DESTRUCTION OF ENRON-RELATED DOCUMENTS BY ANDERSEN PERSONNEL

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BEFORE THE

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OVERSIGHT AND INVESTIGATIONS

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DESTRUCTION OF ENRON-RELATED DOCUMENTS BY ANDERSEN PERSONNEL

THURSDAY, JANUARY 24, 2002

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ENERGY AND COMMERCE,
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:40 a.m., in room 2322, Rayburn House Office Building, Hon. James C. Greenwood (chairman) presiding.

Members present: Representatives Greenwood, Bilirakis, Stearns, Burr, Whitfield, Bass, Tauzin (ex officio), Deutsch, Stupak, Strickland, DeGette, John, Rush, and Dingell (ex officio).

Also present: Representatives Ganske, Fossella, Waxman, Markey, Engel, Green and Jackson-Lee.

Staff present: Tom DiLenge, majority counsel; Jennifer Safavian, majority counsel; Mark Paoletta, majority counsel; David Cavicke, majority counsel; William Carty, legislative clerk; Peter Kielty, legislative clerk; Shannon Vildostegui, majority counsel; Edith Holleman, minority counsel; Consuela Washington, minority counsel; and Jonathan Cordone, minority counsel.

Mr. GREENWOOD. The hearing will come to order. The Chair recognizes himself for the purposes of making an opening statement.

We are here this morning to confront one critical aspect in the collapse of the Enron Corporation. This is only the first step in a thorough and rigorous examination by the Energy and Commerce Committee into what the chief executive officer of Andersen, Mr. Berardino, referred to in recent testimony as a tragedy. It is surely that. More than 4,000 employees lost their jobs. Thousands more lost their life savings. Millions of investors, both great and small, watched in disbelief as $70 billion in wealth vanished, but not before 600 Enron employees divvied up more than a $100 million in bonuses this past November.

The essential tenet in our Nation's unparalleled achievement is that private enterprise in a well-regulated marketplace is a great engine for human freedom, innovation, improved standards of living, better quality of life, and individual liberty. That is why when the marketplace endures a collapse such as this, we have a duty to restore confidence by putting real and effective safeguards in place for the future and by bringing any wrongdoing into the bright light of public scrutiny so that those responsible suffer the consequences.

Today's hearing will explore how one of the world's premiere professional organizations could have actually compounded the cata-

strophic business failure by allowing the systematic destruction of Enron-related audit documents at a time when it was clear to everyone, certainly to Andersen, that government investigators and civil litigants would soon be demanding the documents needed to understand how things could have gone so wrong so quickly.

To its credit, Andersen voluntarily disclosed the destruction to this committee and the Department of Justice and then promptly provided us with most requested information on this subject.

While committee investigators have not had a full opportunity to interview all those involved, and while we have not yet received all of the documentation requested, we have interviewed the key witnesses, including Mr. Duncan, Ms. Temple and Mr. Odom, of whom the latter two will be testifying today. I thank these three individuals for their timely cooperation with the committee. I am, however, disappointed that while Mr. Duncan has complied with the subpoena requiring his appearance today, by invoking his fifth amendment rights, as we expect he will today, he will hamper the important work of this committee in our search for the truth about what transpired at Andersen during the critical period we are examining.

But before we begin the litany of what we know and what we have learned, I want to say what I find most troubling. It is clear that scores of professionals and support staff were involved in the shredding of paper and deletion of computer files relating to the Enron audit. Yet to date, committee investigators have been unable to locate or learn about a single Andersen employee who raised any concerns or objections about destroying Enron-related documents, even after the SEC inquiry became public. That behavior is a far cry from the American Institute of Certified Public Accountants first principle of professional conduct, which states that, quote, in carrying out their responsibilities as professionals, members should exercise sensitive professional and moral judgments in all of their activities.

So what have we learned so far? Some key points seem uncontrovertible. First, there was an unusually high degree of concern throughout the Andersen chain of command in the fall of 2001 about ensuring that individuals working specifically on Enron matters complied with Andersen's document retention policies, which might better be termed destruction policies since they call for disposal of all nonessential draft or conflicting documentation relating to an audit, including the e-mails, voicemails and desk files of those working on the audit.

This may be commonplace and even appropriate in most cases, but when a high-profile client is about to implode in an accounting scandal, those, quote, nonessential documents may be just what investigators and litigants will be looking for, and it is clear that Andersen's senior management knew just that. How could they not, given their recent and embarrassing experience with the firm's audit of Waste Management, Inc.?

Second, Andersen's legal group waited until November 9, after Andersen had already received a subpoena from the Securities and Exchange Commission and had been named in at least one civil lawsuit relating to Enron, to give instructions to its Enron audit personnel to suspend normal document destruction policies. We

now know the destruction of records continued up to that last day, maybe even beyond, according to Andersen and others.

Andersen's managing partner and CEO Mr. Berardino said over the weekend that the firm's policy was that all document destruction should have stopped once Andersen learned in mid-October about the SEC inquiry into Enron's related party transaction. So why didn't the firm advise its personnel of that until nearly 3 weeks later?

Third, Andersen has sought to place the blame for this debacle solely on Mr. Duncan, the partner in charge of the Enron account, who, according to Andersen, orchestrated an expedited effort among the engagement team to destroy documents after he learned of the SEC inquiry. Mr. Duncan surely has a lot of explaining to do, given the facts as the committee has uncovered them. He certainly is guilty of poor judgment, if not worse. Even if he truly believed he was instructed by Andersen's legal counsel on October 12 to clean up the Enron files, as he has told the committee investigators, that does not explain why he waited until October 23, after learning of the SEC inquiry, to call an urgent meeting of his Enron audit managers to discuss compliance with the firm's document retention and destruction policies. It is also inexplicable that he would not seek legal counsel before doing so, rather than relying on an e-mail from Ms. Temple sent prior to the SEC inquiry.

Fourth, the now well-publicized e-mails from Ms. Temple to Andersen's personnel working on Enron matters in the mid-October timeframe to remind them of the firm's retention and destruction policies were by all accounts highly unusual and of questionable timing. She has told committee investigators that her intent was to ensure that proper documentation of key conclusions was being generated and retained at this critical juncture in the Enron account. We have no reason at this point to doubt her good intentions, but as she herself conceded, the policy also requires the destruction of all other records, and it was absolutely reasonable for recipients of those e-mails to view her reminders in exactly that way.

And the fact that she never acted to instruct or advise Andersen personnel otherwise until November 9 only served to confirm such interpretations and to compound these errors. Indeed, the November 10 memorandum confirming her November 9 voicemail to Mr. Duncan makes plain that Andersen's legal group believed the obligation to start preserving all Enron-related documents did not kick in until that time. This is particularly hard to swallow, given what Andersen already knew by then, accounting errors with billion-dollar impacts, serious allegations from within Enron about accounting scandals, internal investigations and reviews by Enron and Andersen, a plummeting Enron stock price, an SEC inquiry, civil lawsuits and daily press reports raising the specter of much worse to come.

This is not to say that Ms. Temple alone was at fault. It appears clear that she was consulting closely with her superiors in that legal group, as well as outside counsel that had already been retained by Andersen by the mid-October time period.

Perhaps it is too late to save the reputations and careers of many of those caught up in the web of the Enron collapse, but for those

in business and the professionals who may watch these proceedings, it would be wise to recall the admonition of an ancient Japanese proverb: The reputation of a thousand years may be determined by the conduct of 1 hour.

The Chair would note that a number of members of the full Energy and Commerce Committee who are not members of this subcommittee have asked to participate in today's hearing. We, of course, are happy to do that. While the members of the subcommittee will be recognized for opening statements, the members of the full committee who are not members of the subcommittee will not be afforded the opportunity for opening statements, but will have the opportunity to ask questions, and I will now recognize the ranking member of the full committee Mr. Dingell for 5 minutes.

Mr. DINGELL. Mr. Chairman, you are most courteous and gracious. I commend you, Mr. Chairman, the chairman of the full committee Mr. Tauzin, and Mr. Deutsch for these hearings today, and I would note that we on this side are anxious to join you in an effort to develop all of the facts and to pursue wrongdoers as far as is necessary.

We are here today to address a serious breach in corporate integrity, the destruction of documents by an accounting firm bearing on the corporate wrongdoing of its client and perhaps on its own wrongdoing, during a time when accounting wrongdoing was at issue in the press and a matter of regulatory attention. The event was either criminally stupid or stupidly criminal, or both. We must confront why were senior Arthur Andersen employees especially reminded by their lawyers to implement their document retention policy, in other words, get rid of papers, just as concerns about Enron's accounting were reaching a fever pitch.

Why didn't Arthur Andersen's litigation attorney or its outside litigation counsel send Andersen's Enron team a memo on October 22, the day Enron announced an SEC inquiry, and tell them to retain all documents? Mr. Berardino, who refuses to be with us today, told us Sunday on Meet the Press that Andersen's policy was to do so, yet Ms. Temple did not write such a memo until November 10, after Andersen had received a subpoena. Why did Arthur Andersen management let this happen? Why did anyone at Andersen in their right mind think that document destruction, when an SEC inquiry involving accounting practices was under way, was in any way appropriate? Was that the real Andersen policy, which is what company officials told our staff in interviews?

Today we start to learn what happened. Today we start the process of holding people accountable. Today we start to determine what kind of tough action is required to prevent this kind of affront to our system of laws from happening again. And if these witnesses can't tell us, Mr. Chairman, I look forward to hearing from others who can. And I suspect we will have to hear from others before we have gotten the answers we seek today on these matters.

I also look forward to additional hearings on the accounting skullduggery that flourished. How should all of these shadowy special partners and partnerships have been disclosed; and how were they not and why not? How did Arthur Andersen's overlapping roles as outside and insider auditors and its conflicting roles as

auditors and consultant hurt full and fair disclosure? How did the lack of transparency, accountability and enforcement for the accounting industry enable the Enron shell game to go undiscovered? Or was it discovered and not told? How has the additional legal perfection and protection given the accounting industry by Congress over President Clinton's veto hurt the ability of victims to seek redress?

What happened here? Are Andersen's document destruction and accounting shenanigans a matter of individual conceit of—wayward individuals intent on protecting their own careers and futures? Are those a matter of corporate conceit—a company thinking that it was above the law and acting in that fashion? Are these a matter of industry conceit—an industry thinking that its powerful political patrons would protect it once again as they did when we sought to see to it that the practice of consulting and auditing were separated?

I look forward, Mr. Chairman, to a most vigorous hearing, and we on this side look forward to working with you and seeing to it that we have a most vigorous inquiry and pursuit of wrongdoing and look forward to a continuation and expansion of a vigorous, thorough and careful investigation. Thank you, Mr. Chairman.

[The prepared statement of Hon. John D. Dingell follows:]

PREPARED STATEMENT OF HON. JOHN D. DINGELL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

We are here today to address a serious breach in corporate integrity—the destruction of documents by an accounting firm bearing on the corporate wrongdoing of its client during a time the accounting wrongdoing was at issue in the press and a matter of regulatory attention. This destruction was criminally stupid, or stupidly criminal.

Why were senior Arthur Andersen employees especially reminded by their lawyers to implement their document retention policy—in other words, to get rid of paper—just as concerns about Enron's accounting were reaching a fever pitch? Why didn't Arthur Andersen's litigation attorney or its outside litigation counsel send Andersen's Enron team a memo on October 22—the day Enron announced an SEC inquiry—and tell them to retain all documents? Mr. Berardino, who refused to testify today, told us Sunday on "Meet the Press" that Andersen's policy was to do so. Yet Ms. Temple did not write such a memo until November 10, after Andersen received a subpoena.

Why did Arthur Andersen management let it happen? Why did anyone at Arthur Andersen in their right mind think that document destruction when an SEC inquiry involving accounting practices was underway was appropriate? Was that the real Andersen policy, which is what company officials told our staff in interviews?

Today we start to learn what happened. Today we start the process of holding people accountable. Today we start to determine what tough action is required to prevent this kind of affront to our system of laws from ever happening again. And if these witnesses can't tell us, Mr. Chairman, I look forward to hearing from those who can.

I also look forward to additional hearings on the accounting skullduggery that flourished. How should all of these shadowy special partnerships have been disclosed? How did Arthur Andersen's overlapping roles as outside and inside auditors, and its conflicting roles as auditor and consultant, hurt full and fair disclosure? How did the lack of transparency, accountability, and enforcement for the accounting industry enable the Enron shell game to go undiscovered? How has the additional legal protection given the accounting industry by Congress over President Clinton's veto hurt the ability of victims to seek redress?

What happened here? Are Arthur Andersen's document destruction, and accounting shenanigans, a matter of individual conceit—wayward individuals intent on protecting their careers? Are these a matter of corporate conceit—a company thinking it was above the law? Are these a matter of industry conceit—an industry thinking that its powerful political patrons would protect it once again?

I look forward to a most vigorous hearing, and the continuation and expansion of a most vigorous investigation.

Mr. GREENWOOD. The Chair thanks the ranking member, and would note that the bipartisanship has been exemplary up to date. I expect it will continue, and we will pursue each and every one of the issues raised by the gentleman from Michigan.

Mr. DINGELL. Mr. Chairman, we do want to note that the inquiry to date has been conducted in a proper, thorough, fair, impartial, bipartisan fashion. For that we commend you.

Mr. GREENWOOD. The Chair thanks the gentleman.

The Chair recognizes the chairman of the full committee, Mr. Tauzin, for an opening statement.

Chairman TAUZIN. Thank you, Mr. Chairman. Let me echo those sentiments, Mr. Dingell, and express my full appreciation for the fact that this investigation began with a bipartisan staff, a team of investigators, and your cooperation and assistance has been deeply appreciated, will continue to be appreciated as we go forward. You can be assured again that we will keep you and all of your staff thoroughly informed as we go forward, sir, and involved.

Mr. Chairman, let me personally thank you and the staff of our committee for the extraordinary work already done on this investigation. Let me first explain where we are, and hopefully where we are going, with this investigation. Last year when we announced it, we made it clear that before we held public hearings, we intended to get the facts. We intended to have our investigators interview the witnesses, dig up the documents and to get the evidence before we actually put witnesses before our committee to explain what happened to the American public and to learn ourselves how we might, No. 1, understand, and, second, deal with this incredible tragedy for American investors, Enron employees and other creditors of this massive corporation.

When we made that announcement, we indeed put that investigative team to work, and we have learned a lot. The Washington Post detailed some of what we have learned, including instances where Enron Corporation dealing in numerous partnerships, using the corporate equity to borrow money and to accumulate debt that was not disclosed to investors and others on their balance sheet, miraculously and through accounting tricks and gimmicks converted that debt into a phony income that never appeared and perhaps never would appear to the corporation, and, as one of the whistleblowers wrote in a memo, perhaps not only misled, but fraudulently misled consumers and investors in this important corporation.

At one point it is clear to our investigators and—through our reading of their results that this incredible corporation somehow suspended the rules of corporate ethics and perhaps even put corporate morality on vacation and accumulated massive amounts of debts that were not reported on its balance sheet and were somehow allowed to count as income, again income from these partnerships that never truly should have been counted as income, very much like the MicroStrategy case, where had its arrangements with NCR been reported authentically, realistically, MicroStrategy would have reported losses rather than enormous gains, and con-

sumers and investors might have gotten the truth instead of a lot of phony baloney.

The bottom line is that we are uncovering instances of corporate behavior that I think almost every corporation in America would abhor and would condemn, and we are preparing to lay it all out for the American public at a series of hearings on the Enron operations. That process was interrupted abruptly by an amazing admission by Arthur Andersen of a massive coordinated effort to destroy documents that may be extremely relevant to our investigation and to the investigation that we are working hand in glove with the SEC and now with the Justice Department.

We will hear today of conversations and e-mails and discussions dating back to early fall about the problems at Enron and about the need for somebody to explain them properly to people in this country who are investing in this company, and at the same time a decision to invoke something known as a document retention policy.

The chairman has put it correctly. The document retention policy which we have a copy of, vague in its language, can properly be described as a document retention and destruction policy. Why else would corporate employees and attorneys within Arthur Andersen have instructed its members, including Mr. Duncan, to expeditiously carry out the policy, even working overtime if necessary to complete it within a matter of weeks, the policy of getting rid of documents in the file? If it was simply a retention policy, a simple 1-hour process of locking the files would have done the job. Instead a massive overtime effort involving scores and scores of employees to get rid of documents, documents which we have sought, the SEC is seeking, and obviously the Justice Department is now interested in.

I don't know whether crimes were committed, but it is clear to us that our investigation and other investigations have been impeded by this policy of destruction. We are going to learn a lot about it today. And the reason we have scheduled this hearing in advance of the Enron hearings is because our investigation depends upon the full cooperation of Arthur Andersen and Enron, its employees, in obeying the law, in retaining and providing to this committee and to other government agencies the documents relevant to this case, and we will brook no exception to that rule. So let the word go out to all those who currently work for these two firms that we fully expect their cooperation and we expect to receive all the documents that we request.

I am disappointed that this is the first time in my tenure as chairman that I have had to sign subpoenas to compel the appearance of witnesses before our committee, not even until the Ford Firestone case were we obliged to sign a subpoena. I am disappointed we have reached this point, and I suspect we will be there again when we conduct our full committee hearings on Enron. But let me make it clear, this committee will cut no one any slack as we go forward. We are going to lay the facts down, and we are going to try to find some answers and hopefully some solutions that will give American investors and consumers some confidence in the system again. And where we have made policy that

needs to be changed, we will boldly face the fact that we need to strengthen those policies and those standards, and we will do so.

And I want to thank again Mr. Dingell for his cooperation, and you, Mr. Chairman, for the extraordinary work you are doing. There are many hours yet to go, but before we finish; I believe we are going to lay all the facts on the table for the American people to make their own decisions, but more importantly, if there has been corporate wrongdoing, we will unroot it. If there has been personal or corporate attempts to hide the facts, we will uncover them, and people will answer for them, and in the end we are going to do our best to make sure something like this awful tragedy never occurs again.

We are going to learn, for example, why Enron decided to change pension managers in the middle of this crisis and therefore invoke a 60-day period when its own employees could not dump the stock as some of its corporate officers were dumping. We are going to learn a lot before we are through, but in the end we are going to try and get some answers, too, and the questions raised by you, Mr. Chairman and Mr. Dingell, are deeply appropriate. And before we have finished, we hopefully will pass some changes in policies and laws that will help ensure that investors and consumers can have some confidence again in the audit systems, in the reporting systems, in the way in which Americans learn whether corporations are really earning money or just accumulating debt. Thank you, Mr. Chairman.

[The prepared statement of Hon. W.J. "Billy" Tauzin follows:]

PREPARED STATEMENT OF HON. W.J. "BILLY" TAUZIN, CHAIRMAN, COMMITTEE ON ENERGY AND COMMERCE

Thank you Chairman Greenwood. And let me commend you for putting together this morning's hearing, which will take us on a path of inquiry we certainly did not expect to be on when the Committee began ramping up its Enron investigation in December—the destruction of potentially critical documents.

Yet this is a path we must—and will—follow not only so we can eventually piece together as fully as possible the facts surrounding Enron's financial collapse, but also so we can make very, very clear that this Committee will not allow its investigations to be hindered in any way.

Overall, our wide-ranging investigation, which we will address in more detail at next week's full Committee hearings, involves sorting out the complex bookkeeping and various parties and policies that had a role in that collapse. It also involves a dogged pursuit of the various leads—wherever they take us—that might explain why people did what they did and how things went so wrong.

Only with such full information will we then be able to consider how Congress might address the policy issues raised by Enron's actions. Which brings me back to the disturbing topic of today's hearing: Enron-related audit documents were destroyed by employees of Andersen—the company's own accounting firm—when signs of outside investigations were emerging early this past fall.

So we have a situation where the Committee is trying to conduct a thorough, in-depth investigation and now it is facing destruction of documents that may well have provided critical answers to its questions.

The loss of these documents certainly came as a surprise to our Committee investigators when they were invited by Andersen to look through its Enron materials earlier this month. And the loss certainly is hindering our ability to create a full picture of what Andersen knew about Enron's bookkeeping.

The document destruction raises several troubling questions about Andersen's relationship with Enron and role in its collapse.

Our witnesses today should help us sort through some of the issues raised by these troubling activities.

For example, why did key Andersen employees suddenly decide—in October, just as it was becoming clear that outside investigation was imminent—to enforce document destruction policies? And why did destruction continue for several weeks after

investigations commenced, which was clearly against Andersen policy, according to Mr. Berardino?

The destruction also raises some broader questions about document-retention policies that we may have to address: For example, how do corporations implement these policies, particularly when investigations may be developing? Is this a widespread, though under-appreciated, problem?

Revelations of document destruction have severely harmed Andersen's reputation. I hope what we learn today will help us get a more accurate picture of Andersen's policies, and whether the actions it took represent broader problems within the company, the industry as a whole, or the mistaken decisions of a handful of individuals.

In the end, what we gather should help us understand more fully where we are in our investigation, and where we need to look next as we proceed into some of the substantive issues involving Enron directly.

There *is,* however, another message this hearing should impart—one highlighted by emerging news of document destruction at Enron, now under investigation by the FBI: This Committee takes document destruction very seriously. It will *not* allow efforts to impede its investigations to go unpunished.

Thank you again, Mr. Chairman.

Mr. GREENWOOD. The Chair thanks the chairman and recognizes for an opening statement the ranking member of the subcommittee, the gentleman from Florida, Mr. Deutsch.

Mr. DEUTSCH. Thank you, Mr. Chairman. You know, all the previous speakers have alluded to what the big picture of the Enron disaster is, and the big picture really is that the public accounting system and our capital market system failed, and that failure, in terms of the implication it has to our macroeconomy, potentially could be very, very significant.

There, you know, was not an Enron prior to Enron. I take great exception to the Secretary of Treasury's comments right after Enron filing for bankruptcy that this was business as usual in America; that companies, you know, succeed, and companies fail. That is the case, but the seventh largest company in America effectively imploding in a matter of weeks has not happened before, should not happen again, and that is in a sense the big picture of what we are looking at and what we will end up being able to determine, and whether the issues were systemic or criminal or, you know, specific, I think we will determine, and this committee has shown in the past that we have incredibly competent staff and competent Members to get to that point.

There are many issues as well that I think are part of that. I mean, obviously this hearing is a component of that, but there are many issues as well, and, again, just to put in perspective my—the chairman of the committee mentioned the figure of $100 million of bonuses that were given during the period of—before the implosion of Enron to management. There was also literally over a billion dollars, $1.3 billion of stock held by managers of Enron that was sold prior to Enron's implosion.

We also again are aware of a number of political appointees in the administration who sold stock prior to the implosion of Enron. What we are also aware of, though, is that for the thousands of Enron employees and their 401(k)s, for them personally, many of whom were restricted from selling at least part of their stock, in some cases maybe all of their stock, for the lockout period, they also were very directly affected, but in an opposite—completely opposite way in that they lost over $1 billion. Now, that number is huge, but the number is personal, and, you know, we have seen people, you know, whether in television stories or congressional

hearings, but some of my colleagues in the Houston area have talked to dozens of constituents that tell horror stories on a daily basis. I mean, just again in the scope, the pension fund, the Florida, lost $300 million.

You know, K-Mart filed for bankruptcy this week. It was not a surprise. The public accounting system in a sense worked. Analysts, the public, anyone who was looking at their balance sheet could, in fact, understand what was going on. The question today, you know, obviously is are there other Enrons in our public markets; are there other people who have gamed—other corporations and individuals who have gamed the system, whether through systemic problems or corrupt activities, that will implode tomorrow? And if there is not that transparency and faith in the capital system, there is a significant problem.

What I would like to do, I know the chairman has said that members who are not on the subcommittee cannot take opening statements, but I haven't used my 5 minutes. I would like to yield to Mr. Green from Houston for the remainder of my 5 minutes to talk about some of the specific issues.

[The prepared statement of Hon. Peter Deutsch follows:]

PREPARED STATEMENT OF HON. PETER DEUTSCH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Thank you, Mr. Chairman, for holding this very important hearing. What we are dealing with today is the alleged destruction of documents by Arthur Andersen, the accounting firm for Enron, which unexpectedly declared bankruptcy on December 2nd. While document destruction is the scope of today's hearing, securing confidence in our capital markets is the fundamental issue facing Congress.

It was no surprise to anyone that Kmart Corporation declared bankruptcy this week. With Kmart, the system worked—but why in the case of Enron was the entire Wall Street Community shocked to witness the sudden collapse of America's seventh largest corporation? Sophisticated analysts were caught completely off guard, but the real tragedy are the thousands of workers and seniors who have lost billions in retirement savings, including a $300 million loss in Florida's pension system. If the analysts couldn't understand Enron's books, average shareholders and workers didn't stand a chance.

We are going to address in detail why Andersen's Enron team continued to purge their files of drafts, memos, e-mails and the back-and-forth discussions about accounting decisions that Enron made and Arthur Andersen approved—even after (1) Enron announced the initiation of an inquiry by the Securities and Exchange Commission into the financial accounting of certain off-the-books special purpose entities by Enron; (2) Enron established a special committee of its board to look into related party transactions and their inclusion in Enron's financial statements; (3) an Enron "core consultation group" established at Andersen was discussing litigation; and (4) Andersen retained litigation counsel.

Not until November 10th, after Andersen itself received a subpoena was anyone told to stop implementing the company's document retention policy, thus finally halting the destruction of documents. Mr. Berardino told Meet the Press on Sunday that the company's policy was not to shred documents "if you have a reasonable basis to anticipate an investigation." He stated that basis was not established until October 22nd, the day that the SEC publicly announced it inquiry. Mr. Berardino chose not to be here today to explain exactly what Andersen's policy is. But from our Subcommittee's investigation, it appears that Mr. Berardino's understanding of the policy was not observed by the relevant principals—not the lawyers, not the accountants. In fact, the lawyers kept reminding the Enron team to comply with the retention policy, which was a highly unusual move in a company in which complying with the written policy appeared to occur on an irregular basis at best. Perhaps that is why the three partners that Andersen put on "administrative leave" are actually still in the office every day. Perhaps that explains why no one representing Andersen has—to this day—questioned these partners or their staff to get their version of what exactly happened.

Perhaps, more importantly, Mr. Chairman, is the fact that companies are allowed to release financial reports to shareholders that no one can understand. Even the professional analysts recommending purchase of Andersen stock until at least October 24 cannot figure out how Enron was making money. Unlike Kmart's collapse, the rapid bankruptcy of Enron was a total shock. Employees, shareholders, public pension plans, professional investors and banks lost billions of dollars, and there are many tragic personal stories.Ensuring transparency in our financial accounting system is essential to securing public confidence in America's capital markets. Something has to be done to ensure that publicly held companies and their accountants provide accurate financial information that the average investor can understand.

Mr. Chairman, I look forward to learning the facts about Andersen's role in the Enron debacle. I also look forward to additional hearings when we will focus on Enron's destruction of documents and the role of company management in the collapse of America's seventh largest corporation.

Mr. GREEN. Thank you, Mr. Chairman, and I thank my colleague from Florida. I want to thank the chairman for allowing me as a member of the full committee to——

Mr. GREENWOOD. If the gentleman would desist, it is going to be a courtesy that is going to have to be accorded to all of the Members, and the gentleman Mr. Green contacted me earlier and asked if he could participate in the hearing, and we said of course he can, but under our rules and under our procedures, members who are not on the subcommittee are not afforded the opportunity to make opening statements. I will be very liberal with the precursors and the introductions to the questions that Mr. Green wants to make to the witnesses, but I think we are going to need to draw a line with regard to the opening statements.

Mr. GREEN. Thank you, Mr. Chairman. With that, I would just like permission to submit an opening statement.

Mr. GREENWOOD. Certainly it will be a part of the record and——

[The prepared statement of Hon. Gene Green follows:]

PREPARED STATEMENT OF HON. GENE GREEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. Chairman: I want to begin by thanking you for allowing me the opportunity to participate in today's important hearing.

The Enron meltdown and the associated causes need to be throughly examined, and that all starts with today's hearing.

Enron's economic collapse brought on by the decision makers at Enron and it's supposed watchdogs at Arthur Andersen have devastated investors, employees, creditors large and small, and our Houston Community as a whole.

For only a 16 year old company, Enron was an integral part of Houston's art, medical, educational, and business community.

Enron's name is even on our new Major League Baseball stadium.

Enron's demise has taken the American Dream away from thousands of employees and stockholders, and I am hearing more and more of these stories every day.

Former employees now have no income, no health insurance for their children, and no pension for their retirement and the fulfillment of the American dream.

