairman for calling this hearing and I look forward to hearing from the witnesses.
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