

## *New Jersey Commission on Professionalism in the Law*

### **Standing Up To Corruption and Greed**

The recent corporate scandals involving Enron, WorldCom, and Adelphia Communications (the list seems endless) give rise to many questions regarding the governance and oversight of these organizations. We pose another question – where were the lawyers?

The greedy looting of corporate coffers and betrayal of shareholders occurred under the nose, or perhaps with the participation, of some in-house corporate counsel and their private firm counterparts. Any number of lawyers performed badly, with shocking disregard to their fiduciary duties and the rights of third parties.

At the Commission's professionalism awards luncheon last October, New Jersey's Attorney General David Samson spoke pointedly about "fraud and corporate misadventure" and what he fears "may not be just an episodic spike of immorality and lawlessness by a few rotten apples" but rather "a more widespread general breakdown in those fundamental values that protect our society and communities." He called on the bar to "promote values of honesty and integrity—to raise the standards of business morality. In short we have to stand up against this wave of business corruption, and for those same values that caused us to become lawyers in the first place."

Recently, Judge Melinda Harmon of the Southern District of Texas called to task Vinson & Elkins, Enron's primary outside counsel. The judge rejected a summary judgment motion by the firm in response to a lawsuit that alleges firm authorship of misleading reports and statements about the financial condition of Enron. She concluded that "professionals, including lawyers and accountants, when they take the affirmative step of speaking out, whether individually or as an author or co-author in a statement or report...about their clients financial condition, do have a duty to third parties not in privity not to knowingly or with severe recklessness issue materially misleading statements on which they intend or have reason to expect that those third parties will rely." See *In re Enron Corporation Securities, Derivative & ERISA Litigation (S.D. Tex. 2002, Civil Action No. H-01-3624)*.

Judge Harmon's decision is a warning to lawyers who abet or acquiesce in corporate misdeeds. It is a pity that such lawyers choose to ignore their primary mission -- to represent a client's interests through reasoned advice, counseling and strong advocacy. Instead, these lawyers foolishly allow themselves to become swept away in the overzealous pursuit of client interests, even when such conduct may involve illegality or trampling on the rules of professional conduct.

Let us heed Judge Harmon, as well as the advice of Attorney General Samson. New Jersey's legal community must be vigilant in upholding the bedrock values that underscore our profession. Honesty, truthfulness, integrity, trustworthiness, and justice are more than words. They are powerful concepts that must guide all of us.

*This article is one of a series produced by the New Jersey Commission on Professionalism in the Law to promote professional responsibility and encourage discussion about issues and problems facing the legal community.*