Our committee's job is not to prosecute, that will come if we can find someone at the Department of Justice who has not recuse themselves.

No, our job is to investigate how we can prevent this from happening again.

Over the last several weeks it appears that, Arthur Andersen has attempted to hide facts and destroy documents related to their work for the Enron Corporation.

After being briefed by committee staff, reading all the recent news accounts, and talking to impacted Enron workers, I am stunned by the activity of Arthur Andersen a once venerated 88 year old company.

What I find most interesting is that Arthur Anderson's experiences with both the Waste Management and Sunbeam corporations seemed to be only practice for their crown jewel of bankruptcies, Enron.

I am hopeful that today's witnesses will be able to shed some light on Arthur Andersen's "document destruction policy"[1]. Not a document preservation policy.

As a lawyer, I always understood that if their was even the hint of some kind of official investigation that it was better to retain documents rather then destroy them.

This is because if an investigation is started and the investigators learn that I started a large scale shredding operation, it makes me look guilty.

Ms. Temple's e-mail to Mr. Odom that was subsequently relayed to Mr. Duncan reminding everyone of the so-called "document preservation policy" is at least highly suspicious and at most criminal.

Mr. Chairman, Arthur Andersen definitely played a role in the Enron collapse, but we all know the true problem resides with Ken Lay, Jeffrey Skilling, and Andrew Fastow.

Arthur Andersen is only a large cog in the wheel that was Enron, and the Committee needs to stay focus on this fact.

I want to thank you again Mr. Chairman for allowing me to participate today, and I look forward to hearing the witness testimony.

Mr. DEUTSCH. If I could yield back my time, then, and just mention, you know, I don't know how much we will get in this hearing, but Mr. Green—I know my colleague also from Houston area as well has unfortunately—I mean, we just came back from a couple-week break where he was telling me some of the stories before the hearing started, and literally, I mean, tearing can come to your eyes, that he is met the people, he has talked to people on a daily basis. Obviously that information of what the status of Enron was not provided for them, and clearly the insiders knew what was going on.

Chairman TAUZIN. Would the gentleman yield?

Mr. DEUTSCH. I am out of time. If he would——

Chairman TAUZIN. Just quickly to announce that we are going to have a full committee hearing on Enron to lead off the rest of the hearings by the subcommittees, and the gentleman will, of course, have a chance then to make full opening statements.

Mr. GREEN. Thank you.

Mr. GREENWOOD. And if I may say so, the gentleman from Texas Mr. Green has expressed his profound concern with regard to the well-being of his constituents, and we appreciate his participation this morning.

The Chair now recognizes the gentleman from Florida Mr. Bilirakis for an opening statement.

Mr. BILIRAKIS. Thank you very much, Mr. Chairman. I don't have a prepared opening statement, but I would just like to make a couple of points very briefly. One is that both Mr. Tauzin and Dingell have emphasized bipartisanship of this hearing and of the entire investigation, and of the subsequent hearings that are going to take place. I think we should all keep that in mind. This particular hearing is limiting itself, as I understand it, to the destruction of Enron-related documents by personnel working for the company, and I would hope that we would limit ourselves to that. As much as we all would want to go into the other areas, I hope that we would try and hold off on those.

The second point as has been made by so many others in other ways is credibility, or I guess I like to say maybe lack of credibility.

[1] Arthur Anderson had a policy known as the "documentation preservation policy" that required their auditors to destroy all documents not specifically related to their final audit report. Ms. Temple sent an e-mail to Mr. Odom reminding him of this policy on Enron related documents.

We depend on you accountants and you auditors. We, the American people, depend on you so very much. We depend on your truth. We depend on your veracity. We depend on you not hiding and on you not misstating and not miscommunicating to us the facts as you see them. What is happening here is that we are losing that sense of credibility in you. I am not sure that any of the American people are paying attention at all, although I expect that they practically all are. I am not sure that they will, in the future place, complete confidence in information that they might receive from the auditors and the accountants of any of the companies throughout this country of ours. And for that, you should be, I think, very, very much ashamed.

Now, I don't know what happened. I don't know why the documents were destroyed. We are supposed to go into these hearings with an open mind, and I like to think that we all have an open mind. However, I think we all probably have been back there sort of saying, hey, if they destroyed these documents the way they did when they probably should not have, they must have had something to hide. That is certainly there, and I hope that you will clear that up.

Did the process of destruction of documents mean that you are hiding the truth, that you did not reflect the truth, that you did not really do the job that American people expected you to do, even though you were employed by the company in the process of reporting their activities? So many people are let down, not only the stockholders around the country, but certainly the employees who have lost so much in their retirement fund. Certainly it is a shame when you see a big company go under the way it has, and it is a terrible crime that retirement funds have been lost. However, I think more than anything else we have lost that sense of credibility that we have always had in the auditors and in the accountants, and I think that is just really terrible. And, again, you should be ashamed of all that.

Having said all that, Mr. Chairman, I will yield back.

Mr. GREENWOOD. The Chair thanks the gentleman from Florida and recognizes for his opening statement for 3 minutes the gentleman from Michigan Mr. Stupak.

Mr. STUPAK. Mr. Chairman, I thank you for holding this important hearing. This is the first of what will likely be many hearings this committee will hold on the collapse of Enron and the roles that the executives at Enron and Arthur Andersen played in that collapse. Today's hearing about shredding documents by Arthur Andersen employees is one with extremely serious implications, including possible civil and criminal penalties. I look forward to learning more about Andersen's policies on document retention and destruction.

In reviewing the materials provided by the committee, it appears that there were—was a clear effort on Andersen's part to cleanse their files after they were made aware that the SEC had begun an inquiry on October 22 and well after Andersen was informed by one of their former employees who was working for Enron that shady accounting practices were going on at Enron.

While I do look forward to hearing about what Andersen's official policy is on document retention, I also hope that our panelists will

be able to shed some light on what is being done to recover the documents that were purged from computers and shredded by staff. Certainly Andersen runs backups of their computer files, just as my office does, and would have them available to recover many of the deleted files. Hopefully Mr. Baskin will be able to provide us with an update as to what is being done to recover these documents.

The actions taken by Andersen and Enron executives in recent months give us reason to be concerned about the cavalier attitude that is all too prevalent in today's corporate world. I can't help but believe that this cavalier attitude was encouraged by the passage over a Presidential veto of the Securities Litigation Reform Act of 1995.

In 1995, only a few other members on this committee and I opposed the bill, which essentially shredded the rights of investors to take action against companies for these deplorable business actions. The Security Litigation Reform Act, or the securities rip-off act as some of us called it back then, provides immunity from the private fraud liability for written or oral corporate forward-looking statements even when those statements are deliberately false. This so-called reform act significantly limits victims' recoveries by curtailing joint and several liability, making it more difficult for Enron employees to sue corporate officials who cashed in close to a billion dollars worth of stock while Enron was collapsing.

Finally, the Securities Reform Act failed to restore the liability of aiders and abetters in private action. Here we have Andersen aiding Enron or Enron aiding Andersen, and the whole crooked bunch avoids liability. So once again, the defrauded shareholders are left holding an empty bag.

Unfortunately, Mr. Chairman, we are seeing firsthand the results of that terrible law. Thousands of Enron employees who used to have what they thought would be a secure retirement will now be forced to work well into what should be their retirement years and have little ability to take action against the individuals who shredded their hopes for a secure retirement.

Chairman Tauzin said this morning, and I compliment him, he said in a TV interview that our first commitment must be to the investors. I agree, and we can help these and millions of other shareholders by immediately repealing the 1995 Securities Reform Act so we can put teeth back into our security exchange laws.

Mr. Chairman, it is not just the employees who are taking a beating on their retirement hopes. There are countless numbers of people, ranging from teachers in California, police and fire officials in New York City, who have lost hundreds of millions of dollars in their pension plans and 401(k)s. That is a subject of future hearings, which the chairman said we will be having beginning next week, and I look forward to discussing this in more detail and more depth at future hearings. And I thank you, Mr. Chairman, for the time.

[The prepared statement of Hon. Bart Stupak follows:]

PREPARED STATEMENT OF HON. BART STUPAK, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. Chairman, I thank you for holding this important hearing this morning. This is the first of what will likely be several hearings that this committee will hold re-

garding the collapse of Enron and the roles of the executives at Enron and Arthur Andersen in that collapse.

Today's hearing about the shredding of documents by Arthur Andersen employees is one with extremely serious implications including possible civil and criminal penalties. I look forward to learning more about Anderson's policy on document retention and destruction. In reviewing the materials provided by the committee, it appears that there was a clear effort on Anderson's part to cleanse their files AFTER they were made aware that the SEC had begun an inquiry on October 22nd and *well after* Andersen was informed by one of their former employees who was working for Enron that shady accounting practices were going on at Enron.

While I do look forward to hearing about what Andersen's official policy is on document retention, I also hope that our panelists will be able to shed some light on what is being done to recover the documents that were purged from computers and shredded by staff. Certainly Andersen runs back-ups of their computer files, just as my office does, and would have them available to recover many of the deleted files. Hopefully Mr. Baskin will be able to provide us with an update as to what is being done to recover these documents.

The actions taken by Andersen and Enron executives in recent months give us reason for concern about the cavalier attitude that is all too prevalent in today's corporate world. I can't help but believe this cavalier attitude was encouraged by the passage—over a presidential veto—of the Securities Litigation Reform Act of 1995. In 1995 only a few other members on this committee and I opposed the bill which essentially shredded the rights of investors to take action against companies for these deplorable business actions. The Securities Litigation Reform Act, or Securities Rip Off Act as some of us called it, provides immunity from private fraud liability for written or oral corporate forward looking statements even when those statements are deliberately false. This so-called Reform Act "significantly limits victims recoveries by curtailing joint and several liability making it more difficult for Enron shareholders to sue corporate officials who cashed in close to 1 billion dollars worth of stock while Enron was collapsing. Finally, the Security Reform Act failed to restore the liability of aiders and abettors in private action. Here we have Andersen aiding Enron or Enron aiding Andersen and the whole crooked bunch avoids liability, so once again the defrauded shareholders are left holding an empty bag.

Unfortunately Mr. Chairman, we are seeing first hand the results of that terrible law. Thousands of Enron employees who used to have what they thought would be a secure retirement will now be forced to work well into what should be their retirement years and have little ability to take action against the individuals who shredded their hopes of a secure retirement. Chairman Tauzin said this morning in a TV interview that "our first commitment is to the investors. I agree and we can help these and millions of other shareholders by immediately repealing the 1995 Securities Litigation Reform Act—so we can put teeth back into out security exchange laws.

Mr. Chairman, it is not just the Enron employees who have taken a beating on their retirement hopes. There are countless numbers of people ranging from teachers in California to police and fire officials in New York who have lost hundreds of millions of dollars in their pension plans and 401K's , but that is a subject for future hearings and I look forward to discussing this more in depth at those hearings.

Mr. GREENWOOD. The Chair thanks the gentleman from Michigan and recognizes for the purposes of an opening statement for 3 minutes the gentleman from Florida Mr. Stearns.

Mr. STEARNS. Thank you, Mr. Chairman, and let me commend you for having this hearing and, of course, also to commend the staff on both sides of the aisle for all the work they did, of course, during the holidays when lots of the Members were back enjoying the Christmas holidays.

The hearings, of course, today are focusing on destruction of documents, an allegation that will carry serious implications should deliberate wrongdoing be discovered. I think I am not alone. I think all of my colleagues would agree that a person will fare better in cooperating with this subcommittee and the full committee's investigation as opposed to subverting our efforts. We need to have

answers for investors, and we need to develop transparency on this question of the auditing of large corporations.

Florida State pension fund incurred a loss to the tune of $300 million. Individual constituents have called me to render their complaints at losing their retirement savings from their 401(k) accounts. And I promised, as my colleagues on both sides have, to do everything possible to get to the bottom of this matter and prevent a reoccurrence. So I look forward to the testimony of our witnesses.

It is my understanding that a memo from February 2001 detailed Andersen's concern with Enron and whether that company's dealing would harm Andersen's reputation. I think I can say that Andersen now has wounded its own reputation. It is self-inflicted. So if they are here today, it is their own fault. Mr. David Duncan, the former Andersen partner in charge, is alleged to have ordered the expedited destruction of Enron-related documents. One of our witnesses, a counsel for Arthur Andersen, Ms. Temple, prior to the document destruction e-mailed a, "reminder," of Andersen's document retention policy. So is Mr. Duncan being made a scapegoat here this morning, for it sees maybe an explicit order was given to destroy a document, yet backsides were covered through the, "reminder" e-mail on document retention.

This is kind of like the code word—the code red instruction that Colonel Jessup used in A Few Good Men, that movie, as you will remember. When he issued the code red, it was a term that did not appear in any manual or standard operating procedure, yet carried specific actions once it was given.

So, Mr. Chairman, I think this hearing should give us an opportunity to get to the bottom of this destruction of documents, and I might say, the chairman of our full committee has also talked about transparency in auditing procedures. I would like to note that I chair the committee that has jurisdiction over the Financial Accounting Standards Board, and I would like to know personally if our accounting standards are responsive to today's challenge posed by the increasingly complex business and financial transactions of companies like Enron. Are there other companies doing this same procedure with these limited partnerships, sheltering of the debt? So we need to look at these standards and to assure our constituents and the American public that there is transparency and honesty dealing with these accounting procedures.

So, again, I commend you and the full chairman of the staff for the work you are doing.

Mr. GREENWOOD. The Chair thanks the gentleman from Florida and recognizes for the purposes of an opening statement for 3 minutes the gentleman from Ohio Mr. Strickland.

Mr. STRICKLAND. Thank you, Mr. Chairman, and I would like to submit a longer opening statement, and I will be short.

Mr. GREENWOOD. Without objection, the gentleman's statement will be a part of the record.

Mr. STRICKLAND. It isn't clear exactly when the collapse of Enron began, but on October 16, 2001, Enron announced its third-quarter results, which included a loss of more than $600 million, and disclosures of a $1.2 billion reduction in shareholder equity. The next day, October 17, the SEC opened an informal inquiry into Enron's business practices, and on October 22, Enron publicly acknowl-

edged the SEC's inquiry was under way. Only 1 day later, the Andersen/Enron audit managers met, and the team was instructed to ensure that they are in compliance with the firm's, "documentation retention and destruction policies."

Subsequently and alarmingly, an estimated thousands of Enron-related documents were destroyed. This destruction of documents takes place after the SEC began its inquiry. Furthermore, the destruction of documents continues not for a few hours or for a few days, but I understand it wasn't until November 9, 2001, that an e-mail was sent to the Enron audit team calling for, "no more shredding."

This behavior by Enron's accounting firm is brazen, outrageous, and completely unacceptable. In fact, the document shredding may render it impossible for this committee, the other House and Senate committees, the SEC and the Department of Justice to know exactly who and what led to Enron's collapse.

Andersen was responsible for auditing Enron's books and recognizing the company's problems. Not only did the accounting firm neglect to do its job, but it may have made it impossible for the SEC to do its job because it continued to destroy documents relevant to the agency's investigation.

When Enron declared bankruptcy last month, thousands of workers found themselves unemployed, and investors, including many of those same unemployed workers, lost billions of dollars when Enron's stock fell. As workers and investors suffered the consequences of Enron's apparently fraudulent behavior, and the company's executives, embarrassed perhaps, but rich, walk away with millions of dollars, the employees walk away with little or nothing.

It is imperative that we uncover what happened and that we take steps to see that those who are responsible are punished, and having worked in a maximum security prison before I came to this institution, I am tired of white collar crime being treated differently than other kinds of crime in this country, and if crimes have been committed, it is my fervent hope that those responsible will see the inside of a jail cell. I yield back my time.

Mr. GREENWOOD. The Chair thanks the gentleman from Ohio and recognizes the gentleman from North Carolina Mr. Burr for 3 minutes for the purposes of an opening statement.

Mr. BURR. Thank you, Mr. Chairman.

I don't think anyone at this hearing is happy with the reasons for why we are here today, but today in this exercise we must faithfully discharge our duties to uncover that which has been covered up. We must begin to publicly uncover and inquire of the actions taken by Arthur Andersen in its work on behalf of the Enron Corporation. Why did Andersen engage in what is alleged to be a large-scale destruction of documents related to Enron's financial well-being?

We know from testimony given to our committees as early as August that Andersen had already convened a working group to review Enron's third-quarter charges, charges in its October 16 press release that revealed a loss of $618 million and a reduction in shareholder equity of approximately $1.2 billion due to charges associated with various partnerships. We know that Ms. Temple was concerned enough about misstatements in the third-quarter press

release, that she suggested to Mr. Duncan that portions of his memo for company files be deleted so that it does not suggest that Andersen concluded the release was misleading.

Why is this important? Because it appears that some at Andersen were seeking to avoid a similar outcome to what had happened with their client Sunbeam in the middle of the last year. As it was reported by The Wall Street Journal in November, according to the SEC's May settlement order with Sunbeam, Andersen auditors had routinely dismissed so many violations of general accepted accounting procedures as immaterial, that they eventually piled up to produce significant distortions in Sunbeam's financial statements, making the barely solvent consumer products maker look handsomely profitable. Sunbeam filed for Chapter 11 bankruptcy protection this past February 2001.

This article went on to say that under generally accepted accounting procedures, misstatements aren't immaterial simply because they fall beneath the numerical threshold. According to an SEC accounting bulletin, under certain circumstances, the SEC says intentional immaterial misstatements are unlawful. One reason is that when immaterial statements are combined with other misstatements, they can, according to the SEC bulletin, render the financial statement taken as a whole to be materially misleading.

What I hope to come away from this hearing and this phase—and I emphasize "this phase"—of our investigation is were documents destroyed by Andersen that would have proven that an—that they had made intentionally immaterial statements as related to Enron? When did Andersen hire outside counsel to represent them, and did the document destruction start, continue, or accelerate once they received that outside legal advice? Were Andersen officials aware of an SEC investigation, but did little to stop the destruction of documents?

Mr. Chairman, the chore before us today will require some hard work and heavy lifting. Before I go any further, I want to commend the staffs on both sides of the aisle who gave up nights, weekends and holidays to make sure that we were ready to start this investigation today. It has been said that hard work will reveal character of those involved in the task at hand. Some will turn up their sleeves, some will turn up their nose, and some just won't turn up at all. I look forward to working with those who choose to turn up their sleeves in this endeavor to uncover that which has been covered up, and I yield back.

Mr. GREENWOOD. The Chair thanks the gentleman from North Carolina and recognizes for 3 minutes the gentlelady from Colorado for the purpose of making an opening statement.

Ms. DEGETTE. Thank you, Mr. Chairman. Before I make my statement, I would like to ask unanimous consent that all the full committee members who are here but not being allowed to make opening statements be allowed to submit their statements for the record.

Mr. GREENWOOD. Without objection, the opening statements from the full committees members present who are not members of the subcommittee will be incorporated into the record.

Ms. DEGETTE. Thank you, Mr. Chairman.

Mr. Chairman, by now we are all painfully familiar with the events that led to the collapse of Enron. When Enron reported a significant financial loss more than a year ago, we soon learned that it had inflated its earnings by straying from generally accepted accounting principles. Subsequently, the SEC opened investigations into Enron and later Arthur Andersen. This whole debacle has shown Congress and the SEC that we will need to, among other things, strengthen the laws which protect investors and build stronger protections to prevent the inevitable conflict between companies that audit and provide other services to their clients.

Today, though, the issue is focused specifically on the destruction of Enron-related documents by Arthur Andersen employees. This panel will need to help us understand exactly what Andersen's document destruction protocol is, which documents should be destroyed under it and the conditions that govern its use.

Specific actions were taken—that were taken by Andersen employees are also in need of scrutiny. Through press accounts and through staff, we have learned that an internal memo was sent to David Duncan, who is here today but apparently not going to testify, the head of Andersen's Houston branch, from Nancy Temple, a lawyer in the company's Chicago headquarters. The memo reportedly detailed Andersen's standard document destruction and retention protocol. Five days later Enron received a letter of inquiry from the SEC, initiated after Enron reported significant changes to its financial standing. According to press accounts, despite the SEC inquiry into one of its clients, Andersen had begun to and continued to shred documents related to its business dealings with Enron and did not make any change to that policy, even after it was—it received a letter of inquiry from the SEC.

I frankly don't want to leave this room today until I learn two things. First, what exactly was the document preservation protocol at Andersen in this instance, and what has been done in past similar instances as some of my colleagues have alluded to? Second, the exact time line of who knew what when and the implications of this employee knowledge on the destruction of documents.

The committee's investigation has thus far discovered that implementation of Andersen's document destruction protocol may have been ambiguous. It was generally understood by Andersen employees that the policy was not applied uniformly, and no particular manager on any level oversaw compliance with the policy. We need to find out the implication of that matter.

We also need to find out whether senior members of Andersen were aware of Enron's potential accounting problems possibly in August of 2001.

I will be asking the panelists a number of questions around these issues. Mr. Chairman, I congratulate you in calling this hearing today and look forward to learning the answers to these questions.

Mr. GREENWOOD. The Chair thanks the gentlelady from Colorado and recognizes for 3 minutes for the purpose of an opening statement the gentleman from Kentucky Mr. Whitfield.

Mr. WHITFIELD. Mr. Chairman, thank you very much.

This is really a sad day for our country, and I know that there isn't anyone on this committee that is particularly excited about this endeavor. This is the first of many hearings that will be held

on this subject, and our goal, of course, is to find out the truth. We know for a fact that 4,000 some-odd people have lost jobs. We know for a fact that stockholders from around the country have lost most of their equity in this company. We know for a fact that employees—loyal employees of the company have had their pension plans eliminated, the value of their 401(k)s eliminated. And we know for a fact that Sherron Watkins in her letter to Mr. Lay back in August pointed out—this is quite sad, I think—that—it said, employees question our accounting proprietary consistently and constantly.

I have even heard one manager-level employee from the principal investments group say, I know it would be devastating to all of us, but I wish we would get caught. We are such a crooked company. And then one of the real advocates for Enron, Mr. David Fleischer, an analyst at Goldman Sachs, had told Mr. Lay at a financial analyst meeting, there is an appearance that you are hiding something. And he went on to say, they have engaged in a number of transactions that one wonders about and that are hard to understand. They have not been as forthcoming in explaining them, but, he said, I am still recommending the stock, because I don't think accountants and auditors would have allowed total shenanigans. And in the absence of total shenanigans going on at this company, there is tremendous value here.

So we want to get to the facts. We want to discover the truth. And as we go forward, Congress is going to have to come up and come forward with some solutions to prevent this type of activity in the future, look at conflicts between one entity serving as a consultant and as an auditor, and try to determine how the Director of the Division of Investment at the SEC in 1997 provided an exemption from the Foreign Investment Act of 1940 for Enron alone.

Do we need pension reform? Why did the board of directors of Enron waive their ethical standards for corporate executives to enter into partnerships with Enron for the purpose—or at least what happened was hiding debt? All of these questions must be answered, and as I said, it is a sad day, and many of us do have constituents impacted by this. And when you think of the employees of this company and their loyalty to this company being totally wiped out while executives walked off with millions and millions and millions of dollars, it really is a sad day, and I want to thank the chairman for having this hearing.

Mr. GREENWOOD. The Chair thanks the gentleman from Kentucky and recognizes the gentleman from Louisiana, Mr. John.

Mr. JOHN. Mr. Chairman, thank you very much for holding this hearing. This is a very important topic, and what I envision is going to be a series of very in-depth, very lengthy and very serious hearings over the next few months, several months, engaging the full committee also, on what went wrong with the energy giant Enron. The hearing today focuses on what I believe is a first appropriate step, and that, of course, is document shredding. I believe it is really important for us to start here to understand and uncover what exactly went wrong.

I think the work of this committee is very clear. First, it is to get the testimony from individuals so that we can understand and uncover the facts; second, determine if there were criminal activi-

ties that were engaged in; and third, to seek out the appropriate—appropriate, if necessary, legislative solutions affecting accounting, managerial and corporate relationships so this tragedy will never happen again in America.

I will have a more in-depth and comprehensive opening statement at the full committee hearing next week, which will be more global in its reach, and I look forward to the testimony today from the witnesses. I thank the chairman for his——

Chairman TAUZIN. Would the gentleman yield?

Mr. JOHN. Sure. Yes, I will yield to the chairman.

Chairman TAUZIN. The Chair feels compelled to clarify that with the new announcements, disclosures of potential record destruction at Enron Corporation itself, that the full committee hearing is scheduled for February 6. If you will all put that on your calendar. The investigators will use the time in between to examine thoroughly those new allegations of Enron destruction. I thank the gentleman for yielding.

Mr. JOHN. Thank you, and I yield back to the chairman.

Mr. GREENWOOD. The Chair thanks the gentleman and recognizes the gentleman from New Hampshire, Mr. Bass, for an opening statement.

Mr. BASS. Thank you very much, Mr. Chairman. And has been stated before, the purpose of the hearing is to deal with the very specific issue of shredding of documents. Hopefully the—this hearing will lead to broader issues that will be addressed by Mr. Stearn's subcommittee, perhaps the full committee, dealing with issues of accounting practices and changes in the regulatory structure that govern the proper disclosure and honest, trustworthy disclosure of financial information in the corporate world.

As my friend from Kentucky said, this is going to be a—to a great extent—a very sad process that we go through here for the 4,000 or so people whose lives have been shredded by the actions of a few who may have acted in a certainly unethical, if not illegal, manner in covering up what may be one of the biggest corporate scandals in recent American history.

I hope as a result of this hearing, and hearings that will follow, that we can to some measure restore a feeling of confidence in the integrity of not only accounting practices, but in business reporting practices which will have a salutary impact on the capital markets in this country, because this is not a good time in this country to have this kind of an issue arise.

We are economically fragile right now. The last thing we need to have is to have investors lose confidence in the—in the nature and structure of corporations and business and to have allegations, such as the ones that will be discussed and investigated over the next few weeks, prove to be true.

So I want to thank my colleagues for helping bring this matter out and bring a resolution, because if we don't, the implications are going to be not only significant to the business world but to the economy and this Nation and the world. I yield back.

Mr. GREENWOOD. The Chair thanks the gentleman from New Hampshire and recognizes the gentleman from Illinois, Mr. Rush, for an opening statement.

Mr. RUSH. Thank you, Mr. Chairman, for holding today's hearing on the destruction of Enron-related documents. Today, many thousands of Americans have awaked not knowing how they will survive today or tomorrow.

At the same time, several high-level executives are waking up with their economic futures in top-notch shape. For them, the collapse of Enron may be little more than a financial speed bump.

Today's hearing will be an important part in answering the questions asked by many Americans. That question is simply: Why was corporate misconduct and malfeasance allowed to happen? Why was Enron's arrogance and avarice allowed to trample the future of Enron's employees?

Enron, which was once the seventh largest company in America, has wreaked havoc on the lives of thousands of former employees and stockholders. Furthermore, given the major role that Enron played in the energy industry, the ripple effects will be felt throughout our economy for some time to come. Other Americans will pay for Enron's corporate greed.

Simply put, this is indeed a financial catastrophe. One economist stated it perfectly when he said the following, and I quote: You can look at the system of concentric circles from management to directors and the audit committee to regulators and analysts and so forth and so forth. This was like a nuclear meltdown where the core was melted through all layers.

Today, as we begin to look at the first of many layers of that meltdown, I am hopeful that we will be able to conduct a straightforward discussion. That discussion should allow us to move on that core issue that asks: What deliberate, negligent, or reckless actions taken by Enron itself led to the financial and personal ruin of thousands of unsuspecting shareholders?

That said, I will remind the witnesses of the importance of today's hearing, which is not about excuses, nor is it about fingerpointing done in the hopes of getting off the hook. Instead, this hearing is about those thousands of workers who were left to perish in this financial meltdown while those at the controls ran for safe cover. And ultimately this hearing is an important step in making sure that the American public is shielded from this sort of travesty in the future.

And, Mr. Chairman, last I want to say that I hope that my gut suspicions are not accurate this morning, and I hope that although the hearing is aimed at the actions, possible criminal actions of Arthur Andersen, I hope that this hearing is not about letting Enron off the hook and distracting and diverting the attention of the actions of the Enron executives and using others an scapegoats for their actions.

Thank you, and I yield back the balance of my time.

[The prepared statement of Hon. Bobby L. Rush follows:]

PREPARED STATEMENT OF HON. BOBBY L. RUSH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Today, thousands of Enron employees awoke not knowing how they will survive today or tomorrow. At the same time, several high level executives awoke with their economic futures in good condition. For them, the collapse of Enron may be little more than a financial speed bump.

