

Suite 502

1150 Seventeenth Street, N.W., Washington, D.C. 20036

Telephone: (202) 777-3000 Facsimile: (202) 777-3010

ECONOMIC NEWS UPDATE

IRWIN M. STELZER

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Gary Mulgrew, David Bermingham, Giles Darby, Ken Lay, Eliot Spitzer, Hank Greenberg – the list goes on. The first three, now known as “the Natwest Three”, are awaiting extradition from Britain to the United States to face charges in connection with the collapse of Enron. Lay, of course, is – was – the founder of Enron, and a former client and friend. Found guilty of a variety of crimes, his death in Aspen last week ends the probability that he would be sentenced to spend the rest of his life in jail. Spitzer and Greenberg, the New York Attorney General and the builder and former boss of AIG, the insurance giant, respectively, are engaged in one of the many legal tussles that Spitzer has initiated with a score of Wall Street’s most important companies.

A common thread links the fates of these men, and many others: involvement in a legal system that is presumed to be fair, and to produce acquittal for the innocent, and stretches in jail for the guilty. But there is a wide

gap between that laudable theory and real-world practice.

Start with the notion that a prosecutor’s sole goal is to bring miscreants to justice. Surely, many who decide to try those they believe have broken one or more of the many complicated statutes that now govern corporate life are dedicated public servants, pure in heart and motive. But equally surely others have mixed motives. Spitzer wants to be governor of New York, and to follow in the footsteps of his idol, Theodore Roosevelt, to the White House. The prosecutors trying the various Enron cases know their careers will be affected by the outcome of those cases: accolades, fame and fortune will follow convictions, carping and second-guessing will follow acquittals.

Other prosecutors are hardly devoid of political sensibilities. Whatever one thinks of the special prosecutors that made life so miserable for Bill Clinton, or that are now attempting to convict Scooter Libby, a prominent member of the Bush-Cheney team, it is

unreasonable to assume that they failed to notice the political consequences of their actions.

Then there is the matter of money. The massive numbers of documents, the numerous experts and witnesses, the sheer amount of time these cases take to adjudicate, combine to run the costs up into the millions. (I should add the high hourly fees charged by defense lawyers immunized from competition by the peculiar anticompetitive rules that govern the practice of a law, but that is a subject for another column.) Funding is of less concern to prosecutors, who rely on what seems an inexhaustible supply of public funds, than it is to the accused, who must rely on their own resources.

True, many who run afoul of the securities and other laws are hardly short of personal assets. But prosecutors have developed techniques to freeze the accuseds' access to their own funds, and even though a US District Court a few weeks ago put a stop to another prosecutorial gambit -- preventing corporations from funding the defense costs of their executives -- even the wealthiest defendants are at a financial disadvantage.

Worse still is the situation in which the unrich find themselves when accused of some corporate crime. Knowing that the person they are about to charge is of ordinary means, prosecutors can offer him the opportunity to plead guilty to some lesser charge, and thereby avoid the cost of a trial that would reduce the accused's family to penury for years to come, no matter what the outcome of a long trial.

Then there is the special problem faced by UK executives under the extradition treaty Britain signed with the

United States. A law intended to make it easier to extradite terrorists is being used to whisk the Natwest Three to Texas for trial before a Houston jury. Houston, with its tens of thousands of former Enron workers and busted pensioners, might not be the ideal venue in which to find unbiased jurors, a point Ken Lay would certainly have made in his appeal.

Extradition in itself is not a bad thing. With more and more business transactions of any consequence being conducted across national boundaries, it is reasonably sensible to enable authorities in which the crimes have been committed to get their hands on the perpetrators. If the Natwest Three did indeed conspire with Enron's Andy Fastow, now serving a ten-year sentence after pleading guilty to engineering a variety of fraudulent deals, America is the place they should be tried. But Britain signed the extradition treaty only after receiving assurances from America that it would reciprocate. In the event, congressmen with large Irish constituencies proved eager to protect any accused IRA terrorists from extradition to the UK, and so blocked the necessary reciprocal legislation. Why Tony Blair doesn't pull out of the treaty is a mystery, especially since his refusal to do so only provides ammunition for those who accuse him of being Bush's lapdog. And why the President doesn't take a hand in this matter, rather than once again providing ammunition to Brits who contend that "the special relationship" is a one-way street, is equally mysterious.

None of this should be taken as an effort to defend the guilty, or to sign on to the proposition that business crimes -- fraud, cartel conspiracies and the like -- are "victimless", and therefore

should be treated differently from street muggings. Businessmen who conspire to fix prices, or to sell shares at inflated values, or to loot their shareholders' treasuries with phony compensation schemes, are different from highwaymen of old only in finding it unnecessary to announce their presence with "Stand and deliver."

That said, it is not unreasonable to wonder whether the justice system has become tilted a little too much in favor of the accusers, not all of whom are immune from the preferments that go with winning famous cases against famous defendants.



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