Today's hearing will be an important part in beginning to answer the questions asked by millions of Americans. Those questions are simply: Why was this corporate misconduct and negligence allowed to occur? Why were Enron's top-level managers allowed to arrogantly and greedily trample on the future of their employees?

Enron, once the seventh largest company in America, has wreaked havoc on the lives of thousands of their employees and stockholders. Furthermore, given the major role that Enron played in the energy industry, the ripple effects of their collapse are will be felt throughout our economy for some time to come. Americans will pay for Enron's corporate greed. This is a financial catastrophe.

One economist stated it perfectly when he said the following: "You can look at the Enron collapse as a system of concentric circles from management to directors, and the audit committee to regulators. This was like a nuclear meltdown where the core was melted through all layers."

As we begin to look at the first of many layers of that meltdown, I am hopeful that we will be able to conduct a straight-forward discussion. I would remind the witnesses of the importance of today's hearing. It is not about excuses and finger pointing done in the hopes of getting off the hook. It is about those thousands of workers who were left to perish in this financial meltdown, while those at the controls ran for safe cover. The hearing is a critical first step in making sure that the American public is forever shielded from this sort of travesty.

Mr. GREENWOOD. I thank the gentleman. Mr. Rush, if you want to see us investigate the Enron Corporation, I suggest you fasten your seatbelt.

[Additional statements submitted for the record follow:]

PREPARED STATEMENT OF HON. RICHARD BURR, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NORTH CAROLINA

Mr. Chairman, I don't think anyone at this hearing is happy with the reasons for which we must be here today. But today, in this exercise—we must faithfully discharge our duties to uncover that which has been covered up.

We must begin to publicly uncover and inquire of the actions taken by Arthur Andersen in its work on behalf of the Enron Corporation.

Why did Andersen engage in what is alleged to be a large scale destruction of documents related to Enron's financial well-being? We know from testimony given to our Committee's as early as August, that Andersen had already convened a working group to review Enron's Third Quarter charges, charges that in its Oct 16 press release revealed a loss of $618 MILLION and a reduction in shareholder equity of approximately $1.2 BILLION due to charges associated with various partnerships. We know that Ms. Temple was concerned enough about misstatements in the Third Quarter press release that she suggested to Mr. Duncan that portions of his memo for company files be deleted so that it does not suggest that "[Andersen has] concluded the release is misleading." Why is this important?

Because it appears that some at Andersen were seeking to avoid a similar outcome to what happened with their client Sunbeam in the middle of last year.

As it was reported by the *Wall Street Journal* in November, "according to the SEC's May settlement order with Sunbeam, Andersen auditors had routinely dismissed so many violations of Generally Accepted Accounting Procedures (GAAP) as immaterial that they eventually piled up to produce significant distortions in Sunbeam's financial statements, making the barely solvent consumer-products maker look handsomely profitable. Sunbeam filed for Chapter 11 bankruptcy-court protection this past February (2001)."

The article went on to say, "Under GAAP, misstatements aren't immaterial simply because they fall beneath a numerical threshold, according to an SEC accounting bulletin. Under certain circumstances, the SEC says intentional immaterial misstatements are unlawful. One reason is that when immaterial misstatements are combined with other misstatements, they can (according to the SEC bulletin): 'render the financial statements taken as a whole to be materially misleading.'"

What I hope to come away with from this hearing and this phase of our investigation is:

- Were documents destroyed by Andersen that would have proved they had intentionally made immaterial statements as they related to Enron?
- When did Andersen hire outside counsel to represent them as it pertained to their client Enron?
- Were Andersen officials aware of an SEC investigation yet did nothing to stop the destruction of documents?

Mr. Chairman, the chore before will require some hard work and heavy lifting. Before I go any further, I want to commend the staffs on both sides of the aisle who sacrificed nights, weekends and holidays to get this investigation to where we are today. It has been said that hard work will reveal the character of those involved in the task at hand. Some will turn up their sleeves, some will turn up their noses, and some just won't turn up at all. I look forward to working with those who chose to turn up their sleeves in this endeavor to uncover that which has been covered up.

PREPARED STATEMENT OF HON. ROBERT EHRLICH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MARYLAND

Thank you, Mr. Chairman. Mr. Chairman, the failure of any business is deeply disappointing as investors are stripped of wealth and worker's incomes, security, and future dreams are altered. Employees and their families bear the brunt of this failure with many experiencing a profound sense of loss, anger, and shame. As the failure ripples through related enterprises, rocking businesses and communities—disillusionment and loss is left in its wake. Unfortunately, the tempest of a failed enterprise is in direct proportion to its size, and I applaud your conducting this inquiry of Enron, once our nation's 7th largest company.

On December 2, 2001, energy-giant Enron shocked the energy and financial communities by filing for Chapter 11 bankruptcy. Enron is the largest corporation in American history to file for bankruptcy. In addition to investor losses, the sudden and dramatic fall in Enron's stock price has stripped the retirement accounts of many current and retired Enron employees, whose savings were largely based on Enron stock.

Mr. Chairman, my colleagues and I support the committee's efforts to discover whether or not Enron engaged in illegal business practices. We want to understand why executives received large bonuses and compensation during Enron's financial decline while other employees were prevented from selling their stock and lost their entire life savings. We want to understand how such a large corporation was able to hide its debt and collapse without any warning from responsible regulatory agencies and auditors. There are many questions to be answered: Did Enron's use of a large number of partnerships contribute to its collapse? Was there a failure on the performance of federal regulators? Did federal regulators have authority to adequately oversee the complex commodity trading and financial transactions—the foundation of Enron's rapid growth? Through your guidance, these and many other questions will be answered.

Further, I am troubled by the performance of one of our country's most preeminent accounting firms and auditors. Strong, diligent, and effective accounting and auditing practices are the foundation of capitalism and fundamental to maintaining investor and lender confidence in our capital markets. The Enron collapse has brought a crisis of confidence in the accounting profession and changes are required to regain the public's trust. Deceptive accounting and auditing practices must not go unchecked.

Mr. Chairman, I applaud your efforts to review accounting standards, practices, and services and their effects in the Enron collapse. If there are flaws in the regulatory system, then the laws must be changed to guarantee that a debacle of this magnitude will never happen again. I agree with President Bush's State of the Union statement that through stricter accounting standards and tougher disclosure requirements, corporate America must be made more accountable to employees and shareholders and held to the highest standards of conduct. This must be an era of corporate responsibility.

The American people know that deliberate destruction of evidence by an employee in an ongoing investigation brings its own State and Federal criminal and civil penalties as does failure to comply with SEC regulations and directives. Americans know that our court system will resolve the many lawsuits seeking justice and compensation. Illegal and duplicitous actions should not and cannot be tolerated. Americans know that some may attempt to use this failure and business scandal that has hurt so many as a tool for petty politics and opinion manipulation. We owe those who have worked hard, played by the rules, and have lost so much a strong, bipartisan investigation, or risk victimizing them a second time.

Mr. Chairman, your efforts to promote dependable, affordable, and environmentally-sound production and distribution of energy are well known. Opponents may try to confuse deregulation with illegal and duplicitous actions. I continue to believe that the competitive market place, protected from potential abuse of power through proper oversight and legal protections, is the foundation for a strong econ-

omy, the basis for national security, and provides the best products and services to our citizens. I agree with President Bush that it is critical, particular in the energy market, to provide Americans the right of choice with regard to products and services.

Finally, this committee's investigation into Enron's business practices will prevent future business collapses of this nature, determine the effectiveness of Federal oversight and regulatory agencies, and make clear whether changes to Federal law are necessary to protect employees and shareholders. We must and will get to the bottom of Enron's failure and work to ensure it never happens again.

Thank you Mr. Chairman.

PREPARED STATEMENT OF HON. PAUL E. GILLMOR, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO

Thank you Mr. Chairman, for giving us the opportunity to explore the recent events with regard to the destruction of Enron-related documents by Andersen personnel. I am also glad to see the witnesses from Andersen and look forward to hearing their testimony.

Over the past few years, like many of the members here, I have distributed a questionnaire to my constituents in an effort seek further input regarding the issues of day. Of note, one of my questions inquires whether members of a household invested in stocks or mutual funds. Here lies my motivation and concern. Of those that responded to this year's survey, 83% answered "yes." With the number of private shareholders on the rise, it is important that as we listen to Andersen's document retention and destruction policies carefully, keeping in mind the actions of those in corporate management. More importantly, their actions should never come at the expense of the shareholder. I look forward to further congressional oversight regarding this issue.

PREPARED STATEMENT OF HON. EDWARD J. MARKEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MASSACHUSETTS

Thank you, Mr. Chairman, for extending to me the courtesy of participating in today's hearing.

I think it is outrageous that the same executives who may be responsible for the destruction of workers' pensions—and the destruction of documents that might prove their guilt—are currently protected by Congress when defrauded worker's actually try to recover their life savings. But, sadly, it is true. Why? Because in 1995, Arthur Anderson and the other big accounting firms succeeded in lobbying Congress to strictly limit their future liability for securities fraud. That bill passed over the President's veto as part of the Republican Contract with America. And today, we are seeing the grim results—Arthur Anderson can no longer be held jointly and severally liable when a court has found them guilty of securities fraud. I believe that this ill-advised law has directly contributed to a rising tide of accounting failures, culminating in the Enron-Arthur Anderson fiasco. The types of internal checks and balances that a healthy concern about litigation risk used to create within each accounting firm has been undermined. The many honest and decent people who want to do the right thing get overruled, and the increasing revenues coming from consulting and non-audit businesses put growing pressure to sign off on the "cooked books" of major clients.

Yesterday, I introduced legislation aimed helping to address this problem. This bill would, among other things, require auditors to retain copies of all documents generated during the course of an audit for a period of four years and establish criminal penalties of up to ten years imprisonment for auditors that knowingly and willfully destroy such documents. The bill also would reform the liability standards applicable to accountants in securities fraud cases and provide an exemption from the "Catch 22" discovery stay that allows accounting firms to escape accountability for their actions. I look forward to working with Members on this and other reforms. Clearly, we have a system that is very broken, and we need to work together to fix it.

Today's hearing is focused on the disturbing reports that employees of Arthur Anderson have destroyed documents in connection with the Enron debacle. I think it's appalling that Anderson CEO Joseph Berardino has declined the Subcommittee's invitation to testify on this matter, when he was somehow able to make an appearance on *Meet the Press* last Sunday. I have also read that Mr. Berardino has agreed to appear before the House Financial Services Committee on February 4th. If Mr. Berardino can appear to answer questions on national television and before other

Committees, it seems to me that he should be able to appear before this Subcommittee so that we can get to the bottom of why his firm destroyed documents being sought by the SEC, by the Justice Department, and by defrauded workers and investors.

Now, I have many questions about the underlying transactions and investments whose accounting treatment helped to bring Enron to bankruptcy, but I understand that this is not the subject of today's hearing. I would merely hope, Mr. Chairman, that we will have a chance to thoroughly examine Enron's investments in broadband, its energy trading operations, and its derivatives and other structured financings in the detail needed to understand just what happened here and what lessons we can learn from this massive fraud and misbehavior. That will require more than a single hearing of all of the principals to do properly.

Thanks again, Mr. Chairman, for allowing me to participate in today's hearing. I look forward to the testimony.

Mr. GREENWOOD. The Chair will now call the first panel. Mr. Duncan, will you please come forward.

Please be seated right there. Thank you, sir.

Good morning, Mr. Duncan.

Mr. DUNCAN. Good morning.

Mr. GREENWOOD. Mr. Duncan is here with us today under subpoena. To date, Mr. Duncan has cooperated with this committee in our search for the facts by submitting to an interview last week with our committee investigator that lasted more than 4 hours. Yet we received a letter from his counsel yesterday stating that Mr. Duncan authorized his counsel to advise the committee that he will, quote, rely on his constitutional right not to testify, close quote.

I believe that this privilege should be personally exercised before the Members, and that is why we have requested Mr. Duncan's appearance here today, and request that he reconsider.

Mr. Duncan, you are aware that the committee is holding an investigative hearing, and, in doing so, we have the practice of taking testimony under oath. Do you have objection to testifying under oath?

Mr. DUNCAN. No, sir.

Mr. GREENWOOD. Thank you. The Chair also advises you that under the rules of the House and the rules of the committee, you are entitled to be advised by counsel. Do you desire to be advised by counsel during your testimony today?

Mr. DUNCAN. Yes, sir.

Mr. GREENWOOD. Okay. In that case, would you please rise and raise your right hand and I will swear you in.

[Witness sworn.]

Mr. GREENWOOD. Thank you, Mr. Duncan. You are now under oath and you may give a 5-minute summary of your written testimony if you choose to.

TESTIMONY OF DAVID DUNCAN, FORMER ANDERSEN PARTNER-IN-CHARGE OF ENRON ENGAGEMENT

Mr. DUNCAN. I have no summary, sir.

Mr. GREENWOOD. Okay.

The Chair will recognize himself for questioning. Mr. Duncan, Enron robbed the bank. Arthur Andersen provided the getaway car, and they say that you were at the wheel.

I have a specific question for you, Mr. Duncan. You were fired by Anderson last week for orchestrating an expedited effort among

the Andersen-Enron engagement team to destroy thousands of paper documents and electronic files relating to the Enron matter after learning of an inquiry by the Securities and Exchange Commission into Enron's complex financial transactions.

Did you give an order to destroy documents in an attempt to subvert governmental investigations into Enron's financial collapse, and, if so, did you do so at the direction or suggestion of anyone at Anderson or at Enron?

Mr. DUNCAN. Mr. Chairman, I would like to answer the committee's questions, but on the advice of my counsel I respectfully decline to answer the question based on the protection afforded me under the Constitution of the United States.

Mr. GREENWOOD. Well, let me be clear, Mr. Duncan. Are you refusing to answer the question on the basis of the protections afforded to you under the fifth amendment to the United States Constitution?

Mr. DUNCAN. Again, on the advice of my counsel, I respectfully decline to answer the question based on the protection afforded me under the United States Constitution.

Mr. GREENWOOD. Will you invoke your fifth amendment rights in response to all of our questions here today?

Mr. DUNCAN. Respectfully, that will be my response to all of your questions.

Mr. GREENWOOD. I am disappointed to hear that, but it is therefore the Chair's intention to dismiss the witness.

Mr. Duncan, we thank you for your attendance today and your respect for this committee's process. You are dismissed and perhaps we will see you on another occasion.

Mr. DUNCAN. Yes, sir.

Mr. GREENWOOD. I continue on my time.

Mr. DINGELL. Mr. Chairman, may I raise a point of inquiry at this time?

Mr. GREENWOOD. The gentleman is recognized.

Mr. DINGELL. I assume the witness is being excused but may be recalled at a later time; is that correct?

Mr. GREENWOOD. That is correct.

Mr. DINGELL. And that the witness remains subject to the process of the committee, and that if the committee's need is such, that we will be recalling him; is that correct?

Mr. GREENWOOD. That is correct.

Mr. DINGELL. Very well. I thank you, Mr. Chairman.

Mr. GREENWOOD. Does the ranking member of the subcommittee wish to be recognized?

Mr. DEUTSCH. Mr. Chair, I think also, just in terms of clarification, that we have the ability to grant immunity, but at this time we have chosen not to, based upon our working with the Justice Department as well as the SEC.

Mr. GREENWOOD. Mr. Duncan's attorney has repeatedly made it clear that Mr. Duncan would have testified this morning had the committee been willing to grant immunity to him. We have chosen not to do that. I think that would be improper, certainly at this time, in view of the Justice Department's investigation.

Mr. DEUTSCH. I want to make it clear that that is a bipartisan agreement in that respect that the investigation is continuing.

Chairman TAUZIN. Would the gentleman yield? I also wanted to say clearly on the record that our joint bipartisan team of investigators is working on a daily basis in consultation with Justice Department officials. The decisions we make regarding granting any right of immunity to testify will be made in terms of that consultative proceeding with the Justice Department.

I thank the chairman.

Mr. GREENWOOD. The Chair thanks the gentleman.

Continuing on my time, I think it is very important to lay out for the subcommittee, our panel, and our audience our apparent understanding of Mr. Duncan's recollection of relevant events based on the committee counsel's interview of Mr. Duncan last week.

It is my understanding that Mr. Duncan said that during the September and October time period, he participated in frequent meetings and teleconferences with a group of senior-level Andersen partners in Houston and Chicago to discuss matters relating to the Enron account. That group included Ms. Nancy Temple from the legal group and Mr. Michael Odom, the audit and practice director, both of whom are testifying today.

The consultation group which was created in late August or early September was fluid in membership and was formed in response to growing concerns over the accounting for Enron special purpose entities.

Specifically, Mr. Duncan said that the group was formed at the suggestion of Mr. Odom and himself in response to, one, Sherron Watkins' allegations of accounting improprieties on the Enron Raptor and LJM transactions; two, the $1 billion accounting error discovered in August by Enron and Andersen with respect to the accounting for the Raptor entities; and, three, the rapidly declining stock price of the Enron merchant assets transferred to the Raptor partnerships which made it look like there would be a significant write-down by Enron.

During these conference calls, prior to October 12, 2001, Mr. Duncan recalls receiving advice from Ms. Temple with respect to the proper documentation of Andersen's evolving position with respect to the correct accounting for the Raptor transactions.

Also prior to receiving Ms. Temple's October 12 e-mail regarding compliance with Andersen's documentation retention policy, Mr. Duncan recalls Ms. Temple on one or two of these three group conference calls asking him, quote, "How are you on compliance with the document retention policy on Enron?" he said that his response to her was, "At best, irregular."

Mr. Duncan then received Ms. Temple's October 12 e-mail forwarded from Mr. Odom with the note "more help." He did not know what Mr. Odom meant by that phrase, but he viewed Ms. Temple's e-mail as a follow-up to the question she had posed to him orally about compliance with the retention policy, and as advice from his attorney to ensure that the entire Enron audit engagement team was in compliance with that policy.

He added that he had never before during his lengthy tenure at Andersen been asked about compliance with the retention policy, nor had he ever received such an e-mail about ensuring compliance with that policy from anyone in Andersen's legal group.

Mr. Duncan does not recall the precise date, but sometime after October 12, 2001, Mr. Duncan met with his top Enron audit partners, Mr. Tom Bauer, Ms. Deborah Cash, and Mr. Roger Willard, to discuss the advice that he had received from Ms. Temple. According to Mr. Duncan, the meeting participants concluded that they should call a meeting of all of the Enron audit managers to discuss timely compliance with the retention policy.

Mr. Duncan does not recall when this meeting occurred, but does not dispute that his secretary sent out an e-mail on October 23, 2001, calling an urgent meeting of the Enron managers for later that same day.

Just days earlier, on either Friday, October 19, or Saturday, October 20, Mr. Duncan had first learned of the SEC informal inquiry of Enron. He recalled that he had discussions with the Andersen Consultation Group about the SEC development over the weekend, including Ms. Temple. He also recalled that on October 22, he and other Andersen engagement team members met with Enron chief accounting officer, Rick Causey, to discuss the SEC inquiry.

Duncan said that Causey requested Andersen's assistance in creating documents to explain the related party transactions to the SEC. Mr. Duncan said that at the meeting he called with all of the Andersen audit managers on the Enron account, whenever it may have occurred, he advised them of the importance of compliance with the document retention policy, and handed out copies of the policy to the participants.

Mr. Duncan said that he observed individuals on the engagement team actively complying with the firm's document policies by shredding documents, and that the activity continued up until November 9 when he received a voice-mail from Ms. Temple ordering the preservation of all Enron-related documents.

Mr. Duncan also said that he destroyed some of his own Enron-related documents in an effort to comply with Andersen's document retention and destruction policies.

Again, that is my understanding of Mr. Duncan's interview with committee staff. Mr. Deutsch, would you agree that I have characterized our current understanding of Mr. Duncan's recollection of relevant events accurately?

Mr. DEUTSCH. I would.

Mr. GREENWOOD. Thank you. With that, I would call the second panel of witnesses to the table.

Mr. DINGELL. Mr. Chairman, while the witnesses are coming forward, I would like to request to proceed out of order for about 1 minute.

Mr. GREENWOOD. Without objection, the gentleman, Mr. Dingell, will be recognized to speak out of order for 1 minute.

Mr. DINGELL. I assure you with thanks, Mr. Chairman, you have nothing to fear from this request.

I have the pleasure to introduce an old friend to this committee who is known and loved by us all, Mr. Jack Valenti who is in the room.

And I have also the pleasure to introduce a new friend of the committee, somebody that you have been watching, I think with great enjoyment, in one of the most popular of the shows, The Sopranos. That is Ms. Lorraine Bracco, who is here present with us

this morning as a part of an effort we are making to bring forth information with regard to the inadequate treatment of women managers in the marketplace and discrimination against them.

So we thank her for that, and I am pleased to welcome her. And I have, Mr. Chairman, stayed under my 1 minute.

Chairman TAUZIN. Will the gentleman yield quickly? Just to point out, we may need your character's services before this hearing is over.

Ms. BRACCO. I am available.

Mr. GREENWOOD. Welcome. The Chair calls the second panel, Mr. Dorsey L. Baskin, Jr., managing director, Professional Standards Group, Andersen; Mr. Andrews, the global managing partner; Ms. Nancy Temple, attorney, Andersen; and Mr. Michael C. Odom, audit partner at Andersen.

Good morning. The Chair welcomes our next panel of witnesses. You are aware that the committee is holding an investigative hearing and that when doing so, we have the practice of taking testimony under oath.

Do you have any objections to testifying under oath? Seeing no such objection, the Chair then also advises you that under the rules of the House and the rules of the committee, you are entitled to be advised by counsel.

Do any of you desire to be advised by counsel during your testimony today? Mr. Baskin you—state your counsel's name for the record, Mr. Baskin.

Mr. BASKIN. Mark Gitenstein.

Mr. GREENWOOD. Mr. Andrews?

Mr. ANDREWS. Mark Gitenstein and Stan Brand.

Mr. GREENWOOD. Ms. Temple?

Ms. TEMPLE. Yes. Mark Hansen, Reid Figel, and Silvija Strikis.

Mr. GREENWOOD. You know the name of your attorney. Very good. Mr. Odom.

Mr. ODOM. Peter Flemming.

Mr. GREENWOOD. Okay. In that case, would you please rise and raise your right hands so I can swear you in?

[Witnesses sworn.]

Mr. GREENWOOD. Thank you. The Chair advises you that you are now under oath, and would recognize Mr. Andrews for 5 minutes to make an opening statement, Mr. Andrews?

Mr. ANDREWS. Actually, Mr. Baskin is making the opening statement.

Mr. GREENWOOD. Mr. Baskin, then you are recognized for 5 minutes for your opening statement.

TESTIMONY OF C.E. ANDREWS, SENIOR EXECUTIVE, ANDERSEN LLP; MICHAEL C. ODOM, AUDIT PARTNER, ANDERSEN LLP; DORSEY L. BASKIN, JR., MANAGING DIRECTOR, PROFESSIONAL STANDARDS GROUP, ANDERSEN LLP; AND NANCY TEMPLE, ATTORNEY, ANDERSEN LLP

Mr. BASKIN. Thank you. Chairman Tauzin, Congressman Dingell, Chairman Greenwood, Congressman Deutsch, members of the committee, my name is Dorsey Lee Baskin, Jr. Since 1999 I have been managing director of Andersen's Assurance Professional Standards Group, which has firm-wide responsibility for providing guidance

on auditing standards, including professional standards relating to the preservation of audit work papers and client files.

I have been at Andersen for almost 25 years since receiving my MBA from Texas A&M University in 1977. I am here with my partner, C. E. Andrews, who is managing partner for Andersen's global audit practice. He and I will both answer the committee's questions.

I would like to make three essential points at the outset of our testimony. First, as our CEO has said, this is indeed a tragedy on many levels. Second, the committee and the broader public should know that Andersen came forward voluntarily and disclosed the destruction of documents by Andersen personnel. However improper that destruction was, Andersen did not hide from its obligations to do what it could to take corrective action. We promptly alerted all investigative authorities, including this committee.

Although the firm was well aware of the potentially devastating impact this disclosure could have on our reputation, we did the right thing. We certainly are not proud of the document destruction, but we are proud of our decision to step forward and accept responsibility.

Third, it bears emphasis that Andersen has cooperated fully and unreservedly with all of the ongoing investigations into the destruction of Enron-related documents. We are determined to get to the bottom of what happened. We have publicly acknowledged and will continue to acknowledge mistakes that we have made. We have tried and will continue to try to answer every question that is put to us. And we will take whatever decisive action is necessary to restore public confidence in the firm.

I have to tell you in all candor that we are limited in what we can say today about the destruction of documents by Andersen personnel working on the Enron engagement. Our investigation into that destruction is far from complete. We have not yet had the opportunity to review all of the many relevant documents or to hear from all of the people who have relevant information.

But, having said that, this is what I can tell you about Andersen's retention and destruction of documents. To begin with, it is the usual routine and wholly legitimate practice of auditors to preserve their final working papers while disposing of drafts, personal notes, and other materials that are not necessary to support the audit report.

So far as I am aware, this is the policy of all of the large accounting firms. This policy toward document disposal reflects longstanding and sound audit practice. It is designed to assure that the audit work papers, which are the principal materials reflecting and documenting the conclusions of the audit, unambiguously reflect the judgments that actually were reached.

This understanding of proper audit practice was reflected in the Andersen document retention policy in effect last fall, which provided that documents other than work papers ordinarily should be disposed of when no longer needed, but that such documents should be retained when litigation has commenced or is threatened.

Of course, precisely when that occurs often will require the application of informed judgment to the particular circumstances of a given case, and that may well be a point at which reasonable peo-

ple can differ. As for the destruction of Enron-related documents, we know that on October 23, just 6 days after the SEC requested information from Enron, David Duncan, Andersen's lead partner on the Enron engagement, called an urgent meeting of the Enron engagement team, in which he organized an expedited effort to shred, or otherwise dispose of, Enron-related documents.

This effort was undertaken without any consultation with others in the firm, or, so far as we are aware, with legal counsel. Over the course of the next several days, a very substantial volume of documents and e-mails were disposed of by the Enron engagement team. This activity appears to have stopped shortly after Mr. Duncan's assistant sent an e-mail to other secretaries on November 9, the day after Andersen received a subpoena from the SEC telling them no more shredding.

Once this activity came to light, Andersen's response was immediate. Andersen notified the Department of Justice, the SEC, and all relevant congressional committees. At the same time, the firm suspended its records management policy and asked former Senator Danforth to conduct an immediate and comprehensive review.

On January 15, approximately 2 weeks after our CEO learned about the document destruction, Andersen dismissed Mr. Duncan. The firm also placed three of our partners from the Enron engagement on administrative leave, pending completion of the investigation into their responsibility for these events.

The firm relieved four partners in its Houston office of their management responsibilities, and the firm indicated that it will take disciplinary action against any Andersen personnel who are found to have acted improperly.

I should address the question why Andersen took the forceful action it did regarding Mr. Duncan. In our view, Mr. Duncan's actions reflected a failure of judgment that is simply unacceptable in a person who has major responsibilities at our firm. He was the lead engagement partner for a significant client, exercising very substantial responsibility within the firm, yet our investigation indicated that he directed the purposeful destruction of a very substantial volume of documents, just as the government investigation was beginning.

This is the kind of conduct that Andersen cannot tolerate. When Andersen CEO Joe Berardino testified before Congress almost 6 weeks ago, he observed that all of us here today, and many others who are not here, have a responsibility to seek out and evaluate the facts and take needed action. We have tried to fulfill that responsibility.

We uncovered the document destruction. Our firm's management brought it to the attention of the governmental authorities. We already have started to implement decisive disciplinary and remedial action. We are continuing our investigation, resolved to take all steps that are necessary to restore public confidence in the integrity of our firm. Thank you.

[The prepared statement of C.E. Andrews and Dorsey L. Baskin, Jr. follows:]

PREPARED STATEMENT OF C.E. ANDREWS, GLOBAL MANAGING PARTNER—ASSURANCE AND BUSINESS ADVISORY, ANDERSEN, AND DORSEY L. BASKIN, JR., MANAGING DIRECTOR, ASSURANCE PROFESSIONAL STANDARDS GROUP, ANDERSEN

Chairman Tauzin, Congressman Dingell, Chairman Greenwood, Congressman Deutsch, Members of the Committee.

C.E. Andrews is managing partner for Andersen's global audit practice. Dorsey L. Baskin, Jr. is Managing Director of Andersen's Assurance Professional Standards Group, which has firm-wide responsibility for providing guidance on auditing standards, including professional standards relating to the preservation of audit work papers and client files.

We would like to make two essential points at the outset of our testimony. First, this Committee and the broader public should know that Andersen came forward *voluntarily* and disclosed the destruction of documents by Andersen personnel. However improper that destruction was, Andersen did not hide from its obligation to do what it could to take corrective action; we promptly alerted all investigative authorities, including this Committee. Although the firm was well aware of the potentially devastating impact this disclosure could have on our reputation, we did the right thing. We certainly are not proud of the document destruction—but we are proud of our decision to step forward and accept responsibility.

Second, it bears emphasis that Andersen has cooperated fully and unreservedly with all of the ongoing investigations into the destruction of Enron-related documents. We are determined to get to the bottom of what happened. And we will take whatever decisive action is necessary to restore public confidence in the firm.

The Committee is holding this hearing at an extraordinary time. The circumstances surrounding the collapse of Enron are now being investigated by myriad committees and subcommittees of Congress, including this Committee; the House Financial Services Subcommittee; the Senate Commerce Committee; the Senate Governmental Affairs Committee; and the Senate Permanent Subcommittee on Investigations.

In addition, of course, investigations are being conducted by the Securities and Exchange Commission; the U.S. Department of Justice; and the U.S. Department of Labor.

And not least, Andersen is conducting its own inquiry into all of the circumstances of the Enron audit, including the destruction of documents by Andersen personnel. This is not a face-saving exercise on our part. It is absolutely essential to Andersen's continued success that there be a thorough, entirely credible determination of what happened and what went wrong. We know that our reputation is our single most important asset—and the one on which our firm's existence is premised. We therefore are determined to get to the bottom of what happened, to publicly acknowledge and correct any errors that we made, and to take all actions that are necessary to ensure that such mistakes do not recur in the future.

The proof of our commitment to a thorough and transparent response to the events at Enron is visible in the steps that we already have taken. Andersen's CEO, Joe Berardino, testified before the a House committee in December and acknowledged that Andersen auditors made an error in judgment regarding the Enron audit. As we'll explain in more detail later, we likewise have acknowledged that the destruction of documents by the Enron engagement team was wrong, and we have taken forceful steps in response.

Our commitment also is manifest in the full cooperation that we have given to all of the official inquiries into Enron's collapse. While others whose assistance has been sought by investigators have not cooperated and were nowhere to be seen at previous congressional hearings, we have answered every question put to us and appeared whenever requested. Although this is a very painful time for our firm and the questions are sometimes difficult to answer, Joe Berardino and C.E. Andrews, each testified before congressional committees last month. Mr. Berardino has addressed issues raised by the press, and he and Andersen's other top executives have tried to respond fully and honestly to the concerns both of our clients and of the tens of thousands of Andersen partners and employees who had no connection at all to the Enron audit.

We have, moreover, gone the extra mile in cooperating with the governmental investigations:

- We have made diligent efforts to provide all relevant materials to investigative bodies; to accommodate this Committee, for example, we produced a substantial volume of material on a significantly expedited basis.
- We gave the Committee the names of Andersen personnel who have knowledge about events relating to Enron, including document destruction, and, to the extent possible, encouraged these individuals to cooperate with the Committee's

requests for interviews. We did not object to the testimony of any Andersen personnel with direct knowledge relevant to the inquiry, including Ms. Nancy Temple.

- We have provided briefings to congressional staff on Enron accounting issues and, to the extent we are able, on matters relating to the destruction of documents.
- We have invested incalculable man hours responding to governmental requests for documents and information.

Finally, to assure that we resolve all issues relating to the destruction of documents in a manner that is beyond reproach, we retained former Sen. John Danforth and his law firm to review Andersen's document retention policies and, ultimately, to ensure that Andersen takes all appropriate disciplinary action against personnel involved in improper document destruction.

Our investigation into the destruction of documents by Andersen personnel is far from complete. We nevertheless will endeavor to be as helpful and forthcoming as possible—although we must add the caveat that there may well be questions that neither we, nor anyone else at Andersen, will be able to answer at this time to the Committee's satisfaction.

This is what we can tell you about Andersen's retention and destruction of documents.

To begin with, it is the usual, routine, and wholly legitimate practice of auditors to preserve their final work papers while disposing of drafts, personal notes, and other materials that are not necessary to support the audit report. So far as we are aware, this is the policy of all large audit firms.

This policy towards document disposal reflects sound audit practice. It is designed to assure that the audit work papers—which are the principal materials reflecting and documenting the conclusions of the audit—unambiguously reflect the judgments that actually were reached. To this end, auditors routinely dispose of preliminary or draft documents that might create confusion about the auditor's analysis or conclusions. It is the audit work papers, rather than preliminary materials, that are the real evidence of how the audit proceeded.

Generally Accepted Auditing Standards, commonly referred to by their initials as GAAS, provide guidance on the purpose and nature of documentation retained by auditors. The applicable general standard, Section 339 of the codification of audit standards, provides that auditors should keep for a period of time their working papers that support their reports.

The standard provides that the purpose of working papers is to: (a) provide the principal support for the audit report, including the reference in the report to compliance with GAAS; and (b) aid the auditor in the conduct and supervision of the audit. Work papers consist of many different types of documents, including schedules and details of account balances; memoranda relating to business and financial reporting risks and management controls; work programs that direct the staff in the procedures and tests to be performed, and that may document the results thereof; documentation of procedures and tests such as confirmations of accounts receivable; records of counts of inventory; results of tests of the operation of controls as the audit progresses; conclusions reached as the result of tests; a copy of the entity's financial statements signed by management to evidence its responsibility for the final presentation; memoranda related to any accounting and audit issues that arose during the audit, including conclusions reached; representation letters from management; and a copy of the final audit report.

In addition to these period-specific documents, auditors generally keep continuing or "evergreen" files that contain documents of use to audits for more than one year. Examples of these documents would be copies of loan agreements, charters, organization charts, and so on. Auditors also keep client-relationship files that contain records of billing for fees and other administrative matters. The client-relationship files are not considered to be part of the work papers because they do not contain audit evidence relating to the audit report.

According to the section 339 of GAAS, many factors affect the auditors judgment about the quantity, type, and content of the work papers for a particular engagement, including: (a) the nature of the engagement (b) the nature of the auditors report; (c) the nature of the financial statements, schedules, or other information on which the auditor is reporting; (d) the nature and condition of the client's records; (e) the assessed level of control risk; and (f) the needs in the particular circumstances for supervision and review of the work.

The January 2002 revision of section 339 of GAAS adds to the standard that audit documentation should be sufficient to: (a) enable members of the engagement team with supervision and review responsibilities to understand the nature, timing, extent and results of auditing procedures performed and the evidence obtained; (b) indicate the engagement team member(s) who performed and reviewed the work; and

(c) show that the accounting records agree or reconcile with the financial statements or other information being reported on.

Section 339 of GAAS provides that the auditor should adopt reasonable procedures for safeguarding work papers and should retain them for a period sufficient to meet the needs of the auditor's practice and to satisfy any pertinent legal requirements of records retention.

Typically the work papers for the previous year's audit are checked out at the beginning of the next audit by the engagement team and used as a source of information during the next audit. Hereafter, the work papers tend to sit in storage for many years.

This understanding of proper audit practice was reflected in the Andersen document retention policy in effect last fall, which provided that documents other than work papers ordinarily should be disposed of when no longer needed—but that such documents should be retained when litigation has commenced or is threatened. Precisely when that occurs often will require the application of informed judgment to the particular circumstances of a given case, and that may well be a point on which reasonable people can differ. It also may be a point that looks quite different in hindsight than it did to people making decisions at the time.

Looking at this policy now, in light of recent events and with the benefit of hindsight, we have to say that it is not a model of clarity—although our guess is that, if the document retention policies of other large businesses were subjected to the same close scrutiny, they likely also would reveal ambiguities and questions about their application to particular cases.

As we mentioned, we are still investigating the destruction of Enron-related documents by Andersen personnel, and there is much still to learn. But we can say this much about what we know about the destruction of Enron-related documents. On October 17 the SEC requested information from Enron about its financial accounting and reporting. Several days later, on October 23, David Duncan, Andersen's lead partner on the Enron engagement, called an urgent meeting of the Enron engagement team at which he organized an expedited effort to shred or otherwise dispose of Enron-related documents. This effort was undertaken without any consultation with others in the firm or, so far as we are aware, with legal counsel.

Over the course of the next several days, a very substantial volume of documents and emails—involving many of the Enron-related materials that ultimately were destroyed were disposed of by the Enron engagement team, including Mr. Duncan. So far as we have been able to determine to date, however, no audit work papers were destroyed.

This activity appears to have stopped shortly after Mr. Duncan's assistant sent an e-mail to other secretaries on November 9—the day after Andersen received a subpoena from the SEC—telling them "no more shredding."

Enron-related documents also were destroyed by others at the firm, although the volume and circumstances of their activities appear to have been quite different from those of Mr. Duncan. We are continuing our investigation into that aspect of these events.

On Friday, January 4—shortly after the firm's internal inquiry informed Andersen's CEO about the document destruction—Andersen voluntarily notified the Department of Justice and the SEC. On January 7, Andersen met with Justice Department and SEC attorneys and briefed them on what we knew. On January 10, Andersen also disclosed the destruction to all relevant congressional committees and to the public. At the same time, the firm suspended its records management policy, asking Sen. Danforth to conduct an immediate and comprehensive review of that policy and to recommend improvements.

On January 15, approximately two weeks after our CEO learned about the document destruction, Andersen dismissed Mr. Duncan, the lead engagement partner. The firm also placed three other partners from the Enron engagement on administrative leave pending completion of the investigation into their responsibility for these events. The firm relieved four partners in its Houston office of their management responsibilities. And the firm indicated that it will take disciplinary action against *any* Andersen personnel who are found to have acted improperly. Anyone at Andersen who purposely destroyed work papers, or who destroyed Enron-related documents after having been informed of the Nov. 8 subpoena to Andersen, will be dismissed; discipline for other improper conduct will depend on the nature and severity of the acts involved.

Finally, as we have mentioned, Andersen retained Sen. Danforth and his firm to ensure that all appropriate steps are taken to deal internally with misconduct by Andersen personnel.

We should address the question why Andersen took the forceful action it did regarding Mr. Duncan. In our view, Mr. Duncan's actions reflected a failure of judg-

ment that is simply unacceptable in a person who has major responsibilities at our firm. He was the lead engagement partner for a significant client, exercising very substantial responsibility within the firm. Yet our investigation indicated that he directed the purposeful destruction of a very substantial volume of documents—and in doing so, he gave every appearance of destroying these materials in anticipation of a government request for documents. This is the kind of conduct that Andersen cannot tolerate.

The case of Mr. Duncan was clear enough to allow us to draw conclusions about his responsibility at an early stage of the inquiry. That is not true of other Andersen personnel who were involved with the destruction of documents. Our investigation continues; persons who are found to have acted inappropriately, whatever their position in the firm, will be dealt with accordingly.

Let me conclude by noting that when Joe Berardino testified almost six weeks ago, he ended his remarks by stating that "[a] day does not go by without new information being made available and I would observe that all of us here today—and many others who are not here—have a responsibility to seek out and evaluate the facts and take needed action." We have tried to fulfill that responsibility. We uncovered the document destruction; our firm's management brought it to the attention of the governmental authorities; we already have started to implement decisive disciplinary and remedial action; and we are continuing our investigation, resolved to take all steps that are necessary to restore public confidence in the integrity of our firm.

This is, of course, a very painful and difficult period for Andersen. But Andersen's great strength is its 85,000 employees in 84 countries around the world; its 28,000 Andersen Personnel in the United States contribute to the economic life of virtually State in the Union. We are determined to respond to this test openly and with complete candor, and to face up honestly to our responsibilities to our clients and to the public.

Thank you.

Mr. GREENWOOD. The Chair thanks the gentleman.

Ms. Temple, do you have an opening statement?

Ms. TEMPLE. I do not, Mr. Chairman.

Mr. GREENWOOD. Mr. Odom, do you have an opening statement?

Mr. ODOM. No, sir.

Mr. GREENWOOD. Mr. Odom, I understand from your attorney that you have a letter addressed to me that you would like to have incorporated into the record?

Mr. ODOM. Yes, sir.

Mr. GREENWOOD. Okay. Without objection, that letter will be incorporated into the record.

The Chair would note for the witnesses and for the members that each of you should have a binder that has—two binders that have in it the documents to which we will refer during the course of the hearing, and we will refer to the documents by tab number so that you can refer to them to assist you in responding to the questions.

And I would suggest at this point you might want to turn to Tab 28.

Mr. BURR. Mr. Chairman, do we also have a copy of Mr. Odom's letter?

Mr. GREENWOOD. Yes. The staff will copy and circulate Mr. Odom's letter.

[The material referred to follows:]

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January 22, 2002

BY FAX

James C. Greenwood
Chairman
Committee on Energy and Commerce
Subcommittee on Oversight and Investigations
2436 Rayburn -- House Office Building
Washington, D.C. 20515

Re: Michael Odom

Dear Chairman Greenwood:

I am a member of the firm of Curtis, Mallet-Prevost, Colt & Mosle LLP and represent Michael Odom.

This morning I received your letter dated January 21, 2002 inviting Mr. Odom to testify before your Subcommittee on Thursday, January 24, 2002 at 9:30 a.m.

I have spoken with Tom Delinge of your Staff, and explained that, for professional reasons on my part, I preferred to receive a subpoena which Mr. Delinge will be faxing to me today and which I will accept as service of Mr. Odom. Accordingly, Mr. Odom will be appearing at the hearing on Thursday.

Given the relatively short period of our representation, and our inability to access virtually all relevant documents, as Mr. Odom's counsel I would have preferred that the hearing take place at a later date.

For reasons which are apparent, we will not be providing a written statement.

A final point. As you may know, Mr. Odom was interviewed this past Friday, January 18, in an immediate response to a request for an interview which I received the day before. "Versions" of the interview were immediately "leaked" which did not accurately reflect

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the content of Mr. Odom's interview. I am certain the "leaks" did not come from your Staff which speaks well of its discipline and administration. Nonetheless, I must express my concern with the pattern of "leaking" in this matter which does disservice to the interests of justice and therefore to the public interest.

I respectfully request this letter be made a part of the record of Thursday's proceeding.

Respectfully,

Peter Fleming Jr.

cc: Mark Paoletta
Thomas Delinge

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Dear Mr. Lay,

Has Enron become a risky place to work? For those of us who didn't get rich over the last few years, can we afford to stay?

Skilling's abrupt departure will raise suspicions of accounting improprieties and valuation issues. Enron has been very aggressive in its accounting – most notably the Raptor transactions and the Condor vehicle. We do have valuation issues with our international assets and possibly some of our EES MTM positions.

The spotlight will be on us, the market just can't accept that Skilling is leaving his dream job. I think that the valuation issues can be fixed and reported with other goodwill write-downs to occur in 2002. How do we fix the Raptor and Condor deals? They unwind in 2002 and 2003, we will have to pony up Enron stock and that won't go unnoticed.

To the layman on the street, it will look like we recognized funds flow of $800 mm from merchant asset sales in 1999 by selling to a vehicle (Condor) that we capitalized with a promise of Enron stock in later years. Is that really funds flow or is it cash from equity issuance?

We have recognized over $550 million of fair value gains on stocks via our swaps with Raptor, much of that stock has declined significantly – Avici by 98%, from $178 mm to $5 mm, The New Power Co by 70%, from $20/share to $6/share. The value in the swaps won't be there for Raptor, so once again Enron will issue stock to offset these losses. Raptor is an LJM entity. It sure looks to the layman on the street that we are hiding losses in a related company and will compensate that company with Enron stock in the future.

I am incredibly nervous that we will implode in a wave of accounting scandals. My 8 years of Enron work history will be worth nothing on my resume, the business world will consider the past successes as nothing but an elaborate accounting hoax. Skilling is resigning now for 'personal reasons' but I think he wasn't having fun, looked down the road and knew this stuff was unfixable and would rather abandon ship now than resign in shame in 2 years.

Is there a way our accounting guru's can unwind these deals now? I have thought and thought about how to do this, but I keep bumping into one big problem – we booked the Condor and Raptor deals in 1999 and 2000, we enjoyed a wonderfully high stock price, many executives sold stock, we then try and reverse or fix the deals in 2001 and it's a bit like robbing the bank in one year and trying to pay back it back 2 years later. Nice try, but investors were hurt, they bought at $70 and $80/share looking for $120/share and now they're at $38 or worse. We are under too much scrutiny and there are probably one or two disgruntled 'redeployed' employees who know enough about the 'funny' accounting to get us in trouble.

What do we do? I know this question cannot be addressed in the all employee meeting, but can you give some assurances that you and Causey will sit down and take a good hard objective look at what is going to happen to Condor and Raptor in 2002 and 2003?

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Summary of alleged issues:

Raptor

Entity was capitalized with LJM equity. That equity is at risk; however, the investment was completely offset by a cash fee paid to LJM. If the Raptor entities go bankrupt LJM is not affected, there is no commitment to contribute more equity.

The majority of the capitalization of the Raptor entities is some form of Enron N/P, restricted stock and stock rights.

Enron entered into several equity derivative transactions with the Raptor entities locking in our values for various equity investments we hold.

As disclosed, in 2000, we recognized $500 million of revenue from the equity derivatives offset by market value changes in the underlying securities.

This year, with the value of our stock declining, the underlying capitalization of the Raptor entities is declining and Credit is pushing for reserves against our MTM positions.

To avoid such a write-down or reserve in Q1 2001, we 'enhanced' the capital structure of the Raptor vehicles, committing more ENE shares.

My understanding of the Q3 problem is that we must 'enhance' the vehicles by $250 million.

I realize that we have had a lot of smart people looking at this and a lot of accountants including AA&Co. have blessed the accounting treatment. None of that will protect Enron if these transactions are ever disclosed in the bright light of day. (Please review the late 90's problems of Waste Management – where AA paid $130+ mm in litigation re: questionable accounting practices).

The overriding basic principle of accounting is that if you explain the 'accounting treatment' to a man on the street, would you influence his investing decisions? Would he sell or buy the stock based on a thorough understanding of the facts? If so, you best present it correctly and/or change the accounting.

My concern is that the footnotes don't adequately explain the transactions. If adequately explained, the investor would know that the "Entities" described in our related party footnote are thinly capitalized, the equity holders have no skin in the game, and all the value in the entities comes from the underlying value of the derivatives (unfortunately in this case, a big loss) AND Enron stock and N/P. Looking at the stock we swapped, I also don't believe any other company would have entered into the equity derivative transactions with us at the same prices or without substantial premiums from Enron. In other words, the $500 million in revenue in 2000 would have been much lower. How much lower?

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Raptor looks to be a big bet, if the underlying stocks did well, then no one would be the wiser. If Enron stock did well, the stock issuance to these entities would decline and the transactions would be less noticeable. All has gone against us. The stocks, most notably Hanover, The New Power Co., and Avici are underwater to great or lesser degrees.

I firmly believe that executive management of the company must have a clear and precise knowledge of these transactions and they must have the transactions reviewed by objective experts in the fields of securities law and accounting. I believe Ken Lay deserves the right to judge for himself what he believes the probabilities of discovery to be and the estimated damages to the company from those discoveries and decide one of two courses of action:

1. The probability of discovery is low enough and the estimated damage too great; therefore we find a way to quietly and quickly reverse, unwind, write down these positions/transactions.
2. The probability of discovery is too great, the estimated damage to the company too great; therefore, we must quantify, develop damage containment plans and disclose.

I firmly believe that the probability of discovery significantly increased with Skilling's shocking departure. Too many people are looking for a smoking gun.

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Summary of Raptor oddities:

1. The accounting treatment looks questionable.

   a. Enron booked a $500 mm gain from equity derivatives from a related party.
   b. That related party is thinly capitalized, with no party at risk except Enron.
   c. It appears Enron has supported an income statement gain by a contribution of its own shares.

   One basic question: The related party entity has lost $500 mm in its equity derivative transactions with Enron. Who bears that loss? I can't find an equity or debt holder that bears that loss. Find out who will lose this money. Who will pay for this loss at the related party entity?

   If it's Enron, from our shares, then I think we do not have a fact pattern that would look good to the SEC or investors.

2. The equity derivative transactions do not appear to be at arms length.

   a. Enron hedged New Power, Hanover, and Avici with the related party at what now appears to be the peak of the market. New Power and Avici have fallen away significantly since. The related party was unable to lay off this risk. This fact pattern is once again very negative for Enron.
   b. I don't think any other unrelated company would have entered into these transactions at these prices. What else is going on here? What was the compensation to the related party to induce it to enter into such transactions?

3. There is a veil of secrecy around LJM and Raptor. Employees question our accounting propriety consistently and constantly. This alone is cause for concern.

   a. Jeff McMahon was highly vexed over the inherent conflicts of LJM. He complained mightily to Jeff Skilling and laid out 5 steps he thought should be taken if he was to remain as Treasurer. 3 days later, Skilling offered him the CEO spot at Enron Industrial Markets and never addressed the 5 steps with him.
   b. Cliff Baxter complained mightily to Skilling and all who would listen about the inappropriateness of our transactions with LJM.
   c. I have heard one manager level employee from the principle investments group say "I know it would be devastating to all of us, but I wish we would get caught. We're such a crooked company." The principle investments group hedged a large number of their investments with Raptor. These people know and see a lot. Many similar comments are made when you ask about these deals. Employees quote our CFO as saying that he has a handshake deal with Skilling that LJM will never lose money.

4. Can the General Counsel of Enron audit the deal trail and the money trail between Enron and LJM/Raptor and its principals? Can he look at LJM? At Raptor? If the CFO says no, isn't that a problem?

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Condor and Raptor work:

1. Postpone decision on filling office of the chair, if the current decision includes CFO and/or CAO.

2. Involve Jim Derrick and Rex Rogers to hire a law firm to investigate the Condor and Raptor transactions to give Enron attorney client privilege on the work product. (Can't use V&E due to conflict – they provided some true sale opinions on some of the deals).

3. Law firm to hire one of the big 6, but not Arthur Andersen or PricewaterhouseCoopers due to their conflicts of interest: AA&Co (Enron); PWC (LJM).

4. Investigate the transactions, our accounting treatment and our future commitments to these vehicles in the form of stock, N/P, etc..
   For instance: In Q3 we have a $250 mm problem with Raptor 3 (NPW) if we don't 'enhance' the capital structure of Raptor 3 to commit more ENE shares. By the way: in Q1 we enhanced the Raptor 3 deal, committing more ENE shares to avoid a write down.

5. Develop clean up plan:

   a. Best case: Clean up quietly if possible.

   b. Worst case: Quantify, develop PR and IR campaigns, customer assurance plans (don't want to go the way of Salomon's trading shop), legal actions, severance actions, disclosure.

6. Personnel to quiz confidentially to determine if I'm all wet:
   a. Jeff McMahon
   b. Mark Koenig
   c. Rick Buy
   d. Greg Whalley

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To put the accounting treatment in perspective I offer the following:

1. We've contributed contingent Enron equity to the Raptor entities. Since it's contingent, we have the consideration given and received at zero. We do, as Causey points out, include the shares in our fully diluted computations of shares outstanding if the current economics of the deal imply that Enron will have to issue the shares in the future. This impacts 2002 – 2004 EPS projections only.

2. We lost value in several equity investments in 2000. $500 million of lost value. These were fair value investments, we wrote them down. However, we also booked gains from our price risk management transactions with Raptor, recording a corresponding PRM account receivable from the Raptor entities. That's a $500 million related party transaction – it's 20% of 2000 IBIT, 51% of NI pre tax, 33% of NI after tax.

3. Credit reviews the underlying capitalization of Raptor, reviews the contingent shares and determines whether the Raptor entities will have enough capital to pay Enron its $500 million when the equity derivatives expire.

4. The Raptor entities are technically bankrupt; the value of the contingent Enron shares equals or is just below the PRM account payable that Raptor owes Enron. Raptor's inception to date income statement is a $500 million loss.

5. Where are the equity and debt investors that lost out? LJM is whole on a cash on cash basis. Where did the $500 million in value come from? It came from Enron shares. Why haven't we booked the transaction as $500 million in a promise of shares to the Raptor entity and $500 million of value in our "Economic Interests" in these entities? Then we would have a write down of our value in the Raptor entities. We have not booked the latter, because we do not have to yet. Technically, we can wait and face the music in 2002 – 2004.

6. The related party footnote tries to explain these transactions. Don't you think that several interested companies, be they stock analysts, journalists, hedge fund managers, etc., are busy trying to discover the reason Skilling left? Don't you think their smartest people are pouring over that footnote disclosure right now? I can just hear the discussions – "It looks like they booked a $500 million gain from this related party company and I think, from all the undecipherable ½ page on Enron's contingent contributions to this related party entity, I think the related party entity is capitalized with Enron stock." ..... "No, no, no, you must have it all wrong, it can't be that, that's just too bad, too fraudulent, surely AA&Co wouldn't let them get away with that?" ..... "Go back to the drawing board, it's got to be something else. But find it!" ..... "Hey, just in case you might be right, try and find some insiders or 'redeployed' former employees to validate your theory."

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To: Michael C. Odom/@ANDERSEN WO
CC:
BCC:
Date: 10/12/2001 08:53 AM
From: Nancy A. Temple
Subject: Document retention policy
Attachments:

Mike-
It might be useful to consider reminding the engagement team of our documentation and retention policy. It will be helpful to make sure that we have complied with the policy. Let me know if you have any questions

Nancy

http://www.intranet.andersen.com/onefirm.nsf/content/ResourcesFirmwidePoliciesPolicy-ClientInformationOrganization?OpenDocument

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October 15, 2001

Privileged and Confidential:
Attorney-Client Communication
and Attorney Work Product

Mr. James V. Derrick, Jr.
Executive Vice President and General Counsel
Enron Corp.
1400 Smith Street
Houston, Texas 77002

Re: Preliminary Investigation of Allegations of an Anonymous Employee

Dear Jim:

You requested that Vinson & Elkins L.L.P. ("V&E") conduct an investigation into certain allegations initially made on an anonymous basis by an employee of Enron Corp. ("Enron"). Those allegations question the propriety of Enron's accounting treatment and public disclosures for certain deconsolidated entities known as Condor or Whitewing and certain transactions with a related party, LJM, and particularly transactions with LJM known as Raptor vehicles. The anonymous employee later identified herself as Sherron Watkins, who met with Kenneth L. Lay, Chairman and Chief Executive Officer of Enron, for approximately one hour to express her concerns and provided him with materials to supplement her initial anonymous letter. This letter constitutes our report with respect to our investigation and sets forth the scope of our review, the activities undertaken, the identification of primary concerns, and our analysis and conclusions with respect to those concerns.

1. **Scope of Undertaking**

In general, the scope of V&E's undertaking was to review the allegations raised by Ms. Watkins' anonymous letter and supplemental materials and to conduct an investigation to determine whether the facts she has raised warrant further independent legal or accounting review.

By way of background, some of the supplemental materials provided by Ms. Watkins proposed a series of steps for addressing the problems she perceived, which included retention of independent legal counsel to conduct a wide-spread investigation, and the engagement of independent auditors, apparently for the purpose of analyzing transactions in detail and opining as to the propriety of the accounting treatment employed by Enron and its auditors Arthur Andersen

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L.L.P. ("AA"). In preliminary discussions with you, it was decided that our initial approach would not involve the second guessing of the accounting advice and treatment provided by AA, that there would be no detailed analysis of each and every transaction and that there would be no full scale discovery style inquiry. Instead, the inquiry would be confined to a determination whether the anonymous letter and supplemental materials raised new factual information that would warrant a broader investigation.

2. **Activities Undertaken**

Our preliminary investigation included the review of selected documents provided to us by Enron and from our internal sources, interviews with key Enron and AA personnel and discussions with V&E attorneys who are familiar with legal issues addressed by Enron in connection with the subject transactions. The focus, of course, was to identify background information, disclosures and personal views with respect to the Condor/Whitewing and Raptor vehicles and Enron's relationship with LJM.

Documents reviewed in this process included excerpts of meetings of Enron's Board of Directors, including minutes of meetings of the Audit and Finance Committees of the Board, various public filings of Enron (annual reports, 10-K's, 10-Q's), documents relating to Enron's transactions with LJM, including Deal Approval Sheets and Investment Summaries, and various miscellaneous materials in the nature of presentations and memoranda. The focus of our document review was to determine whether the requisite approval of the transactions referenced in the anonymous letter had been obtained from Enron's Board and its committees, the nature of the disclosures made with respect to the transactions and relationships questioned by the anonymous letter and supplemental materials and to provide general background information.

Interviews were also conducted with various Enron personnel based either on their connection with the transactions involving Condor/Whitewing, LJM and Raptor, or because they were identified in materials provided by Ms. Watkins as persons who might share her concerns. Those persons interviewed were: Andrew S. Fastow, Executive Vice President and Chief Financial Officer; Richard B. Causey, Executive Vice President and Chief Accounting Officer; Richard B. Buy, Executive Vice President and Chief Risk Officer; Greg Whalley, President and Chief Operating Officer (formerly Chairman of Enron Wholesale); Jeffrey McMahon, President and Chief Executive Officer, Enron Industrial Markets (formerly Treasurer of Enron); Jordan H. Mintz, Vice President and General Counsel of Enron Global Finance; Mark E. Koenig, Executive Vice President, Investor Relations; Paula H. Rieker, Managing Director, Investor Relations; and Sherron Watkins, the author of the anonymous letter and supplemental materials.

Interviews were also conducted with David B. Duncan and Debra A. Cash, both partners with AA assigned to the Enron audit engagement.

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In addition to the foregoing formal interviews, discussions were likewise held with Rex Rogers, Vice President and Assistant General Counsel of Enron, and Ronald L. Astin of V&E regarding general background information and the identification of specific issues relating to the matters raised by the anonymous letter and supplemental materials.

After completing interviews with all of the foregoing individuals, supplemental interviews were conducted with Andrew S. Fastow and Richard B. Causey of Enron and David B. Duncan and Debra A. Cash of AA to confirm certain information learned in the overall interview process.

As we initially discussed, we limited our interviews (with the exception of the AA partners mentioned above) to individuals still employed with Enron. Therefore, we did not interview individuals no longer with Enron mentioned in the anonymous letter or supplemental materials or any third party related to LJM.

3. **Identification of Primary Concerns**

Our preliminary investigation revealed four primary areas of concern expressed by Ms. Watkins' anonymous letter and supplemental materials. Accordingly, our document review and interview process focused on those areas of concern and whether the facts raised by Ms. Watkins' anonymous letter and supplemental materials presented any new information as to those matters that may warrant further independent investigation. Those areas of primary concern are as follows:

a. the apparent conflict of interests by Mr. Fastow's ownership in LJM;

b. the accounting treatment accorded the Condor and Raptor structures in Enron's financial statements;

c. the adequacy of public disclosures of the Condor and Raptor transactions; and

d. the potential impact on Enron's financial statements as a result of the Condor/Whitewing and Raptor vehicles because of the decline in value of the merchant investments placed in those vehicles as well as the decline in the market price of Enron common stock.

Our findings and conclusions with respect to each of these areas of concern are set forth separately below.

4. **Conflict of Interest**

Mr. Fastow actually organized two separate investment partnerships. The first, LJM-Cayman L.P. ("LJM1"), was launched in June, 1999. The LJM concept appears to have been fully discussed

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with the Office of the Chairman and was presented to and approved by Enron's Board of Directors at a special meeting on June 28, 1999. That approval included the Board's waiver of Enron's code of ethics to permit Mr. Fastow to act as the general partner of LJM1. The primary purpose for the organization of LJM1 was to establish a non-Enron entity with which Enron could enter into a swap transaction to hedge its investment in Rhythms NetCommunications. It was likewise recognized that LJM might negotiate to purchase additional assets in Enron's merchant portfolio. LJM raised $16 million in outside equity, invested in a Raptor vehicle that entered into a swap for Rhythms NetCommunications and also purchased a sufficient portion of Enron's equity in the Cuiaba power plant in Brazil to allow Enron to deconsolidate that project.

The second investment partnership – LJM2 Co-Investment, L.P. ("LJM2") – was organized in October, 1999.[1] At an October 11, 1999 meeting of the Finance Committee of the Board of Directors, Enron's activities with LJM1 were reviewed and the proposal for transacting business with LJM2 was discussed and approved. The Board of Directors, at its meeting on October 12, 1999, waived Enron's code of ethics to permit Mr. Fastow to serve as general partner of LJM2 and established guidelines for Enron's transaction of business with LJM2. Those included: (i) no obligation to do transactions between Enron and LJM2; (ii) the Chief Accounting and Risk Officers would review, and where appropriate, approve transactions with LJM2; (iii) there would be an annual review by the Board's Audit Committee of completed transactions or recommendations, as appropriate; and (iv) there would be an annual review as to the application of the Company's code of ethics to assure that such transactions would not adversely affect the best interests of the Company.

The LJM2 partnership raised $349 million in equity from investors ranging from commercial and investment banks, insurance companies, public and private pension funds and high net worth individuals. LJM2 has engaged in approximately 21 separate transactions with Enron.

Pursuant to the Board's guidelines, special procedures were adopted and utilized for the transaction of business with LJM. Those procedures included the preparation of a special LJM2 Deal Approval Sheet ("DASH") that would be prepared for every Enron/LJM2 transaction generally describing the nature of the commercial transaction and the relevant economics. Approval was also required by a variety of senior level commercial, technical and commercial support professionals. DASH was supplemented by an LJM approval process checklist testing for compliance with Board directives for transactions with LJM2, including questions addressing the following:

- alternative sales options and counter-parties.

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[1] The initial LJM partnership was then referred to as "LJM1." LJM1 and LJM2 will be referred to jointly as "LJM" unless there is a particular reason to distinguish between the two investment partnerships.

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- determination that the transaction was conducted at arm's length,
- disclosure obligations, and
- review of the transaction by Enron's Office of the Chairman, Chief Accounting Officer and Chief Risk Officer.

As part of these procedures, it also appeared that several additional controls were adhered to. These included LJM senior management professionals never negotiating on behalf of Enron; Enron professionals negotiating with LJM reporting to senior Enron professionals other than Mr. Fastow; Enron Global Finance commercial, legal and accounting monitoring of compliance with procedures and controls for regular updates for Chief Accounting and Risk Officers, and internal and outside counsel regularly consulted regarding disclosure obligations and review of any such disclosures.

Based on our review of the LJM Deal Approval Sheets and accompanying checklist, it appears that the approval procedures were generally adhered to. Transactions were uniformly approved by legal, technical and commercial professionals as well as the Chief Accounting and Risk Officers. In most instances, there was no approval signature for the Office of the Chairman except for several significant transactions. It also appeared that the LJM transactions were reviewed by the Audit Committee on an annual basis. At the February 7, 2000 meeting of the Audit Committee, all LJM transactions occurring prior to that date were reviewed. A review of all the LJM transactions during the following year was made at the February 12, 2001 meetings of both the Audit and Finance Committees.

Based on our interviews with various Enron representatives, and notwithstanding the foregoing guidelines and procedures that were adopted, concerns were expressed about the awkwardness in LJM's operating within Enron and two potential conflicts of interest. The awkwardness arose from the fact that LJM's professionals – primarily individuals reporting to Mr. Fastow and Michael Koppers – were also Enron employees who officed in Enron space and worked among Enron employees. Transactions were negotiated between Enron employees acting from Enron and other Enron employees acting for LJM. Within Enron, there appeared to be an air of secrecy regarding the LJM partnerships and suspicion that those Enron employees acting for LJM were receiving special or additional compensation. Although there was a Services Agreement between Enron and LJM pursuant to which LJM compensated Enron for the services of Enron personnel and use of Enron's facilities, this fact did not quell the awkwardness of the Enron employees "wearing two hats." Much of this awkwardness should be eliminated on a going-forward basis, however, by reason of Mr. Fastow's sale of his ownership interest in LJM effective July 31, 2001 to Mr. Koppers (who resigned from Enron prior to the transaction) and the complete separation of LJM's employees and facilities from Enron.

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The first area of potential conflict of interest voiced by several individuals was the risk that undue pressure may be placed on Enron professionals who were negotiating with LJM because those individuals would ultimately have their performance evaluated for compensation purposes by Mr. Fastow in his capacity as Chief Financial Officer. In particular, Jeffrey McMahon stated that while he was Treasurer of Enron he discussed this conflict directly with Mr. Fastow and Jeffrey Skilling, and that the conflict was not resolved prior to his acceptance of a new position within Enron. Mr. McMahon stated, however, that he was aware of no transaction where Enron suffered economic harm as a result of this potential conflict.

The second potential conflict of interest identified by several individuals was that investors in LJM may have perceived that their investment was required to establish or maintain other business relationships with Enron. Although no investors in LJM were interviewed, both Mr. Fastow and Mr. McMahon stated unequivocally that they told potential investors that there was no tie-in between LJM investment and Enron business. Moreover, Mr. Fastow stated that Merrill Lynch was paid a fee for marketing LJM2 partnership interests and that a number of investors, such as private and public pension funds and high net worth individuals, had no business relationship with Enron.

In summary, none of the individuals interviewed could identify any transaction between Enron and LJM that was not reasonable from Enron's standpoint or that was contrary to Enron's best interests. Conversely, the individuals interviewed were virtually uniform in stating that LJM provided a convenient alternative equity partner with flexibility that permitted Enron to close transactions that otherwise could not have been accomplished. Moreover, both the awkwardness and potential for conflict of interest should be eliminated on a going-forward basis as a result of Mr. Fastow's divestment of his ownership interest in the LJM partnerships.

5. **Accounting Issues**

As stated at the outset, the decision was made early in our preliminary investigation not to engage an independent accounting firm to second guess the accounting advice and audit treatment provided by AA. Based on interviews with representatives of AA and Mr. Causey, all material facts of the Condor/Whitewing and Raptor vehicles, as well as other transactions involving LJM, appeared to have been disclosed to and reviewed by AA. In this regard, AA reviewed the LJM solicitation materials and partnership agreement to assure that certain safeguards were provided that would permit LJM to be a source of third party equity in transactions conducted with Enron. AA likewise reviewed specific transactions between Enron and LJM to assure that LJM had sufficient equity in the transaction to justify the accounting and audit principles being applied.

The relationship between Enron and AA was an open one and, according to Mr. Causey, Enron consults AA early and often on accounting and audit issues as they arise. AA concurs with this statement, but points out that in certain of its accounting and audit treatment, it must rely on

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Enron's statement of the business purpose for specific transactions and Enron's valuation of assets placed in the Condor/Whitewing and Raptor structures.

Enron and AA representatives both acknowledge that the accounting treatment on the Condor/Whitewing and Raptor transactions is creative and aggressive, but no one has reason to believe that it is inappropriate from a technical standpoint. In this regard, AA consulted with its senior technical experts in its Chicago office regarding the technical accounting treatment on the Condor/Whitewing and Raptor transactions, and the AA partners on the Enron account consulted with AA's senior practice committee in Houston on other aspects of the transactions. Enron may also take comfort from AA's audit opinion and report to the Audit Committee which implicitly approves the transactions involving Condor/Whitewing and Raptor structures in the context of the approval of Enron's financial statements.

Following our initial interview with AA representatives, you agreed with us that it was desirable and appropriate to provide them with Ms. Watkins' anonymous letter and supplemental materials so that AA could comment directly on specific allegations contained in those materials. AA identified two allegations in particular that, if accurate, would affect their accounting and audit treatment. Those allegations were, in effect: (i) There was a handshake deal between Mr. Skilling and Mr. Fastow that LJM would never lose money on any transaction with Enron; and (ii) LJM received a cash fee in the Raptor transactions that completely recouped its investment and profit.

Mr. Fastow adamantly denies any agreement with Mr. Skilling or anyone else that LJM would never lose money in transactions with Enron, and he recognized that such an agreement would defeat the accounting treatment that was the very objective for the formation of LJM. Mr. Causey is unaware of any such agreement and has seen no evidence of it.

Both Mr. Fastow and Mr. Causey acknowledge that LJM was to receive a cash fee for its management of the Raptor vehicles in an amount not to exceed $250,000.00 annually for each company, for a total of $1,000,000.00 for the four entities. AA was aware of Enron's payment of these fees as well as other organizational costs of the Raptor entities, but these fees fall far short of recouping LJM's investment in the Raptor entities. Both Mr. Fastow and Mr. Causey were quick to point out, however, that in each Raptor vehicle the first transaction was a "put" of Enron shares which was settled favorably to LJM prior to maturity, and as a result thereof, distributions were made to LJM in amounts equal to or greater than its initial investment in those Raptor vehicles. AA is aware of these transactions and is comfortable that, by reason of the applicable special purpose entity accounting rules, the transactions do not undermine LJM's equity investment in the Raptor vehicles.

When questioned about her basis for these two allegations in her anonymous letter and supplemental materials, Ms. Watkins acknowledged that she had no personal, first hand knowledge of either allegation. Both were based solely on rumors that she heard during the two months she was working in Enron Global Finance, and she was uncertain about any details of the alleged cash fee

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allegation. Notwithstanding the lack of any solid basis for the allegations, we think it is likely that AA will seek some kind of assurance from Enron and perhaps from Messrs. Fastow and Causey that no such agreement or cash fee payment occurred.

6. **Adequacy of Disclosures**

Notwithstanding the expression of concern in Ms. Watkins' anonymous letter and supporting materials regarding the adequacy of Enron's disclosures as to the Condor/Whitewing and Raptor vehicles (which, to a large extent, reflect her opinion), AA is comfortable with the disclosure in the footnotes to the financials describing the Condor/Whitewing and Raptor structures and other relationships and transactions with LJM. AA points out that the transactions involving Condor/Whitewing are disclosed in aggregate terms in the unconsolidated equity affiliates footnote and that the transactions with LJM, including the Raptor transactions, are disclosed in aggregate terms in the related party transactions footnote to the financials.

The concern with adequacy of disclosures is that one can always argue in hindsight that disclosures contained in proxy solicitations, management's discussion and analysis and financial footnotes could be more detailed. In this regard, it is our understanding that Enron's practice is to provide its financial statements and disclosure materials to V&E with a relatively short time frame within which to respond with comments.

7. **Potential Bad Cosmetics**

Concern was frequently expressed that the transactions involving Condor/Whitewing and Raptor could be portrayed very poorly if subjected to a Wall Street Journal exposé or class action lawsuit. Factors pointed to in support of these concerns included (i) the use of Enron stock to provide equity necessary to do transactions with Condor/Whitewing and Raptor; (ii) recognizing earnings through derivative transactions with Raptor when it could be argued that there was no true "third party" involved in those transactions; (iii) because both merchant investment value and Enron stock have fallen, the Raptor entities may not be able to satisfy their obligations to Enron, thus raising the question "Who ultimately bears this loss?"; (iv) the apparent conflict of interest issue raises questions as to the valuation of assets sold to or that were the subject of transactions with Raptor and the timing of those transactions, (generally at a point when the valuation was at a historical high point).

8. **Conclusions**

Based on the findings and conclusions set forth with respect to each of the four areas of primary concern discussed above, the facts disclosed through our preliminary investigation do not, in our judgment, warrant a further widespread investigation by independent counsel and auditors.

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Our preliminary investigation, however, leaves us with concern that, because of the bad cosmetics involving the LJM entities and Raptor transactions, coupled with the poor performance of the merchant investment assets placed in those vehicles and the decline in the value of Enron stock, there is a serious risk of adverse publicity and litigation. It also appears that because of the inquiries and issues raised by Ms. Watkins, AA will want additional assurances that Enron had no agreement with LJM that LJM would not lose money on transactions with Enron and that Enron paid no fees to LJM in excess of those previously disclosed to AA. Finally, we believe that some response should be provided to Ms. Watkins to assure her that her concerns were thoroughly reviewed, analyzed, and although found not to raise new or undisclosed information, were given serious consideration.

We have previously reported verbally to Mr. Lay and you regarding our investigation and conclusions and, at your request, have reported the same information to Robert K. Jaedicke, in his capacity of Chairman of the Audit Committee of Enron's Board of Directors. At Dr. Jaedicke's request, we gave a verbal summary of our review and conclusions to the full Audit Committee. Should you desire to discuss any aspect of this written report or any other details regarding our review of this matter, please do not hesitate to contact us at your convenience.

Very truly yours,

VINSON & ELKINS L.L.P.

By: Max Hendrick III
Max Hendrick, III

c: Joseph C. Dilg
Houston 664423 1

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Memo

ANDERSEN

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Date October 15, 2001
Subject Enron Press Release Discussions
Page 2 of 1

To The Files

Draft

From David B. Duncan
Date October 15, 2001
Subject Enron Press Release Discussions

On Friday evening, October 12, 2001, I received a draft of Enron's anticipated press release regarding third quarter 2001 results indicated Enron's intentions to record numerous charges against income for the quarter totaling approximately $1 billion on an after-tax basis. The charges were described as "non-recurring" in the draft.

Enron had sometimes used this description in past press releases. In such cases, we had always informed management that, although we understood that press releases were the Company's responsibility, we did not advise the use of "non-recurring" as a description and were concerned it could potentially be misunderstood by investors. We pointed out that such items are, more often than not, included in normal operating earnings in the GAAP financial statements. We also insisted that the Company not use such a description in public filings with which we may have some association (i.e., in 10-Q and 10-K MD&A information). Whether because of our views or otherwise, management has generally described these or similar items as "Items Impacting Comparability in such public filings".

Because of the magnitude of the anticipated third quarter 2001 charges and because they were being described as "non-recurring" in the draft release, I shared excerpts of the draft with Mike Odom, Rich Corgel and Gary Goolsby of our practice risk management group and Nancy Temple of our legal group for advice regarding this situation.

After discussion with the above individuals, on Sunday, October 14, I spoke with Rick Causey, Enron's Chief Accounting Officer, about the company's presentation approach. I told Rick that, while we recognized that press releases are solely the Company's responsibility, we had strong concerns that the presentation of the charges as non-recurring could be misconstrued or misunderstood by investors. I also informed him that we were aware of enforcement actions undertaken against companies by the SEC in cases where they believe such a presentation was materially misleading. Our advice was that the Company should consider changing the presentation or should otherwise undertake whatever procedures they might deem necessary, including the involvement of counsel, to ensure they did not consider the presentation to be misleading. Rick acknowledged my advice.

On Monday, October 15, 2001, the night before the release, I inquired of Rick what procedures may have been performed. He responded that he had raised the issue internally and that the press release had gone through "normal legal review".

The release was issued early Tuesday, October 16, 2001, with essentially the original presentation.

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Date October 15, 2001
Subject Enron Press Release Discussions
Page 3 of 1

cc: Mike Odom
Rich Corgel
Gary Goolsby
Nancy Temple

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To: David B. Duncan
CC: Michael C. Odom@ANDERSEN WO; Richard Corgel@ANDERSEN WO; Gary B. Goolsby@ANDERSEN WO
BCC:
Date: 10/16/2001 08:39 PM
From: Nancy A. Temple
Subject: Re: Press Release draft
Attachments: ATT81CIQ; 3rd qtr press release memo.doc

Dave -- Here are a few suggested comments for consideration.

-I recommend deleting reference to consultation with the legal group and deleting my name on the memo. Reference to the legal group consultation arguably is a waiver of attorney-client privileged advice and if my name is mentioned it increases the chances that I might be a witness, which I prefer to avoid.

-I suggested deleting some language that might suggest we have concluded the release is misleading.

-In light of the "non-recurring" characterization, the lack of any suggestion that this characterization is not in accordance with GAAP, and the lack of income statements in accordance with GAAP, I will consult further within the legal group as to whether we should do anything more to protect ourselves from potential Section 10A issues.

Nancy

To: Michael C. Odom@ANDERSEN WO, Richard Corgel@ANDERSEN WO, Nancy A. Temple@ANDERSEN WO, Gary B. Goolsby@ANDERSEN WO
cc:
Date: 10/16/2001 05:00 PM
From: David B. Duncan (Mailed by: Shannon D. Adlong)
Subject: Press Release draft

First draft of memo regarding press release discussion for your comments.

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To: David B. Duncan
CC: Nancy A. Temple
BCC:
Date: 10/17/2001 04:11 PM
From: Richard Corgel
Subject: Re: Press Release draft
Attachments: ATT8ICIQ; 3rd qtr press release memo.doc

I think that the memo adequately documents our position and I concur with Nancy's proposed changes. Thanks.

---------- Forwarded by Richard Corgel on 10/17/2001 04:08 PM

To: David B. Duncan
cc: Michael C. Odom/@ANDERSEN WO, Richard Corgel@ANDERSEN WO, Gary B. Goolsby@ANDERSEN WO
Date: 10/16/2001 08:39 PM
From: Nancy A. Temple, Chicago 33 W Monroe, 50 / 11234
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Memo

ANDERSEN

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Draft

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cc: Mike Odom
Rich Corgel
Gary Goolsby

23 [illegible] memo to The Files 3rd qtr press release [illegible].doc

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To: D. Stephen Goddard Jr.@ANDERSEN WO; David B. Duncan@ANDERSEN WO; John E. Stewart@ANDERSEN WO; Lawrence A. Rieger@ANDERSEN WO; Nancy A. Temple@ANDERSEN WO; John J. Geroc@ANDERSEN WO

CC: William E. Swanson@ANDERSEN WO; Michael M. Lowther@ANDERSEN WO; Michael C. Odom@ANDERSEN WO; John M. Riley@ANDERSEN WO; Debra A. Cash@ANDERSEN WO; Thomas H. Bauer@ANDERSEN WO; Amy A. Ripepi@ANDERSEN WO; Richard R. Peterson@ANDERSEN WO; Benjamin S. Neuhausen@ANDERSEN WO; Gregory J. Jonas@ANDERSEN WO; Donald Dreyfus@ANDERSEN WO; Terry E. Hatchett@ANDERSEN WO; John O. Niemann@ANDERSEN WO; C. E. Andrews@ANDERSEN WO; William B. Peard@ANDERSEN WO; Gary B. Goolsby@ANDERSEN WO

BCC:

Date: 10/23/2001 11:05 AM

From: Mina M. Trujillo

Subject: Core Consultation Team Conference Call - 10/23/01

Attachments:

Our first Core Consultation conference call will take place today October 23, 2001 at 4pm CDT. The agenda for today's call and dial-in details are presented below:

DIAL-IN#: 877-648-3690 (Domestic)
706-634-6563 (Int'l)
ID#: 461961
HOST: Rich Corgel

Agenda

Current Events

technical matters
SEC
third party actions
legal representation
other

Status of documentation

deal memoranda
technical issues
other information
response to SEC
closure of consultation loop with PSG

Expanded consultation and review

role of John Riley
role of concurring partner

Issues management by client

alternative courses of action
interaction with SEC
external communication strategy

Andersen actions

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alternatives
communication strategy with client management and Audit Committee

Year end audit matters

Next steps and assignments

For those of you on the Core Consultation team or others copied on this LN communication, if you have other topics that you feel should be addressed, please contact me. Thanks.

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To: David B. Duncan; D. Stephen Goddard Jr.; Thomas H. Bauer; Debra A. Cash; Roger D. Willard; Timothy K. McCann
CC: Caroline K. Cheng; Michelle A. Molay; Anne C. O'Loughlin
BCC:
Date: 11/10/2001 08:40 AM
From: Nancy A. Temple
Subject: Enron -- Procedures for Responding to Subpoenas and Litigation
Attachments:

Please forward this message to the Enron engagement team, which confirms the voicemail message that was forwarded to the team yesterday regarding instructions for responding to subpoenas and litigation relating to Enron
Thank you.

Nancy Temple

MEMORANDUM TO ALL U S. ENRON ENGAGEMENT PERSONNEL

This is to report to you on the status of the lawsuits that have begun to be filed relating to Enron and to provide you guidance on steps you should take to preserve documents, computer files and other information relating to Enron.

The press stories relating to Enron have led to an increasing number of lawsuits in recent days. Although the initial lawsuits that were filed did not name Andersen as a defendant, we have learned of one new lawsuit that does name Andersen and there have been press reports of a second suit. The SEC has recently opened a formal investigation relating to Enron and, as mentioned in the voicemail previously sent to you, on Thursday afternoon, we received our first communication from the SEC in the form of a subpoena for the production of documents. We have also received a second subpoena in a lawsuit in which Andersen is not a defendant.

One of the first things we must do in preparing to respond to these subpoenas and lawsuits is to take all necessary steps to preserve all of the documents and other materials that we may have relating to the claims that are being filed. To do this, we must first ensure that all documents and materials already in existence are preserved and that nothing is done to destroy or discard any of the information and materials now in your possession. The second step is to ensure that going forward any new documents or other materials that are created as part of Andersen's continuing work relating to Enron and that also related to the claims being filed in the lawsuits are also preserved. This second step may go beyond what the law requires us to do under these circumstances, but we want to take this step so that no one in the future can falsely accuse Andersen of trying to hide any information relating to these matters and so that the lawyers representing Andersen in these matters will have all of the information necessary to represent us

We are in the process of setting up a system to collect all of the documents and materials relating to the litigation and for copying an storage in one central location. We hope to create a system that causes all of you as little inconvenience as possible and that will not interfere unduly with your ongoing work on Enron-related matters. In advance of our physically collecting these materials, however, it is important that you first take steps to preserve all of them. We are therefore instructing that you take the following

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immediate steps relating to documents and other materials relating to Enron engagements:

1. Existing Documents Effective immediately, all existing Enron-related documents and materials must be preserved and nothing should be destroyed or discarded. This includes all copies and all originals of workpapers, all drafts, and all informal files, desk files, e-mails, Lotus Notes, handwritten notes, faxes, memos, forms, calendar entries, lists and so forth, whether in electronic or hard copy, and whether on the Firm's shared drive or on the hard drive of your firm-issued computer or any other location where you commonly store business information, including your home computer and any hand-held computing device. You should not, for example, delete from your computer any e-mails relating to Enron, or any computer work files relating to Enron, or any documents relating to Enron even if those documents are only in draft or preliminary form. The best thing to do is simply to preserve everything in the form that it now exists.

2. Continuing Work With respect to work in progress and new documents and materials that are created in the course of ongoing work in the future, you are not required to preserve materials on new Enron work that is not related to legal claims about Enron's prior financials and public statements. You should, however, take steps to preserve any new materials that are generated related to prior financials or public statements issues. This would include, for example, new materials that may relate to any restatements of prior period financials filed by Enron, including but not limited to related party transactions, as well as any off-balance sheet transactions involving Enron. The simplest way to do this going forward is to create a box in your office and a separate file on a computer where you can collect new materials in these categories that might not otherwise be kept, such as drafts, notes, e-mails, superseded memos, etc. We will provide a label for your box and will periodically collect materials from these boxes as our work continues.

We understand that the document preservation steps described above are a burden, but it is important that we do everything we can in these areas for the reasons explained above, and the lawyers handling these matters are available to answer any questions you may have or to help streamline the process.

Finally, it is very important that you not discuss Enron and the lawsuits with anyone, whether inside or outside of the Firm. This specifically includes any individuals at the client and former employees of Andersen. If anyone attempts to discuss any lawsuit-related matters with you, please ask the individual to call Caroline Cheng, an attorney in our legal group (312-507-4020). Nancy Temple (312-931-1234) will be the attorney primarily responsible for Enron-related litigation. Caroline Cheng (312-507-4020) and paralegals Michelle Molay (312-507-0034) and Anne O'Loughlin (312-507-8437) will be assisting her. If you have any questions, please contact one of them. Thank you for your cooperation.

contact: David Tabolt, 1 312 931 9000, david.w.tabolt@andersen.com
Patrick Dorton, 1 312 931 8695, patrick.m.dorton@andersen.com

Andersen announces preliminary Enron-related disciplinary and administrative actions

- Firm will dismiss lead audit partner; three other partners on engagement placed on leave
- Actions relate to document destruction; firm's investigation still under way
- New management planned for Houston office

CHICAGO, January 15, 2002 — Andersen today said it will dismiss the lead partner on its Enron engagement and is placing three other partners responsible for the engagement on administrative leave. The actions were taken based on preliminary facts relating to Andersen's inquiry into the disposal of documents related to the engagement.

Separately, Andersen announced that it is putting new management in charge of its Houston office. Four partners based in the Houston office have been relieved of their management responsibilities.

"We promised to be forthright and to take action where appropriate," said Joseph F. Berardino, Andersen's managing partner and chief executive officer. "This was a painful decision, but it was absolutely the right thing to do. We are prepared to take all appropriate steps necessary to maintain confidence in the integrity of our firm."

Andersen will dismiss anyone found to have improperly destroyed audit work papers. Work papers constitute the principal record of the work done and the conclusions reached on significant matters. At this time, the firm does not believe that any work papers were destroyed.

The firm also will take action against anyone found to have purposefully deleted Enron-related e-mails or destroyed Enron-related documents after having been informed that on Nov. 8, 2001 these documents were subpoenaed by the U.S. Securities and Exchange Commission. The firm is still looking into this issue. If anyone is found to have acted in this way, they will be dismissed.

However, the firm has determined that it is appropriate to take action now with respect to other conduct.

"Based on our actions today, it should be perfectly clear that Andersen will not tolerate unethical behavior, gross errors in judgment or willful violation of our policies," said Berardino.

In its review of the document disposal issue, the firm discovered activities including the deletion of thousands of e-mails and the rushed disposal of large numbers of paper documents. These activities were on such a scale and of such a nature as to remove any doubt that Andersen's policies and reasonable good judgment were violated.

Although the firm is still working to collect all the facts, it has learned that at the direction of the lead partner an expedited effort to destroy documents in Houston was undertaken. The

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effort was initiated following an urgent meeting the lead partner called on Oct. 23 to organize the expedited effort to dispose of Enron-related documents. This meeting occurred shortly after the lead partner learned that Enron had received a request for information from the SEC about its financial accounting and reporting. This effort was undertaken without any consultation with others in the firm and at a time when the engagement team should have had serious questions about their actions. Nothing in an Oct. 12 e-mail, almost two weeks earlier, or so far as we know, other conversations around that time, authorized this activity.

Most of the activity to delete e-mails and discard desk files and other documents took place in the days following that meeting. The activity appears to have ended shortly after the lead partner's assistant sent an e-mail to other secretaries on Nov. 9 — the day after Andersen received a subpoena from the SEC — telling them to "stop the shredding."

As announced last week, Andersen has successfully recovered documents from electronic backup files, and is continuing efforts to retrieve more.

Andersen's review of the disposal of documents and e-mails is continuing, and other individuals, including partners, are included in the scope of that review. The partners affected by today's actions, as well as other individuals, could face additional disciplinary or administrative action based on findings of the continuing review. A related inquiry into Andersen's actions on the Enron audit also continues.

The partners affected by today's disciplinary actions and management changes are: David B. Duncan, lead partner, dismissal action; Thomas H. Bauer, administrative leave; Debra A. Cash, administrative leave; and Roger D. Willard, administrative leave.

Houston-based partners being relieved of management responsibilities are: D. Stephen Goddard Jr., Michael M. Lowther, Gary B. Goolsby and Michael C. Odom.

About Andersen
Andersen is a global leader in professional services. It provides integrated solutions that draw on diverse and deep competencies in consulting, assurance, tax, corporate finance, and in some countries, legal services. Andersen employs 85,000 people in 84 countries. Andersen is frequently rated among the best places to work by leading publications around the world. It is also consistently ranked first in client satisfaction in independent surveys. Andersen has enjoyed uninterrupted growth since its founding in 1913. Its 2001 revenues totaled US$9.3 billion. Andersen refers to the brand identity adopted by member firms of the Andersen global client service network.

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Transcript for Jan. 20

Read the complete transcript for our Sunday, January 20, program.

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NBC News

MEET THE PRESS

Sunday, January 20, 2002

GUESTS: DONALD RUMSFELD
Secretary of Defense

JOSEPH BERARDINO
Chief Executive Officer, Arthur Andersen Co.

TERRY McAULIFFE
Chairman, Democratic National Committee

Governor MARC RACICOT, (R-Mont.)
Chairman, Republican National Committee

MODERATOR/PANELIST: Tim Russert - NBC News

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MEET THE PRESS - NBC NEWS
(202)885-4598
(Sundays: (202)885-4200)

MR. TIM RUSSERT: Our issues this Sunday: Day 106 of the military operation in Afghanistan, and the search for Osama bin Laden. And: Now, special operation forces land in the Philippine islands.

Wednesday—Thursday. I heard the president refer to you as a matinee idol. I picked up the National...

SEC'Y RUMSFELD: He likes to joke.

MR. RUSSERT: I picked up The National Review, and let me show you the cover. The Stud.

SEC'Y RUMSFELD: No, no, no, no. Come on.

MR. RUSSERT: Don Rumsfeld. America's New Pin-Up. How is your wife dealing with this?

SEC'Y RUMSFELD: Joyce is amused by the whole thing, and that is the sum total of it.

MR. RUSSERT: She gets it.

SEC'Y RUMSFELD: She gets it. She thinks it's all a passing phase, and life will go on.

MR. RUSSERT: Sixty-nine years old, and you're America's stud.

SEC'Y RUMSFELD: Come on. Get onto something serious, Russert.

MR. RUSSERT: On to Enron. Thanks for the segue. Secretary of Defense Donald Rumsfeld, thanks very much.

Coming next: Thousands lose their life savings in the collapse of Enron. Is the Arthur Andersen accounting firm partially responsible? An exclusive interview with their CEO, Joseph Berardino, is next, coming up right here on MEET THE PRESS.

(Announcements)

MR. RUSSERT: And we are back. Mr. Berardino, welcome.

Did Arthur Andersen ever discover anything illegal or improper while auditing Enron's books?

MR. JOSEPH BERARDINO: Tim, we're still investigating all of what happened at Enron. What has been reported and reported accurately is that at least in one transaction, information was not made available to us that would have influenced the accounting treatment at Enron.

MR. RUSSERT: But absent that, in real time, while auditing the books, did Arthur Andersen discover anything that was illegal or improper?

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MR. BERARDINO: We have not discovered—to my knowledge, there is nothing that we have found that was illegal. There have been restatements of the financial statements, which when we had more information, we have acknowledged in one case we did make an error in judgment, and that was corrected. And in another case, some information had been withheld that was extremely important to the decision on the accounting.

MR. RUSSERT: The difficulty Americans have in watching the collapse of Enron and thousands of people who lost their life savings and then the guys at the top cashing out for a billion dollars. And so I want to go back and go through the history a little bit. This is how the LA Times categorized it: "Memo Reveals Andersen Saw Risks at Enron; The then-head of U.S. operations for accounting firm Andersen was among those in Chicago who participated in a conference call last Feb. 5 in which Andersen executives in Houston expressed concerns about Enron Corp.'s accounting irregularities, documents show. A Feb. 6 e-mail indicates that Steve Samek and other Andersen executives in the firm's Chicago headquarters were listening in on the call involving a discussion of questionable accounting practices. During the call—the earliest discussion of Enron's financial problems disclosed to date— Andersen's partners talked about dropping Enron as a client. But no action was taken, and two months after learning of the problems, Andersen's auditors gave Enron's books a clean bill of health."

This is last February. Real concerns raised in a call, senior executives of Andersen, about the accounting practices, the business practices, of Enron. Why wasn't anything done then?

MR. BERARDINO: Well, Tim, I think it is important to go back and retrace some of the history, and that February call and meeting that's been reported is accurate in one respect. And that is, we did review the Enron accounting and the risks inherent in the business. This is part of a normal process we go through ever year in each country around the world in which we practice. We review each of our auditing clients, their accounting practices, people we've assigned to the account, and we make an affirmative decision as to whether we retain the client or not.

I think what's important, though, is that meeting be put into a little broader perspective, if you don't mind. This is a company that started, as you well know, in the transport business in energy. It grew to be a big energy company, energy trading company, and did spectacularly well. It had first-mover advantage, high margins, and then in an attempt—at one point, an excellent attempt to continue its growth, they started trading in different businesses: water, paper and pulp, broadband. And every time they did that, the stock went up and its stock went up in the heyday of the dot-coms to incredible multiples. So this meeting was taken in a context of the stock is very high, this company has evolved to essentially be a trading company and are those risk understood by the company and reported.

MR. RUSSERT: That's a broad brush of that meeting. The minutes of the meeting, in effect, were detailed in an e-mail. And let me show you the exact e-mail. It says: "Significant discussion was held regarding the related party transactions with LJM"—which is a side investment—"including the materiality of such amounts to Enron's income statement and the amount retained 'off balance sheet.' The discussion focused on Fastow's"—he's the chief financial officer—"conflicts of interest in his capacity as CFO and the LJM fund manager... We discussed whether there would be a perceived independence issue solely considering our level of fees." Acting as consultant and auditor. "...We arbitrarily discussed that it would not be unforeseeable that fees could reach a $100 million per year"—for Andersen—"amount considering the multi-disciplinary services being provided."

The investigators who looked at that went onto say this: "From our perspective, the memo made it clear that some Andersen officials were clearly aware of the risks of having Enron as a client but decided in the end the company was too much of a cash cow to cut loose."

In February, you're talking about conflicts of interest, worried about the investments of Enron. Six days later, there was an audit committee meeting of the Enron board. Did Andersen express any concerns, any reservations at that meeting?

MR. BERARDINO: I don't know exactly what occurred at that next audit committee meeting, Tim.

But what I do know is that those related party transactions with the chief financial officer had been disclosed. Those fees that people like to make a lot of—that's a lot of money. We understand that. But we're also a $10 billion organization. This client was less than a fraction of 1 percent of our fees. This was a meeting where we discussed what is now clear to everybody, that there are these issues, and we were debating and communicating among ourselves and with the clients what those issues are. It is clear...

MR. RUSSERT: But why not tell Enron? Why not tell Enron? Why not say to them, "You have a potential conflict of interest. We're worried about some of your investments. We're worried about some of the losses you're keeping off the books"?

MR. BERARDINO: I think, Tim, as the story starts getting told—and unfortunately for us, we're in the first glare of publicity—it will be clear, and some of the other disclosures this week had made it clear, that the company and its boards and their legal counsel and many others understood these issues.

MR. RUSSERT: In April, Andersen gave Enron a clean bill of health in their annual report. Then let's go forward to August, and this is critical. And I'll put it on the screen, from The New York Times:

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"According to Congressional investigators, the Enron employee, Sherron S. Watkins, called a former colleague at Andersen"—she worked at Andersen for a time—"on Aug. 20 and told him of her concerns about the energy company's accounting. ...Ms. Watkins's letter [to CEO Ken Lay] pointed to new questions about Enron's web of partnerships and raised the possibility that the company might have to reduce past earnings by $1.3 billion more than it already has. ...On the next day, Aug. 21, four Andersen officials met to discuss Ms. Watkins's concerns..."

And let me show you her concerns. This is her actual letter to Ken Lay. She said, "Dear Mr. Lay, Has Enron become a risky place to work?... ...I am incredibly nervous that we will implode in a wave of accounting scandals. ...the business world will consider the past successes as nothing but an elaborate accounting hoax." She went on, "...Is there a way our accounting guru's"—Andersen—"can unwind these deals now? ...it's a bit like robbing the bank in one year and trying to pay back it back 2 years later. Nice try, but investors were hurt ...We are under too much scrutiny and there are probably one or two disgruntled 'redeployed' employees who know enough about the 'funny' accounting to get us in trouble."

This is August. Andersen met the next day, and what did you do about it?

MR. BERARDINO: Well, we obviously knew many of these issues. We'd been involved with the company as these various investments were made. What we did, and what we are required to do, is whenever there is a so-called "whistle-blower letter" like this, we bring it to the company to make sure they understand, they investigate it. And there were some legal issues being raised, some economic issues being raised, and some accounting issues being raised. An important point here is people want to focus on the accounting, and I think that's fair game. But a company has failed, and it's failed because the economics didn't work.

MR. RUSSERT: But you went to Andersen and raised these concerns?

MR. BERARDINO: We went to Enron, yes.

MR. RUSSERT: Enron. And raised these concerns. Did you, at this time, retain legal counsel, concerning—concerned that Andersen may be involved in potential litigation?

MR. BERARDINO: Not to my knowledge, no.

MR. RUSSERT: At that point you did not?

MR. BERARDINO: No

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CEO and others were saying, "Everything's fine. Our company's never been stronger." Privately, they're dumping their own stock and getting money. Small guys are locked down. Andersen knows there's trouble, and you said nothing.

MR. BERARDINO: Tim, our obligation is to report to the shareholders. We report to the shareholders through their elected representatives, the board of directors and their audit committee.

MR. RUSSERT: And you issued warnings to Enron about their accounting practices, about their business practices in August?

MR. BERARDINO: Tim, I think an extremely important point here is that this is a company whose business model failed. Accounting reflects the results of business activities. And the ways these events were being accounted for were clear to management and to the board; obviously, in less detail to the board. But at its base, this is an economic failure. And what had happened is this company's stock had spiked up very high. In late 2000, it was selling at over 40 times earnings. And then as people were watching and waiting for the returns from these investments, the stock was sliding all year in 2001, and it lost about 80 percent or 90 percent of its value before any of these accounting issues came to light of day.

MR. RUSSERT: But the concern is that Andersen was acting both as an auditor and as a consultant, something that the SEC tried to stop a year ago, and you spent millions of dollars in lobbying fees trying to resist, and you're conflicted. Because if you are auditing and you want to wave a flag saying, "This just doesn't add up. You are overstating profits," your consulting fees may vanish.

MR. BERARDINO: Tim, as I mentioned earlier, as big as Enron was, it was a fraction of our fees.

The work we had done for Enron, under any scenario, were appropriate, were disclosed to the board and to the shareholders who, at the end of the day, need to know what our relationships are.

MR. RUSSERT: Here's the problem. There was a discussion with Ken Lay with his employees. And let me put it on the screen. It was an e-mail discussion: "Mr. Lay, Enron has been aggressive in the use of SPV's [special financing vehicle] collateralizing cash flows for the sake of present earnings. I couldn't help but notice our auditor, Arthur Andersen of Houston, recently admitted guilt and paid the largest fine ever for criminal falsifications related to SPV's on behalf of another large Houston corporation."

Ken Lay: "...In many cases, not only has the local Arthur Andersen office approved these vehicles, but they have also been approved at Arthur Andersen's headquarter office from some of the world's leading

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MR. BERARDINO: Our team consults with experts on the accounting for these special purposenities.

One of the great misunderstandings on these special purposenities—everyone wants to talks about the off- balance-sheet liabilities, but those liabilities also were covered by off-balance-sheet assets, and the key here is that those assets lost value very quickly.

MR. RUSSERT: But you keep saying it's the failure of an economic model, and what Mr. Ken Lay is telling his employees and his shareholders is that Arthur Andersen blessed that economic model.

MR. BERARDINO: Arthur Andersen blessed the accounting for the transactions. We don't bless the economic viability of a company. It's the result of management's decisions that determines whether a company succeeds or it doesn't.

MR. RUSSERT: The shredding of documents. October 12, Nancy Temple, a lawyer for your company, issued this e-mail, which was forwarded to David Duncan, the chief auditor on Enron: "It might be useful to consider reminding the engagement team of our documentation and retention policy. It will be helpful to make sure that we have complied with the policy." That policy is save what is important; destroy everything else—save the essential documents. Mr. Duncan, your auditor, said he'd never gotten anything like that in all his history of working for Andersen.

And then came this, October 22, in an Enron press release saying: "Guess what, world? The SEC is looking into us and please 'provide information regarding certain related party transactions.'" The next day, your company, Mr. Duncan, your auditor, had an emergency meeting and said, "Start shredding documents," when the whole world knew the FCC was looking into Enron.

October 31, Enron again announced, "FCC had now launched a formal investigation" and the shredding continued. It wasn't until November 10 that your company told Enron and told Andersen, in effect, were under subpoena, stop shredding. Why wouldn't have you, as soon as you heard there was an informal inquiry into Enron, notify your employees, "Hold on, this is serious. Save all information. Don't destroy anything"?

MR. BERARDINO: Tim, our policies state exactly that. And frankly, we're very concerned about those activities, and with days of my learning about this, we took extremely firm action to reflect the values of this organization regarding materials.

MR. RUSSERT: Why didn't Nancy Temple on October 12 say, "Remember our policy. Shred documents"?

MR. BERARDINO: Policy is not to shred documents, not to eliminate documents if you have a reasonable basis to anticipate an investigation.

MR. RUSSERT: But why did she remind people of the policy to do away with some documents?

MR. BERARDINO: Because accountants are pack rats, Tim. We save lots of stuff that's not relevant.

MR. RUSSERT: But why that time? No one else had gotten an e-mail like that. Why suddenly October 12 when Enron was in big trouble and everyone knew it, including you and your company?

MR. BERARDINO: As I understand it, we're in the process of putting our files together to make sure that all of the third-quarter events were properly documented in our work paper and, you know, Nancy just told people to use their judgment. She did not instruct them to do anything, to my knowledge. And as I said, as soon as I became aware of this, we took extremely firm action.

MR. RUSSERT: Why was Mr. Duncan fired?

MR. BERARDINO: At the least in our opinion, he displayed extremely poor judgment in the destruction of documents' issue.

MR. RUSSERT: This headline in The New York Times: "Enron Avoided Income Taxes In 4 of 5 Years. Enron paid no income taxes in four of the last five years, using almost 900 subsidiaries in tax- haven countries and other techniques, an analysis of its financial reports to shareholders shows. It was also eligible for $382 million in tax refunds. Pretax profits in 2000 were $618 million. Did Arthur Andersen approve, sanction, those tax forms?

MR. BERARDINO: We audit the financial statements. We give tax advice from time to time. Beyond that, Tim, I can't state...

MR. RUSSERT: But you knew there accounting problems. You knew there were losses were being taken or perhaps profits being shown. You knew, in effect, there were cooked books back in February, August. The paper trail's very, very clear, and yet you're sanctioning tax returns, which would give Arthur Andersen a refund?

MR. BERARDINO: Tim, we don't audit the company's tax returns, and those books were not cooked in February or in August. There were questions about the viability of some of the assets, and those were reflected in the accounts when the facts became known.

MR. RUSSERT: Knowing what you do now, do you think the books

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MR. BERARDINO: I think the issue here, Tim, is that you had a company that increased its value substantially very quickly as a result of their announcements of getting into these new businesses. Some of those businesses failed, and they failed very quickly. It is almost a parable of the dot-com. It went up very high and came down very fast. The key question that I'm still trying to come to grips with—and I think others are—is: When did those investments start going bad, and to what extent did management know it and to what extent were those disclosed?

MR. RUSSERT: And when did Arthur Andersen know it?

MR. BERARDINO: Yes.

MR. RUSSERT: This was in The New York Times: "[Berardino] often found himself defending the company's errors, especially in its work for Sunbeam and Waste Management. Regarding Sunbeam, which grossly overstated its profits, Andersen agreed to pay $110 million to settle shareholder suits...After another Andersen client, Waste Management, overstated income by more than $1 billion, Anderson agreed to pay part of a $220 million class-action settlement and a $7 million civil penalty..."

Sunbeam, Waste Management, Enron—three strikes. Is Arthur Andersen finished?

MR. BERARDINO: Tim, I don't think we're finished at all. We are meeting with our clients every day.

They're asking us many of the same questions you've asked me. I think those are fair questions. And I think it's important we get to the bottom of it. What our clients are doing now is they're saying, "We see your people out here every day." We have 85,000 people in 84 countries. They see people who are tough, who give good advice, who are not conflicted in the slightest way. And they are looking at how we're responding to this crisis. And we're responding with the utmost of clarity, transparency, reporting voluntarily to Congress, taking firm action in this document issue, bringing in Senator Danforth to help us look into this issue and give us the best policy. Our clients know what we really stand for, and our clients are standing by us because we do great work.

MR. RUSSERT: Will you testify under oath before Congress this week?

MR. BERARDINO: I will testify whenever that's appropriate. I've already been to Congress once. I'm sure I'll be back again. It is extremely important to us that the facts come out. We've had boxloads of material all over Capitol Hill for weeks. We've made our experts available. We will be available and be helpful in any way we can.

focus strictly on auditing, so there is no conflict?

MR. BERARDINO: Tim, I think at a time like this—there is a crisis. There's a crisis in my profession.

But I think there's a crisis in terms of our whole capital markets reporting model. And I think the sign of a great organization, great country, however you want to look at this issue, is to learn. And the way you learn is you're brutally honest with yourself. And we are going to be brutally honest at our organization. I issued a letter, an open letter to our public last week, saying that we are going to come out with some changes to our organization.

MR. RUSSERT: But will you get out of consulting and focus strictly on auditing, so there is no conflict when you're dealing with a company?

MR. BERARDINO: We are looking at that issue and many others, and you'll see what we decide very soon.

MR. RUSSERT: Joseph Berardino, we thank you for joining us under this difficult circumstance.

Thanks very much.

MR. BERARDINO: Well, we appreciate the opportunity to be here.

MR. RUSSERT: Next up: The Bush tax cut and the political fallout from Enron. Democratic Party Chairman Terry McAuliffe. Republican Party Chairman Marc Racicot, both coming up next in their first joint appearance.

(Announcements)

MR. RUSSERT: Republicans and Democrats have very different philosophies and views. The party chairmen square off after this station break.

(Announcements)

MR. RUSSERT: And we're back. Chairman Racicot, Chairman McAuliffe, welcome both.

GOV. MARC RACICOT, (R-MT): Thank you.

MR. TERRY McAULIFFE: Great to be with you.

MR. RUSSERT: Mr. McAuliffe, Enron, people lost their life savings. Many politicians who received contributions from Enron have given them back. Will the Democratic National Committee return all contributions that Enron gave your party, give them to the employee fund for those people who lost their life savings?

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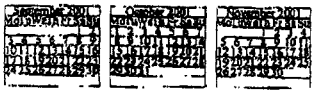

October 22 - October 28, 2001

	Monday 22	Tuesday 23	Wednesday 24	Thursday 25	Friday 26	Saturday 27	Sunday 28
7 30							
8 30						08:00 AM - 09:00 AM 2nd Iowa State	
9 30							
10 30							
11 30	11:30 AM - 06:30 PM Lunch w/Kirk and rest all afternoon	11:30 AM - 01:00 PM Lunch w/Ex vc, Tom		11:00 AM - 12:00 PM Wessex conf. call - JR Suh, Lowther, Odom,			
12 30				12:00 PM - 01:00 PM Lunch w/Deb and John Riley			
1 30		01:30 PM - 02:30 PM Manager meeting 3AC 37C1					
2 30			02:00 PM - 03:00 PM . EOP Fuels mtg w/ Dave, Roger and Tom (dave's)				
3 30		03:00 PM - 04:00 PM Weekly Cassini update meeting w/Tom		03:00 PM - 04:00 PM (Didn't go) Bob Butz/Jeff Sommers - re:			
4 30		04:00 PM - 06:00 PM Raptor conf. call - info to carve fr net Corgal		04:00 PM - 05:00 PM Conf. call (per Dave)			
5 30							
6 30							

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10/23/01 Enron 4 BM.

Riley,

DBB - No activity letter.

Retained. VtE as primary

Ron Astin SEC

Charles Schwartz Litig

Bill McLucas, Wilmer, Cutler & Pickering Former Hd of Enforcement

To Houston on Thurs.

Compln of derivative suits. At least 1 CA Rec.

PA trying to gather all docs re transactions from around the world.

Trying to finish memos.

PRIVILEGED/REDACTED

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ARTHUR ANDERSEN
February 1, 2000

AABU POLICY STATEMENT
NO. 760
Supersedes AW OMs 68, 87, 101 and 123; ABA Bulletin 95-09 and Tax Bulletin 95-94

TO: EACH ARTHUR ANDERSEN PARTNER, PRINCIPAL AND MANAGER

SUBJECT: CLIENT ENGAGEMENT INFORMATION - ORGANIZATION, RETENTION AND DESTRUCTION

1.0 BACKGROUND AND PURPOSE

1.1 The confidentiality and proper management of client engagement information is critical to the Arthur Andersen Business Unit (AA BU). This Policy Statement describes our policies with regard to protecting the confidentiality of client information through its creation, active use to support or defend our work, and destruction.

1.2 The policies described in this memo relate to hard copy and electronic documents and files and client information used or produced by AABU personnel in providing arranged services to clients. While the specific guidelines employed by service lines may vary based on the technologies employed, all current and future service lines should adhere to the guiding principles and policies described herein. It is the responsibility of each service line and Service Category to create and maintain policies and procedures consistent with this Policy Statement.

1.3 Certain Service Categories and service lines may wish to adopt different retention guidelines based on local regulations, customs and practices, confidentiality agreements or other privileged protections and arrangements. If different guidelines are appropriate, it is the responsibility of the heads of these groups to obtain approval from the Managing Partner - Global Risk Management and communicate these different guidelines as appropriate.

1.4 More specific guidance can be obtained from other documents published or utilized by the AA BU relating to the use and confidentiality of client information such as the Personnel Reference Binder, Ethical Standards/Independence, Audit Objectives and Procedures and Service Category/Line Policies and Procedures.

2.0 EXECUTIVE SUMMARY

This Statement establishes critically important policies that enable us to protect confidential client information, retain it as needed to support or defend our work, and eliminate or destroy it when it is no longer needed. The following summarizes the significant policies expressed herein; however, it is necessary to read the entire Policy Statement for a complete understanding.

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1. Material pertaining to each engagement will be contained in one central file (hard copy and/or electronic).(Section 3.1)
2. This central file will not include any personal or gratuitous information. (Section 3.1)
3. Engagement information is the property of the AA BU and will not be copied or electronically transferred to personal files of any AA personnel. (Section 3.10)
4. The legal and professional requirements in each country will determine the type of material, and the retention period required for engagement files. These requirements may vary by service line. In the U.S., such files will be generally retained for six years (see Exhibit A). (Section 4.4)
5. Only final documents will be retained; drafts and preliminary versions of information will be destroyed currently. (Section 3.5)
6. Engagement material not to be retained permanently (see Exhibit A) will be destroyed after the required retention period, subject to the approval of the engagement partner or division head. (Section 4.5)
7. Deletion of information from electronic files will be accomplished in such a way that precludes the possibility of subsequent retrieval by AA personnel or third parties. (Section 4.6)
8. Voice messages recorded in Octel or other voicemail systems must be deleted monthly or sooner. (Section 4.1.2(d))
9. In cases of threatened litigation, no related information will be destroyed. (Section 3.5.4)
10. Each country, office and service line should review their documentation, retention and destruction policies, assess where they are, develop a plan for getting into compliance with the principles of this Policy Statement, and monitor compliance on an ongoing basis. (Section 3.8)

3.0 GUIDING PRINCIPLES

3.1 One Central Engagement File

3.1.1 Only one central file (electronic, hard-copy or combination) will be maintained for the storage of engagement and related documents. This central file will contain all information related to the engagement.

3.1.2 Multiple copies of engagement documents should not exist. Each person needing access to engagement documents should follow a process to obtain documents from the central file. The central file should contain only that information which is relevant to supporting our work. It should not contain gratuitous comments or personal information.

3.1.3 At the end of the engagement, all electronic documents in all locations should be reviewed and any of continuing significance should be included in the central file area. All other documents stored in any other location should be deleted. The central file area should then be moved to a permanent storage area such as a CD and then deleted. This permanent media should be stored with the hardcopy workpapers.

3.2 Compliance with Country and Governmental Regulatory Requirements

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All our document retention and destruction practices should adhere to the applicable country, legal, professional and regulatory requirements. Should any of the policies in this statement violate such requirements, we should adhere to the applicable country legal requirements, and advise the Managing Partner - Global Risk Management of the departure from this policy.

3.3 Standard Classification and Indexing System

While no specific system is mandated, a well-designed system should use the same organization structure for both hard copy and electronic documents to facilitate retrieval and easy application of the retention/destruction policy.

3.4 Retain Only Essential Information

3.4.1 Information gathered or considered in connection with performing client engagements should be evaluated by the engagement partner and manager, and only essential information to support our conclusions should be retained.

3.4.2 Management of each service line should develop and publish documentation standards indicating the types of information that should be retained.

3.4.3 It is the engagement partner's responsibility to assure compliance with these standards.

3.5 Timely Document Destruction

3.5.1 Engagement documents (in whatever form -- paper, electronic, voice) must be destroyed in accordance with the destruction guidelines set forth in Exhibit A.

3.5.2 The "central file" objective is crucial to accomplishing this objective, and to having confidence that it has been accomplished.

3.5.3 Information having relevance to our opinion or findings should be part of the central client engagement files. Drafts and preliminary versions of memos and reports, superseded workpapers, backup diskettes, and other types of information not in the central client engagement files should be destroyed when they are no longer useful to the engagement and no later than when the engagement is completed. Draft versions of documents should be discarded or deleted at the time the final document is completed. Individuals who create these drafts are responsible for destroying them. Exceptions to this may exist in situations where the pre-final versions are the working papers (the source documents for supporting our work) in which case they should be retained.

3.5.4 Engagement personnel may want to advise clients of our destruction policy in order to eliminate their reliance on our files for prior year information.

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3.6 Appropriate Discarding of Confidential Information

3.6.1 Each office should have appropriate procedures for handling wastepaper that ensure that wastepapers are securely handled after they leave the office and that confidential papers are burned, shredded or otherwise safely and completely destroyed.

3.6.2 For electronic files, appropriate techniques (such as "absolute delete") should be used to make sure the data cannot be reconstructed from the storage mechanism on which it resided.

3.7 Generic Form

Copies (or portions) of engagement-related documents that AA saves for research, template, risk management, training, best practices or other similar purposes must be saved in a generic manner – e.g., client names changed to fictional names ("ABC Corp"). This is to avoid inadvertently disclosing client information.

3.8 Compliance

3.8.1 Global Risk Management will be responsible for assuring compliance of each Service Category with this Statement. This may be accomplished through the practice review program, internal audit or other appropriate means.

3.8.2 Each country, office and service line should review their documentation, retention and distribution policies, assess where they are, develop a plan for getting into compliance with the principles of this Policy Statement, and monitor compliance going forward.

3.9 Local Procedures

The Director - Administration for each office is responsible for the implementation of a comprehensive file management program that includes systematically controlling files during their lifetime. This means proactively managing records a) at creation, b) during the active use and c) during destruction or movement to offsite retention facilities. This Statement generally refers to the "office" as the implementor of those policies; in some geographical areas, a country or a group of offices may be the responsible entity.

3.10 Personal Use of Client Information

It is a violation of AA BU policy for personnel to use or access client engagement materials, with no substantial business purpose. Engagement information is the property of Arthur Andersen, and will not be moved, copied or electronically transferred to personal files.

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4.0 PROCEDURES

This section contains the following information and guidelines:

4.1 Indexing Workpapers, Reports and Electronic Information
4.2 Storage of Working Papers, Reports and Electronic Information
4.3 Highly Sensitive Information
4.4 Retention Guidelines
4.5 Destruction Guidelines
4.6 Suggestions for Deleting Electronic Data
4.7 Delay of Destruction

4.1 Indexing Workpapers, Reports and Electronic Information

4.1.1 Hard copy working papers and reports should be indexed by the Files Department of each office as they are received. The Files Department (Files) will assign an index code to each file.

(a) An index code is composed of two parts - the Firm client code (see Firmwide Client List), and a file number. The file number should consist, at a minimum, of the two digits of the year (e.g., 98 for 1998), plus a number serially assigned to each file received for that year. It may be useful to assign additional code letters or numbers as a prefix or suffix to the file number to further distinguish the contents of the file (i.e., report, working papers, etc.), and/or the practice to which the file pertains. For instance, the first tax file received for 1998 tax work for XYZ Company, Inc., might be indexed XYZ123-TR981. This could indicate a 1998 tax return ("TR") file.

Once an office adopts a numbering system, it should be applied to all new files to establish uniform indexing.

(b) Where there is more than one file on an individual engagement, the partner, manager or senior may want the files indexed in a particular sequence which will be convenient for future reference. To do this, all workpapers for that engagement should be sent to the File Department at the same time, accompanied by a listing of the files in the order in which file numbers are to be assigned to them. If the individual sending papers to the Files Department wishes to index them in advance, he or she may request that the Files Department reserve numbers for that purpose.

(c) Working papers and reports of associated entities are filed under their unique client code.

4.1.2 Electronic data should be indexed and stored as described below, or stored on appropriate storage media and included with the hard copy workpapers. The file covers on the hard copy files should indicate the location of any related electronic information.

(a) <u>Information Retained on the Network</u>

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Information retained on the network should be filed by client.

All client files stored on a networked file server should be stored in a manner as follows:
]:\division\client\year\filetype\documents

If the network is accessible by multiple parties, the data should be stored in a manner as follows:
]:\division\ptr\mgr\client\year\filetype\documents

This standard format will facilitate locating documents and will ease identifying documents ready to be destro, nd within the defined timeframe. It will also reduce the risk uplicate copies or multiple versions that are accidentally retain

Documents can be password protected, if appropriate, to help safeguard the information. In exceptional cases, data can be stored offline on disks or CDs to prevent access from unauthorized individuals.

(b) Information Retained on PC Hard Drives

All client files stored on PC hard drives should be indexed as follows: c:\data\client\year\filetype\documents

This information should be eliminated when it is no longer useful. At that time, the appropriate engagement documents should be stored on the network or on appropriate storage media filed with the hard copy workpapers.

(c) Information Retained on Engagement Site LANs

See Chapter 1, Section 2 of Audit Objectives and Procedures (AOP) for ABA policies regarding information on ELAN.

(d) Information Retained on Voicemail

Any supporting documentation on voicemail should be converted to electronic or hardcopy memo and filed with the engagement documents. Accordingly, voicemails should not be retained for longer than 30 days.

(e) Complete Files Retained Together

All engagement items should be placed in the hard copy file at the time the file is submitted to the Files Department for storage. The hard copy file should be complete, including any electronic files. Only final versions of data should be stored in the file. Printed copies can substitute for electronic copies and e-mail.

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4.2 Storage of Working Papers, Reports and Electronic Information

4.2.1 The following policies apply to the storage of working papers:

(a) Current files should be stored in the office before transfer to storage; older files may be placed in storage outside the office in space provided by the office building or in a public or rented warehouse. Local offices candetermine the number of years to retain on site.

(b) Reasonable protection against fire and other hazards should be provided in storage areas by the use of metal doors, fire-retardant walls, or other devices.

(c) Appropriate listing and indexing of such files should be maintained to facilitate access to them when required.

(d) Once approved for filing by the engagement partner or manager, sign-out procedures should be established to control the access and location of such files.

(e) Appropriate procedures should be established to prevent unauthorized access to working papers in client locations, our office or in public storage. Such papers contain confidential information, and the integrity of that information must be maintained. Accordingly, client information should not be left overnight on desks, floors, etc.

(f) In-office storage areas should be securely locked after hours. Public or rented warehouse space should not be available to persons other than AA personnel or authorized warehouse employees as necessary to file or retrieve files.

4.2.2 Methods of storing network backup, archive and other related tape, are covered fully in the AA Admin Binder, and should be referred to when developing destruction procedures for each location.

4.2.3 The following procedures ordinarily should be followed for the storage of electronic CDs or diskettes:

(a) CDs or diskettes will be used only for a specific client. Storing of multiple client datafiles on the same CDs or diskettes should be avoided.

(b) CDs or diskettes should be stored in our hard copy working paper files. For 8½ x 14 inch and other sized working paper files, a cardboard/vinyl diskette storage board should be used. For 8½ X11 inch and other sized binders, vinyl -holder inserts should be used. These supply items can be obtained through Central Purchasing.

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(c) Each CD or diskette and any separate working paper files of printouts, etc., should be labeled with:
Client Name and Client Code
Fiscal Year-End or Period of Project
Project Name
Date of Last Update

(d) When backup copies of the CDs or diskettes and related documentation are deemed necessary, they should be stored offsite. If this is not practical, the backup copies should be kept in a separate protective cabinet outside of the General and/or Division file departments. These backup copies should also be controlled and indexed.

4.2.4 The engagement partner is responsible for assuring that all unnecessary information is destroyed before storage of client files (hard-copy and electronic).

4.3 Highly Sensitive Information

Because all client information within our organization is considered confidential, attempts to classify such information by degree of confidentiality or to provide differing protective procedures generally are to be avoided. However, where unusually sensitive information is involved or when a client specifically requests that we exercise extra precaution with respect to the confidentiality of certain information, or where the files are subject to attorney-client or accountant-client privilege, the procedures detailed below apply:

(1) In most cases, the material in question should be placed in the regular files under seal and should be labeled indicating the restrictions on opening it.

(2) In rare and extreme cases (such as investigations of officers of companies, or in cases involving public personalities), the information relating to such investigations may be highly restricted so that only approved access to such information is permitted. In these situations, the AA BU "Secretary Files" can be used to restrict access to such data. Counterparts to the AA BU Secretary Files are maintained in each office under the direction of the Office Managing Partner (OMP) so these files do not leave the individual office.

(3) When the AA BU Secretary Files are used for this purpose, the restricted information should be indexed "AA BU Secretary File C-8" for client files.

(4) When information or a file is deposited in the AA BU Secretary Files under such circumstances, the file should carry a label indicating:

(a) the name of the entity;

(b) a general description of the information;

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(c) the names of partners and managers having knowledge of the material; and

(d) to whom and under whose direction such information can be disclosed.

(5) When highly sensitive information (as described above) is deposited in the AA BU Secretary Files of an office, a file front (in the case of working papers) or a report cover (in the case of a report) must be filed and indexed in our regular files without any contents except reference to the AA BU Secretary File. In most cases, the only document appearing in the regular files will be a copy of the letter to the AA BU Secretary Files. In this way, our regular files will include a record of all papers and reports while at the same time providing methods by which access to their contents may be completely restricted.

(6) In the case of files subject to the attorney-client or accountant-client privilege, Service Category specific procedures may apply.

The confidentiality of information entrusted to us should be conscientiously protected in all phases of our professional activities.

4.4 Retention Guidelines

4.4.1 When working papers are no longer needed to support or defend our work, they should be destroyed. As a general rule, all working papers should be retained for six years and then destroyed. This period is predicated upon legal statutes of limitations in the United States.

4.4.2 File retention requirements in the Service Categories and service logs are summarized on Exhibit A. The retention periods apply to both electronic and hardcopy information. Exhibit E contains policy suggestions for Electronic Data Retention. Each country management should determine if these exhibits should be revised for their practices. If different practices are appropriate, the Global Risk Management Group should be advised.

4.4.3 All client-related files, such as those containing correspondence, or other records and documents, should be retained until not useful. Material contained in client folders or other files maintained by individual partners and managers should be purged, and out-of-date papers and information should be destroyed in accordance with the procedures established in this Statement. However, no client-related materials in any files should be retained more than six years unless the related working papers prepared in connection with a professional engagement for a particular client are also required to be retained. See 3.4.6 for exceptions for certain tax related matters.

4.4.4 Assurance and Business Advisory (ABA)

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Generally, the purpose of preparing and retaining ABA working papers is to provide documentation and evidence in support of a professional report. They should not be retained beyond the period of their usefulness for this function as set forth in Exhibit A. Historical information about a client's accounts and financial statements should be available from client records, and our working papers are not a proper permanent source of such data.

4.4.5 Tax, Legal and Business Advisory (TLBA)

Our Tax and Business Advisory (TBA) work involves much more than preparation and review of income tax returns. Accordingly, we impose on our TBA services the same standards of practice that we prescribe for income tax return engagements, except where those standards clearly have no application.

Tax working papers provide a medium to accumulate reference material necessary to provide documentation in support of tax work products such as tax returns, tax opinions, refund claims, protests, etc. They also provide support for decisions made regarding matters affecting a client's tax posture. Such working papers should not be retained beyond the period of their usefulness for these functions as set forth in Exhibit A. Historical information regarding such matters should be available from client records, and tax working papers are not a proper permanent source of such data. Positions taken and elections made on tax matters are evident from copies of the relevant tax work products themselves.

See Section 5 of "Tax and Business Advisory Services Policies and Standards - Worldwide for additional policies related to tax files and working papers and file contents.

Working papers, documents and files related to the Legal Practice will be retained according to the regulation, customs and practices of the legal profession in each country. Accordingly, the Country Tax and Legal Partner should prepare a country supplement outlining the policies to be followed. In this connection, it should be noted that many law firms retain client information until termination of their relationships and, in other cases, may destroy information shortly after completion of an assignment. See Legal Practice Worldwide Bulletin - 97.04 for general standards of documentation.

4.4.6 Business Consulting and Global Corporate Finance (BC and GCF)

The major purpose of retaining BC and GCF working paper files is to provide documentation to support a recommendation made or conclusion reached on a particular engagement. Such papers should not be retained beyond the period of their usefulness for this function, as set forth in Exhibit A. Other material (e.g., copies of source documents, reports, and organization charts) should be left with the client or destroyed at the conclusion of the engagement unless they are a necessary part of that support.

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4.4.7 Other Service Lines

Special considerations may apply to certain service lines and retention periods in certain lines may be requested by the client (particularly law firms) or the courts, in which cases the Global Risk Management Group should be advised.

4.5 Destruction Guidelines

4.5.1 The destruction of all working papers and electronic data must be accomplished in such a way as to prevent the data from falling into unauthorized hands and to prevent any possibility of reconstruction from partially destroyed files.

4.5.2 The procedures outlined below are to be followed with respect to the destruction of hardcopy working paper files. Cremation, shredding, mulching or pulping procedures are preferable. Where available, commercial facilities that are bonded and that provide proof of destruction should be used for destruction of records:

(a) Once each year, the Director - Administration in each office will initiate a comprehensive file listing, organized by service line, to be used with respect to ABA, TLBA, BC and GCF working papers which are anticipated to be destroyed under the normal retention policies set forth above.

(b) The Office Managing Partner or area Service Category Head is to issue a working paper file destruction memorandum (see Exhibit B) each year reemphasizing the BU retention polices and requesting each partner in the office to identify within 30 days any files among those anticipated to be destroyed which should be retained. These exceptions must be approved by an area Service Category Head and be supported by sound reasons. The memorandum will advise each partner as to where the comprehensive listing discussed in the preceding paragraph is available and reemphasize the relevant criteria discussed earlier in this Statement. As deemed necessary by the Managing Partner - Office (or Service Category Head), this circulation may include the partners transferred to other offices in recent years or engagement partners from referring offices.

(c) The Managing Partner - Office (or Service Category Head) is to determine the most practical means to make the comprehensive file listing available for partner review and to assure materials (if any) required to be retained under the policy guidelines set forth above are identified.

(d) Each partner is responsible for identifying materials to be retained (if any), and for responding to the working paper file destruction memorandum in writing (see Exhibit B), listing the files (if any) which should be retained, and the reason retention is appropriate.

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(e) The Director - Administration will make arrangements for destruction of all materials not specifically identified for retention based on a review and compilation of all the partner responses and will coordinate any required follow-up procedures necessary to be certain all partners have responded.

(f) A responsible individual should check the files to be destroyed against the approved list, control the destruction process and prepare a summary of disposition of files (see Exhibit C) which is to be retained permanently in the office.

4.5.3 The primary purposes for retaining electronic information on diskettes or networks are to support conclusions, to provide a backup to the copy left with the client or for use in creating subsequent year working papers, carryforward balances, etc. This information should not be retained beyond the period of its usefulness for these functions, as set forth above.

Electronic information should be retained for the same reasons and periods, and destroyed at the same time and in the same manner as hard copy working papers. Electronic data can exist in a number of different locations such as on local area networks, Lotus Notes, servers, ELANs, Zip drives, PCs, archive tapes, backup tapes and diskettes. Destruction procedures need to be considered for all such media within your local office, and the Director - Administration should make sure all necessary destruction takes place. While the procedures necessary will need to change periodically, paragraph 3.6 suggests steps to make sure this happens.

The Director of Technology serving each office is responsible for developing procedures for destroying appropriate electronic data. Exhibit E shows the majority of current possible locations, along with suggestions for destruction techniques.

4.5.4 In the event the AA BU is advised of litigation or subpoenas regarding a particular engagement, the related information should not be destroyed. See Policy Statement No. 780 - Notification of Litigation.

4.6 Suggestions for Deleting Electronic Data

4.6.1 Establish a routine for "wiping clean" or destroying all tapes, disks and other media on which records reside that are not meant to be retained for future access – such that the data is not retrievable.

4.6.2 Servers, desktop computers and laptops should be regularly purged of all unnecessary data.

4.6.3 Stored Lotus Notes messages, documents, databases and bulletin boards must be erased in accordance with prescribed limits on retention of such records.

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4.6.4 Retention of back-up and archived file server records must be limited to the required standards -- as described in the AA Admin Binder. When tapes are "recycled" for future use, they must be effectively "erased" (using a bulk eraser or other effective method) so that the data is made unretrievable.

4.6.5 Retention rules regarding Personal Computer hard-drive documents, floppy disk back-ups, personal/desk files and home files must be complied with -- these "off-line" storage opportunities must be subject to similar discipline as the network systems.

4.6.6 Subject files, Smart and WIN Smart files, Proposal Toolkits, the TIKTS database and other such specialty/research/training/reference sources in the AA BU must be monitored and "purged" of material that relates to client engagements and has exceeded its normal retention period; if such materials have continuing usefulness, they should be made generic if they are to be retained.

4.6.7 Annual statements (Exhibit D) should be obtained from each person confirming that a) he/she has destroyed all extraneous files and documents regarding engagements worked on (or they have been generically retained in a particular specialty, research or reference database) and b) any client information that they have retained on their PC's, on disks or in other locations has been destroyed.

4.6.8 All other data storage areas on the network should be purged on a regular basis to aid in enforcing proper client files storage.

4.6.9 An AATS approved disk wiping utility should be used when computers are turned in for reassignment or disposal.

4.6.10 Any diskettes stored with working papers should either be destroyed or reformatted ("absolute delete") at the same time the papers are destroyed. Diskettes or other external storage media used offsite should be managed by the engagement manager or senior. Any client data that needs to be retained should be moved to proper storage areas on the office file server and the diskettes destroyed or reformatted. This should be done at the end of the job.

4.7 Delay of Destruction

4.7.1 The purpose of obtaining responses from the responsible ABA, TLBA, BC and GCF partners for all working paper files destruction is to assure proper consideration at the appropriate level of any reason why such files should <u>not</u> be destroyed and to synchronize the extended period of their retention if this is necessary. Reasons for extended retention might include regulatory agency investigations (e.g., by the SEC), pending tax cases, or other legal action in connection with which the files would be necessary or useful. <u>In such cases, material in our files cannot be altered or deleted</u> (See Policy Statement No. 780 regarding notification of litigation). Other reasons might include litigation involving AA or the client, the number of open tax years, the possible need for historical

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information regarding loss or credit carryovers, LIFO inventory calculations, or arrangements that may have been made with specific clients to retain working papers under special circumstances. In some cases, destruction may be delayed to conform with the period of retention required of the client for its records on a particular matter, if the period exceeds our policy retention periods.

4.7.2 If, in the judgment of the engagement partner(s), any working paper files should not be destroyed, notation to this effect and a brief description of the reason(s) therefore should be made in responding to the destruction request. Such information should be included in the office's annual summary disposition report (see Exhibit C) which should be reviewed annually thereafter (or at such later date as may be designated by the responsible partner(s)) for reconsideration.

4.8 Any questions related to this Statement should be directed to the Global Risk Management Group.

5.0 REFERENCES

- Audit Objectives and Procedures - Section 2
- Ethical Standards / Independence - Chapter 1
- Tax and Business Advisory Policies and Standards - Worldwide
- Legal Practice Worldwide Bulletin No. 97-04
- AABU Policy Statement No. 780 - Notification of Litigation

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AABU Policy Statement
No. 760

Exhibit A
September 30, 1999

Client Engagement Information
Retention Guidelines for U.S. Practice

The information below summarizes the required retention periods for the U.S. Therefore, these policies may require modification for differing legal and professional requirements in other countries and service lines. Factors (which vary materially by country and by service line) relevant to the retention or destruction of working papers and other material include:

Custom and practice
Regulatory and statutory requirements
Statute of limitations
Legal ownership of working papers and other materials

The result is that each country and each Service Category and service line (or even, in some cases, possibly sub-service lines) potentially have differing requirements with regard to the need, or requirement, to retain working papers and other materials. The only practical approach is for our policies and procedures to be developed country by country and service line by service line. Lacking such, the policies outlined in this exhibit should be followed.

The appropriate Managing Partner - Country, in consultation with local legal counsel, is responsible for initiating any such required modifications and submitting them to the Global Risk Management Group for approval and distribution. However, in no event shall the retention period be shortened from the periods mentioned below if the engagement relates to work performed for an office in another country. . Only the information described below should be retained.

As discussed in par. 4.5.4 of AA BU No. 760, if advised of litigation or subpoena, no related information should be destroyed (see AA BU No. 780).

Service Line	Type of Material	Retention Period
ABA - Financial Statement Assurance	Client File (a)/Engagement Knowledge Base/CAF(purged annually of superceded or non-relevant documents)	0 Permanently (e)
	Audit Workpapers/Central File	Six years
	Office copies of reports and financial statements (d)	Permanently (e)
	Filings with Government agencies which include (physically or by reference) our reports, such as 10K's and Registration Statements filed with the SEC	Permanently (e)

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AABU Policy Statement
No. 760

Exhibit A
September 30, 1999

Service Line	Type of Material	Retention Period
ABA - Business Risk Consulting and Advisory	Central File, including Working Papers	When no longer useful or needed to support an opinion. Maximum of Six years (f).
	Office Copies of Reports (d)	Permanently (e)
ABA - AA Process Solutions	Central File, including working papers (Enterprise Center Clients)	Six years (f)
	Office Copies of Reports and Financial Statements	Permanently (e)
	Filings with Government Agencies which include (physically or by reference) our reports, such as 10Ks and Registration statements filed with SEC	
	CAFs	Permanently (e)
	Project File Documentation, including: • SMART documentation and risk management action plans • Job Arrangement Letter or Contract with appropriate terms • Contract change orders • Project work plans • Engagement QA partner review documentation • Project memoranda related to client discussions of issues/problems and resolution • Supporting schedules, simulations, models, or other documentation that underlie final recommendations made or end products delivered • Client satisfaction documentation and survey forms	Six years (b)
TLBA - Tax and Business Advisory	Central File, including all Working Papers	Six Years (f)
	Income Tax Returns	Six years (f)
	Tax Basis Studies	Permanently (e)
	Earnings and Profits Studies	Permanently (e)
	Estate Planning Studies	Permanently (e)
	Estate and Gift Tax Returns	Permanently (e)
	Office Copies of Attest Reports, including Third-Party Tax Opinions and Reports on Prospective Financial Information	Permanently (e)
	Continuing Tax Files (including all documents that have continuing importance)	Permanently (e)

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AABU Policy Statement
No. 760

Exhibit A
September 30, 1999

Service Line	Type of Material	Retention Period
TLBA - Legal	Central File, including Working Papers Office Copy of Report or Other Deliverable (d)	Customs and practices of legal profession in each country. The policy should be determined by the Head of Legal Services and approved by the Area Practice Director of Legal Services. Permanently (e)
BC	Project File Documentation • Risk SMART documentation and risk management action plans • Job Arrangement Letter with appropriate terms and conditions, signed by the client and AA • Contract change orders • Project work plans • Engagement QA partner review documentation • Project status meetings • Project memoranda related to client discussions of issues/problems and resolution • Supporting schedules, electronic simulations or models, and other documentation that underlie final recommendations made or end products delivered • Client satisfaction documentation and survey forms Office Copy of Final Report or Other Deliverable (d)	Six Years (b) Permanently (e)
Complex Claims & Events (Litigation Support)	Project File Documentation, including: • Documentation to support that an adequate conflict search was performed • Risk SMART documentation • Job Arrangement Letter with appropriate terms and conditions, signed by the client and AA • Contract change orders • AP-150, including sign-off by engagement QA partner • Client satisfaction documentation and survey forms • Retention of specific supporting schedules are required by (i) Class Action Settlement Assistance, (ii) Insurance Insolvency Consulting and (iii) FEHB Settlement Negotiations. Contact the respective service line leader for more information Office Copy of Final Report or Other Deliverable (d)	Six Years (b) Permanently (e)
Federal Government Contracts Consulting	In addition to the guidelines provided for BC, contracts with the U.S. Government require the retention of certain documentation pursuant to Federal guidelines. Contact the Office of Government Services (OGS) for more information.	As directed by OGS

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Service Line	Type of Material	Retention Period
Other Service Lines	Central File, including Working Papers	Six years (b)
	Office Copies of Reports (d)	Permanently (e)

THESE NOTES ARE IMPORTANT - PLEASE READ

(a) The client file is a continuously updated file and includes the reports to support the accept/retain decision, ExCEED, Understanding the Business, Assess Client Risk Controls and Determining and Managing Residual Risk Processes. Per Section 2 of AOP, the engagement team must retain certain reports from the client file in the current year workpapers; retention of other reports is optional.

(b) Six years from the date of the financial statements covered by an audit report or supplemental reports, or the date of issue of special reports on prospective financial information, or other deliverables.

(c) The Office/Country Managing Partner, in consultation with the Global Risk Management Group, may choose to extend the period, if appropriate. In no circumstances, however, should the retention period be lessened.

(d) If our arrangement letter with the client includes legal liability limitation language, such letter should be included with the office copy of our report.

(e) As described in Section 4 of AABU Policy Statement No. 760, these items do not need to be retained permanently for lost clients. These items should be retained for six years after loss of client rather than permanently.

(f) Six years from the year-end of the relevant return unless a longer period is required by local law. However, if a return is under examination or in dispute, the relevant information should not be destroyed until final resolution or settlement.

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AABU Policy Statement
No. 760

Exhibit B
September 30, 1999

WORKING PAPER DESTRUCTION MEMO SAMPLE

To: EACH PARTNER AND PRINCIPAL

Subject: CLIENT INFORMATION (INCLUDING ELECTRONIC MEDIA) DESTRUCTION

ACTION REQUIRED BY ____, 19__

AABU Policy Statement No. 760, which establishes guidelines for the retention, storage and destruction of working papers, requires that certain client documents be destroyed after six years. Therefore, hardcopy and electronic files prior to 19__ will be destroyed this year. This includes files requested to be retained at previous destruction periods. If you are aware of any files that fall before the above years which should not be destroyed, it is your responsibility to inform the Director - Administration of those files by _____, 19__. Working papers to be destroyed include electronic media relating to the destruction period.

Our coordinator of the Files Department has prepared a comprehensive listing of all files planned for destruction this summer. A copy of this listing is available (in some specified location, or possibly attached in smaller offices) for your review.

Exceptions to the destruction process are set forth in Exhibit A to AABU Policy Statement No. 760. Any exceptions to the destruction of information should be decided by the appropriate audit partner, or in the case of lost clients, by the Office/Country Service Category Head.

If you are not certain that the CAFs contain important information of continuing value, such as LIFO base computations, acquisition cost allocations, details of book/tax depreciation and other book/tax differences, etc., it is your responsibility to see that this information is placed in the CAF prior to authorizing destruction of the working papers.

In the Tax, Legal and Business Advisory Division, the materials which pertain to open IRS examinations or pending litigation (and similar matters discussed in Section 4 of AA BU Policy Statement No. 760) should not be destroyed. It is the responsibility of the appropriate partner to inform the Director - Administration of those files which must be retained.

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AABU Policy Statement
No. 760

Exhibit B
September 30, 1999

Please review the attached Exhibit A and immediately determine what files, if any should not be destroyed. If you are not sure whether working paper materials fall within the above guidelines, please consult with your Service Category Head, Director - Administration or, in certain instances, with the Managing Partner -- Professional Practice Litigation. If you have any other questions about these procedures, please contact the coordinator in the Files Department.

Each partner should complete, sign and date the attached form to signify concurrence with the planned destruction, or to specify those files to be temporarily retained. All forms should be returned to the Director - Administration by or before _____, 19__.

Your assistance and immediate action concerning this matter is appreciated.

_____
(Office/Country Managing Partner or
Service Category Head, as appropriate)

Enclosure: Exhibit A of AA BU Policy Statement No. 760

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AABU Policy Statement
No. 760

Exhibit B
September 30, 1999

FILES DESTRUCTION

To: DIRECTOR - ADMINISTRATION

Subject: FILES DESTRUCTION

From: _____

_____ I have read the files destruction memo dated _____ and am not aware of any files that should be retained, based on the file destruction guidelines.

_____ I have read the files destruction memo dated _____ and have listed below the file(s) that should be retained, based on the file destruction guidelines.

_____ Signature

_____ Date

Files To Retain:

Client Name	CLIENT CODE	FILE NUMBER	YEAR(s)	RETENTION REASON

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AABU Policy Statement
No. 760

Exhibit C
September 30, 1999

SUMMARY OF ANNUAL DISPOSITION OF FILES
_____, 1999

FILE NUMBER

YEAR	FILES TO BE DESTROYED	FILES TO BE RETAINED	FILES NOT LOCATED *

Prepared by: _____
FILES DEPARTMENT

Approved by: _____
Director - Administration
or Service Category Head

* Column will normally be blank. Engagement partners should be notified in situations where files are lost, and a memo should be prepared describing the steps taken to find the files.

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AABU Policy Statement
No. 760

Exhibit D
September 30, 1999

Annual Statement
Regarding Destruction of Client Information

To: All Personnel

From: Service Category Head

Subject: Destruction of Client Information Under Personal Control

AABU Policy Statement No. dated _____, 1999, establishes guidelines for destruction of client info. . on both hardcopy and electronic. Each year, we confirm with all our personnel that they have followed the procedures, summarized below, to assure compliance with those guidelines. Please read the procedures below and return this statement to _____ confirming that you have complied with the procedures (for more detail, see Section 4 of the Policy Statement).

1. All personal network areas, ELAN areas, Lotus notes mailboxes and databases, computer hard drives and other electronic storage media under my control has been purged of any data over six years old (diskettes should be destroyed or reformatted using "absolute delete").

2. All files related to client work (except that currently in progress) have been transferred to the network or other appropriate storage location, and has been deleted from media under my personal control; and

3. All extraneous, duplicate or nonessential files and information have been deleted.

4. All Octel messages older than 30 days have been deleted.

_____ Signed

_____ Printed Name

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AABU Policy Statement
No. 760

Exhibit E
September 30, 1999

Policy Suggestions for Electronic
Data Retention

Each office is responsible for developing its own procedures for destroying appropriate electronic data.

Electronic client documents and files can reside in a number of locations, including local office servers, regional servers, engagement site LANs, laptop computers and various portable storage media. Policies and procedures need to be in place and implemented carefully to ensure that all client files are accounted for and properly stored and destroyed according to Firm guidelines. Additionally, your policies should be reviewed with the appropriate Director of Technology to assure they are appropriate. Guidance from the AA AdminBinder should also be considered.

Below is a listing of possible electronic client document and file locations, the impact of their location and recommended policies for proper handling of these files. These policies will need to be somewhat different in each location, based on the specific environment of that location.

Location	Risk	Recommended Policy
Local Office File Servers	Back up may result in data being maintained for longer periods of time than is appropriate. Data can be stored in multiple locations on the network, which increases risks that data is retained for inappropriately long time periods.	Refer to the AA Admin Binder for appropriate file back up procedures. It is important that only one control copy of files (on j:) be maintained. Files stored on the g: drive on the servers should be purged at the same time the c: drive purging takes place, since g: would contain only personal copies of the data and not necessarily be targeted for archival/retention.

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Location	Risk	Recommended Policy
Lotus Notes Servers	Individual mail databases and other Lotus Notes databases, such as AA OnLine, reside on regional notes servers. These databases should never be the primary storage location for client files and information.	General Lotus Notes servers should be backed up in the same manner as local office network servers. . Individuals should remove Lotus Notes mail items that contain client information as quickly as possible.
	DocMan is a Lotus Notes database designed to facilitate the management and storage of client workpapers and other electronic documents prepared in connection with an audit. All DocMan databases are placed on a special regional Notes server separate from all other Firm or local office developed databases. According to DocMan procedures, the current year workpapers will be archived at the conclusion of each engagement.	Once the current y workpapers are archived, these archived tapes must be properly stored and marked for timely destruction in the same manner as local office file servers
	Since the DocMan Notes servers backups are handled regionally instead of at the local office of the engagement team, the regional administrator will be responsible for timely client data destruction.	
	Proposal Toolbox is a database that contains "Best Practices" copies of actual proposals that have been submitted. These proposals contain information about potential clients.	Replace the actual names of the companies with "ABC Company" and remove any other descriptions in the proposal documents that would identify the company.
Engagement Site LANs	Engagement Site LANs (ELANs) will use JAZ drives, zip drives or laptop computers (acting as servers) for client document storage and backups. Duplicate copies or draft copies of these files are frequently left on individual laptop computers and typically not deleted until	Managers (or seniors) should, at the end of each engagement, retrieve or otherwise make sure that the only electronic files for that engagement are the final copies stored on the ELAN document storage device.

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Location	Risk	Recommended Policy
	computers are turned in for reassignment, disposal or lease termination. Since ELANs often "travel" from client location to client location, the same document storage devices (zip drives or JAZ drives) will be used at several different client locations.	Managers (or seniors) should make sure that the floppy, zip or JAZ drive discs that contain the final client electronic files are collected and taken to the local office and filed with the client workpapers at the end of the engagement. Destruction of these discs should be performed following policy guidelines. All discs that contain client electronic files that are not final should either be properly destroyed or securely deleted. Backups of permanent ELANs should be marked appropriately with the backup date and properly stored. These backups should be stored in a protected area and destroyed according to AA BU guidelines.
Individual Laptop Computers	Laptop computers can contain client documents in the c:\data\client subdirectories. These files can be drafts or duplicates of final copies that exist either on the network server or ELANs and have been backed up to tape or disc. Archived and replicated copies of Lotus Notes databases reside in the c:\data\notes\ subdirectory. The potential exists for client information to reside in these locally stored databases.	No client documents should reside on an individual's computer if that individual is connected to a file server or an ELAN on a regular basis. After a client engagement is complete, and proper backups of final client workpapers have been performed, all client documents on a laptop must be deleted using the "absolute delete" utility. The laptop user should regularly review laptop copies and archives of Lotus Notes databases for document retention/destruction purposes.

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Location	Risk	Recommended Policy
	When an individual switches laptops, care must be exercised when moving data from one laptop to another to assure that old client data is not kept.	The local offices should distribute yearly notices to all laptop users to "absolute delete" all client data that are a year or more old.
Word Processing Departments	Word processing departments may keep copies (both hardcopy and electronic) in addition to other copies that are maintained.	Word processing files should be reviewed annually for files that have met the destruction time frame.

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ARTHUR ANDERSEN
October 31, 1999

AA BU POLICY STATEMENT
No. 780
Supersedes AW OM 83 Dated June 1, 1984

To: EACH ARTHUR ANDERSEN PARTNER, PRINCIPAL AND MANAGER

Subject: NOTIFICATION OF THREATENED OR ACTUAL LITIGATION, GOVERNMENTAL OR PROFESSIONAL INVESTIGATIONS, RECEIPT OF A SUBPOENA, OR OTHER REQUESTS FOR DOCUMENTS OR TESTIMONY (FORMAL OR INFORMAL)

1.0 BACKGROUND AND PURPOSE

1.1 The purpose of this Policy Statement is to address the procedures to be followed with respect to prompt notification of all litigation, investigation, and subpoena situations to the Arthur Andersen Legal Group ("AA Legal Group"). Section 2.0 outlines the process for notification of threatened or actual commencement of litigation, governmental and/or professional investigations. Section 3.0 outlines the process to be implemented upon receipt of subpoenas or other requests for documents or testimony.

1.2 Strict compliance with the following procedures is critical. Effective coordination and management of AA's defense and handling of subpoenas can only be achieved if the notification procedure is followed without exception. Without such prompt notification, AA may not be able to resolve or minimize problems before litigation is commenced and/or preserve all of its rights and options.[1]

[1] Although this Statement deals with matters relating to the Arthur Andersen Business Unit ("AA"), it is possible that certain notifications, subpoenas, etc. relating to AA may refer to Andersen Worldwide ("AW") or Andersen Consulting ("AC"). These should also be handled as set forth in this Statement, i.e., forwarded to the AA Legal Group. Upon receipt of these matters, the AA Legal Group will forward them on to the appropriate individuals at AW or AC.

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2.0 PROCEDURES TO BE FOLLOWED REGARDING NOTIFICATION OF THREATENED OR ACTUAL LITIGATION, GOVERNMENTAL OR PROFESSIONAL INVESTIGATIONS

2.1 This section sets forth the notification procedures to be followed in those situations where professional practice litigation against AA or any of its personnel has been commenced, has been threatened or is judged likely to occur, or where governmental or professional investigations that may involve AA or any of its personnel have been commenced or are judged likely. This section also sets forth certain notification procedures to be followed if a payment is to be made (either in cash or in services, including fee adjustments) to resolve a problem situation with a client.

2.2 These procedures are also applicable if individual AA personnel are named in any threatened or pending litigation or investigation involving AA's professional practice. This Statement deals not only with professional practice matters (i.e., relating to AA's Service Categories: ABA, TLBA, BC and GCF), but also, with litigation involving administrative matters, including without limitation, fee collections.

2.3 Prompt notification to the AA Legal Group office that serves your Area[2] shall be made in the circumstances and in the manner described below in Sections 2.4 – 2.10.

2.4 **Institution of Legal Action against AA or Its Personnel** - Notification shall be made promptly to both the Chicago office of the AA Legal Group and the relevant Area office of the AA Legal Group along with a copy of the relevant court papers (e.g., summons and complaint, writ, statement of claim) whenever litigation is commenced against AA or AA personnel. This policy applies not only when AA is named as a defendant (either directly by a plaintiff, or by another defendant, i.e., as a third party defendant) but also when counterclaims are made against AA in actions brought by AA, as in an action for collection of fees.

2.5 **Threatened Legal Action** - Notification to the relevant Area office of the AA Legal Group as well as to the relevant practice director or their functional equivalent should also be made promptly whenever legal

[2] For the Americas, contact the AA Legal Group in Chicago at (312) 931-4391 (Facsimile: (312) 462-8021)
For Asia/Pacific, contact the AA Legal Group in Hong Kong at 852-2853-9196 (Facsimile: 852-2543-9472).
For EMEIA, contact the AA Legal Group in Paris at 33-1-55-61-0994 (Facsimile: 33-1-55-61-0999).

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action against AA or AA personnel is threatened or appears imminent or likely. [Please refer to Exhibit 1 for examples of circumstances to be reported pursuant to this paragraph.]

2.6 **Potential Institution of Legal Action by AA** - Consultation with the relevant Area office of the AA Legal Group must be made prior to the commencement of any legal action by AA, including without limitation, an action for collection of fees.

2.7 **Potential Settlement of Dispute in Absence of Litigation** - Consultation with the relevant Area office of the AA Legal Group must be made prior to proposing an arrangement to make either a cash payment or to provide free or reduced rate services (including fee adjustments) in order to resolve a practice problem. The tax aspects of a proposed arrangement involving a cash payment should be carefully reviewed with the appropriate HOTD and Tax Practice Director or their functional equivalent. In such a situation, the relevant Area office of the AA Legal Group must be involved since a properly prepared release in these types of situations is of great value to AA. As a general matter, AA will insist upon receiving a written release of any claims related to the practice problem prior to making a payment, agreeing to provide services or agreeing to forgive unpaid fees.

2.8 **Governmental Investigations** - Notification to the relevant Area office of the AA Legal Group should be made promptly when AA personnel become aware of investigations involving a client or former client and AA or any AA personnel, (e.g., investigations by a federal or state grand jury, the FBI, the Justice Department, the SEC or the IRS in the United States; the RCMP or the Department of National Revenue in Canada; the Department of Trade and Industry or the Inland Revenue in the United Kingdom, court-appointed receivers or liquidators and similar agencies in these or other countries). Where a subpoena is served upon AA to compel the attendance of AA personnel at a hearing or deposition or for the production of documents in connection with such an investigation, the procedures set forth in Section 3.0 of this Policy Statement regarding receipt of a subpoena or other requests for documents or testimony must be followed.

2.9 **Professional Investigations** - Notification to the relevant Area office of the AA Legal Group should be made promptly when any professional society or regulatory body (such as the AICPA, a state CPA society, the ICAEW or similar professional society or any State Board of Accountancy

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or similar regulatory agency) investigation is commenced or threatened or a complaint is filed against AA or AA personnel.

2.10 **Legal Action Relating to Charitable or Not-For-Profit Activities -** Notification to the relevant Area office of the AA Legal Group should be made promptly when any AA personnel are named or threatened to be named as defendants in any action arising out of such person's service to a non-client charitable or not-for-profit organization.

3.0 **PROCEDURES TO BE FOLLOWED REGARDING RECEIPT OF A SUBPOENA OR OTHER REQUESTS FOR DOCUMENTS OR TESTIMONY (Formal or Informal)**

3.1 This section sets forth the process that each country and office should have in place for handling service of (i.e., delivery) and response to a subpoena or other requests for documents or testimony, including requests or demands, whether informal or formal, from government agencies, stock exchanges or any other third parties (herein referred to collectively as "subpoena(s)") that are addressed to AA as well as those addressed to specific individuals.[3] This process applies to any and all such subpoenas - civil and criminal.[4][5][6]

3.2 Each office should establish a subpoena log in order to track and document pertinent information relating to each and every subpoena that is delivered, e.g., date and time the subpoena was served and accepted,

[3] There are other AA policies that provide guidance regarding non-litigation-related requests for access to AA files. These policies and procedures are set forth in Chapter 1, Section 2 of Audit Objectives and Procedures ("AOP"). In responding to these types of requests for access to files, there is no need to consult with the relevant Area office of the AA Legal Group prior to providing access as long as the guidance set forth in Chapter 1, Section 2 of AOP are followed AND there is no threat of potential litigation or other potential problem associated with the release of files in these situations. If however, for any reason, you believe there to be any risk associated with the release of files in these situations, you should consult with the relevant Area office of the AA Legal Group prior to producing any documents.

[4] This Policy Statement applies to all subpoenas served on AA or AA personnel including those related to Litigation Support and expert engagements as well as employee administrative matters.

[5] Prompt notification to the relevant Area office of the AA Legal Group is also critical in those unusual circumstances where demands for documents and/or testimony are made in the form of search warrants or seizures, as well as those exceptional situations where arrest warrants for AA personnel are issued. Such requests and/or demands often require an office to comply immediately or at best, in a relatively short time period. Every effort should be made to cooperate with government officials in these situations. At the same time, immediate notification to the relevant Area office of the AA Legal Group is critical in order for counsel to assess the situation and develop a strategy to properly respond to the demand.

[6] The procedures set forth in this Policy Statement apply to requests for AA historical information as well as policies and procedures when such requests are related to any situation covered by this Statement, (e.g., materials contained in Research Manager, the AARD, Subject File Riders, training course lists or descriptions).

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the case name listed on the subpoena, the name of the individual who accepted service, the type of service (e.g., hand delivery, marshal's service, mail or courier), to whom and when the subpoena was circulated, the date when the subpoena was faxed to the relevant Area office of the AA Legal Group and information regarding confirmation that the subpoena was received and assigned to someone in the AA Legal Group. Exhibit 2 attached hereto is an example of such a log.

3.3 As part of this process, a person should be designated in each office as the individual who is authorized to accept service of subpoenas on behalf of AA for that office (the "authorized individual"). There should also be a "back up" individual designated who is also familiar with this process in the event that the authorized individual is absent from the office. It is important that the existence of the process and the identity of the authorized individual are properly communicated to everyone in the office, especially receptionists and other employees who may have a higher chance of contact with marshals or other process servers.

3.4 When a marshal or other process server attempts to serve a subpoena addressed to AA at one of our offices, the authorized individual should be notified immediately. The authorized individual (or the back-up designee) should be the ONLY person in that office authorized to accept service on behalf of AA. **The authorized individual should not, under any circumstance, accept service of a subpoena that names a specific individual. In such a case, the named individual should be contacted immediately to accept service personally. If the named individual is not present, the process server should be advised of this fact. If the process server leaves such a subpoena despite being advised that the named individual is not present, written notation should be made of the circumstance.**

3.5 Upon acceptance of a subpoena (whether accepted by the authorized individual or a person specifically named in a subpoena), notation should be made on the actual subpoena reflecting the date and time the subpoena was served as well as the identity of the person making the notation.

3.6 A copy of the subpoena should then be faxed promptly to the relevant Area office of the AA Legal Group, and circulated to the Market Circle Leader, Office Managing Partner, relevant engagement partner, Practice Director or their functional equivalent, and the head of the practice in that office. The Practice Director or their functional equivalent should consider the need to advise the Service Category Managing Practice Director or

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their functional equivalent. In certain countries, the Country/Regional Managing Partner may want to receive a copy.

3.7 After faxing the subpoena to the relevant Area office of the AA Legal Group, the authorized individual should follow-up by telephone or Lotus Notes with the relevant Area office of the AA Legal Group to confirm that the subpoena was received and that it has been assigned to someone for handling in the relevant Area office of the AA Legal Group. The authorized individual must receive positive confirmation of receipt and assignment from the relevant Area office of the AA Legal Group either via Lotus Notes, an Octel or a live conversation. All of this information should be recorded in the subpoena log so that the relevant information can be tracked both by the office and the AA Legal Group, if necessary.

4.0 **No communication with anyone external to AA regarding receipt of the subpoena, including the related client and/or a client's internal or external counsel, should be made without prior consultation with the relevant Area office of the AA Legal Group. Similarly, no action should be taken with respect to responding to the subpoena, including without limitation production of documents, agreeing to appear for testimony, etc., without prior consultation with the AA Legal Group.**

5.0 The guidelines and procedures outlined herein constitute the controlling AA BU guidance relating to the subject matter of this AA BU Policy Statement. Any other guidelines or procedures established at the Area, Region or Country level, or with respect to a specific Service Category, are supplemental and should be issued as Country Supplements to this Policy Statement, subject to the approval process outlined in Policy Statement No. 110-2.

6.0 Any questions with respect to these procedures should be directed to the relevant Area office of the AA Legal Group.

7.0 REFERENCES:

AA BU PS No. 630 - Collection of Accounts Receivable
AA BU PS No. 690 - Serving as an Expert Witness
AA BU Audit Objectives and Procedures - Section 2
AA BU PS No. 720 - Risk Management
AWP No. 107 - Legal Counsel
AA U.S. ABA Bulletin No. 99-11 - Management of Sensitive Client and Professional Issues

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Policy Statement
No. 780

October 31, 1999

DANIEL D. BECKEL
Managing Partner - AA BU Legal Group

JAMES A. FRIEDLIEB
Director of Litigation - Risk Management

APPROVED:
ROBERT G. KUTSENDA
Managing Partner - Global Risk Management

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EXAMPLES OF SITUATIONS TO BE REPORTED

Any situation that may result in a claim being made against the Firm related to services provided to clients of the Firm previously or currently should be reported pursuant to Paragraph 2.5 of this Policy Statement. Examples of such situations include, but are not limited to, the following:

- notification from clients, third parties or their counsel threatening legal action against the Firm;
- serious oral threats from clients or third parties to make a claim against the Firm;
- oral indications from management or owners that the Firm was somehow responsible for the failure of operations or the failure to detect fraud;
- the subsequent discovery of material events that cause us to withdraw or amend a previously issued report or opinion;
- the restatement of prior financial results by an attest client;
- significant criticism, either oral or written, of the quality of our work for a client by:
  - regulatory authorities (i.e. securities commissions);
  - government officials or significant elected representatives;
  - other accountants
- seizure of client files by securities regulators or other government bodies;
- notices, warnings, disciplinary actions against the Firm partners or personnel regarding the quality of professional work;
- indications by management of insolvent/bankrupt enterprises, or guarantors of their debts, that they make take action against the Firm;
- the receivership/bankruptcy of a client subsequent to the issue of an auditors' report which did not include a going concern modification;
- Notice of Assessment or Re-Assessment in response to returns prepared / reviewed by the Firm where it appears that the Firm may have made an error;
- situations in which any taxation authority is proposing to, or has, assessed income or any other tax, or is denying a deduction or credit, contrary to prior advice given by us where that prior advice may now appear to be deficient in any way; and
- situations in which any taxation authority is suggesting that any representations made by us on behalf of a client are inaccurate, incomplete or misleading.

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Edison, Andrew

From: Enron Announcements/Corp/Enron@ENRON on behalf of Jim Derrick@ENRON
ent: Thursday, October 25, 2001 11:55 PM
o: All Enron Worldwide@ENRON
Subject: Important Announcement Regarding Document Preservation

As you know, Enron, its directors, and certain current and former officers are defendants in litigation in Federal and State court involving the LJM partnerships.

Enron has employed counsel and they will represent Enron and its interests in the litigation.

Under the Private Securities Litigation Reform Act, we are required to preserve documents that might be used in the litigation.

Accordingly, our normal document destruction policies are suspended immediately and shall remain suspended until further notice.

Please retain all documents (which include handwritten notes, recordings, e-mails, and any other method of information recording) that in any way relate to the Company's related party transactions with LJM 1 and LJM 2, including, but not limited to, the formation of these partnerships, any transactions or discussions with the partnerships or its agents, and Enron's accounting for these transactions.

You should know that this document preservation requirement is a requirement of Federal law and you could be individually liable for civil and criminal penalties if you fail to follow these instructions.

You should know that Enron will defend these lawsuits vigorously. In the meantime, you should not discuss matters related to the lawsuits with anyone other than the appropriate persons at Enron and its counsel.

If you have any questions, please contact Jim Derrick at 713-853-5550.

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Press Release

ENRON ANNOUNCES SEC REQUEST, PLEDGES COOPERATION

FOR IMMEDIATE RELEASE: Monday, October 22, 2001

HOUSTON - Enron Corp. (NYSE: ENE) announced today that the Securities and Exchange Commission (SEC) has requested that Enron voluntarily provide information regarding certain related party transactions.

"We welcome this request," said Kenneth L. Lay, Enron chairman and CEO. "We will cooperate fully with the SEC and look forward to the opportunity to put any concern about these transactions to rest. In the meantime, we will continue to focus on our core businesses and on serving our customers around the world."

Enron noted that its internal and external auditors and attorneys reviewed the related party arrangements, the Board was fully informed of and approved these arrangements, and they were disclosed in the company's SEC filings. "We believe everything that needed to be considered and done in connection with these transactions was considered and done," Lay said.

Enron is one of the world's leading energy, commodities and services companies. The company markets electricity and natural gas, delivers energy and other physical commodities, and provides financial and risk management services to customers around the world. Enron's Internet address is www.enron.com. The stock is traded under the ticker symbol "ENE."

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Click here to download Adobe Acrobat 4.0.

Mr. GREENWOOD. The Chair recognizes himself for 5 minutes for inquiry. And let me address my first question to Mr. Baskin and/or Mr. Andrews for response.

I would like to read for you a quote from a Georgetown law professor who is an expert on corporate legal ethics. Mr. Milton Regan from the Washington Post last Sunday says this. And if you look at Tab 28 in your binder, it says that as soon as an accounting firm knows that a company it audits is under government investigation, the firm's general counsel or compliance officer would typically send a notice reminding employees of the need to preserve documents related to the inquiry and that, "requirement of preserving documents would override any internal document retention policy."

Mr. Lynn Turner, the former top accountant for the SEC and a longtime member of the Profession in Accounting Firms sent me a letter to the same effect, saying that an SEC inquiry into a client would normally prompt a letter from the auditor's counsel to its employees, directing them to preserve related records. I would like to make this letter part of the record.

[The letter follows:]

January 24, 2002

The Honorable JAMES C. GREENWOOD
Chairman, Subcommittee on Oversight and Investigations
Committee on Energy and Commerce
U.S. House of Representatives
Washington, D.C. 20515-6115

DEAR CHAIRMAN GREENWOOD: For almost twenty years, I was associated with the international accounting firm, Coopers & Lybrand, (now PricewaterhouseCoopers). I served in various capacities in the firm including a partner, member of the national accounting and auditing office and as the partner responsible for the National High Technology audit practice. More recently I served as Chief Accountant of the Securities and Exchange Commission. I am currently an accounting professor on the faculty of the College of Business of Colorado State University.

It has been my experience in practice, when an accounting firm becomes aware an investigation or litigation will occur with respect to the performance of an audit, the communication to the audit team is both in writing and verbal and clear and concise with respect to document retention. The audit team is informed that any documents in possession of the firm, its partners or employees are to be maintained and no documents should be destroyed, altered or otherwise affected.

I would be pleased to provide testimony to this Committee at some future date to assist the Committee in its work related to the Enron matter and respond to any further questions you might have.

Sincerely,

LYNN E. TURNER

Mr. GREENWOOD. Finally, last Sunday on Meet the Press, your CEO and managing partner, Mr. Berardino said essentially the same thing. Let me show you his quotes which should be in Tab 23 of your binder.

He says that your policy states, "exactly that," meaning that upon the SEC inquiry all shredding should have stopped. He even went further, saying that if there is a, "reasonable anticipation of an investigation," all destruction should stop.

So I guess the simple question is: Why didn't anyone at Andersen notify its employees that an SEC inquiry into Enron financial and accounting issues had begun and that normal document destruction policies were suspended? Why did Andersen's counsel wait nearly 3 weeks to do so?

Mr. ANDREWS. Well, Mr. Chairman, in terms of the timing of that particular period of time and what is going on, and as to why

our legal counsel did not do that, I can't address specifically the legal counsel response. But let me at least explain the situation as we see it, as we understand it.

First, we clearly recognize that audit work papers should never be destroyed. That is completely unacceptable. We recognize that nothing can be destroyed once a subpoena is received. That is completely unacceptable. And we also recognize that judgment therefore needs to be applied in a situation, to apply when any kind of documents cannot be destroyed.

When we were in this period that you are referring to, in this late October period, there was a lot going on as it related to the company. At that point, as you indicate, the company had just released its third quarter. It had been notified that it was the recipient of an SEC investigation, a lot of activity was taking place.

Our responsibility and our policy requires the engagement partner, who in this case was Mr. Duncan, to assume and accept responsibility for managing our policies. As you know, as the record states, on October 23, Mr. Duncan called a meeting to review our policies as it pertains to work papers and documents and other related materials. At the conclusion of that meeting, it appears that it led to a vast destruction of documents as a result of that.

Mr. GREENWOOD. Mr. Andrews, let me interrupt you for a second. My understanding of your company's position is that on the 23rd, Mr. Duncan then set off this process, this initiation to destroy documents. But what we can't understand, what I would like to know is why in God's name, on October 23, didn't the chief counsel for your company, the top brass at Andersen, immediately send out word to everyone in the company, particularly those involved in the Enron case, to not touch documents, not shred a document? Why didn't that come down from the top immediately?

Mr. ANDREWS. With regard to that question, Mr. Chairman, as it is stated in our policy, the responsibility for that rests with the engagement partner, a very seasoned, experienced individual. And we rely on the engagement partner to make that judgment, to make the judgment of what to do, as well as when to seek counsel. Without the knowledge, without our knowledge, without the knowledge of the legal counsel, that meeting was called, that meeting was held, and they proceeded to destroy documents, without consultation, without inquiry as to whether it was proper or improper. And we find that situation appalling. We did not——

Mr. GREENWOOD. And all of Mr. Duncan's superiors in the company, including Mr. Berardino, and knowing this meltdown was happening at Enron, knowing that this SEC investigation was on, sat silently, just assuming that Mr. Duncan would do the right thing? They gave him no direction whatsoever?

Mr. ANDREWS. Mr. Chairman, again, Mr. Duncan had been advised of our policies in the memo on October 12. We expect our engagement partners to understand our policies and apply them, and we were not aware of the meeting that took place on October 23, to the best of my knowledge.

So he directed the action. We find that action totally unacceptable. That is why when we began our investigation, which is in process, and we learned of it, we took the action that we have taken to date. But the investigation is in process and not com-

pleted. We took the action aggressively, because it is a situation we will not tolerate. It is not the way Andersen personnel are trained to perform, and it is completely unacceptable. So it is totally out of bounds with good judgment in that situation. And we took action as a result of that.

Mr. GREENWOOD. Let me turn to Ms. Temple.

Since I don't have any other members here right now, I will continue with the questioning. We have a memo from you, Ms. Temple, that is dated, I believe, November 10. Tab 20 in your notebook. And that memo is very explicit. It is very clear that you took action on that date, in the form of that memo, to make it crystal clear that no one was to destroy documents.

Can you explain to us why it took you until November 10 to issue a statement with that clarity, when a month earlier you knew that the question of retention and destruction of documents was going to be critical to investigations and to litigation?

Ms. TEMPLE. Yes, Mr. Chairman. I will tell you the circumstances concerning the November 10 memo and the facts as I understood them in the previous time period. On November 10, the memo was sent—it was drafted by our outside counsel, a law firm—Davis, Polk & Wardwell.

Mr. GREENWOOD. When was that firm retained?

Ms. TEMPLE. I did not personally retain that law firm. I know I spoke to a partner at that law firm on October 16.

Mr. GREENWOOD. Is your testimony that you do not know when they were retained?

Ms. TEMPLE. I don't recall the exact date of the retention. I know I spoke to a partner at that law firm on October 16.

Mr. GREENWOOD. You may proceed.

Ms. TEMPLE. It is the legal group's practice and protocol, when Arthur Andersen receives a subpoena or a request for documents, to send a written notification reminder to the members of the engagement team, and we asked our outside counsel to assist us in that process.

To the best of my recollection, the firm received a subpoena from the Securities and Exchange Commission the end of the business day on November 8, and a voice-mail was distributed to the audit engagement team notifying them of that the following business day. And once this e-mail was drafted, it was circulated to the engagement team.

Now, moving back in timeframe to the previous period that you talked about, the firm does have a written policy that provides guidance. It is self-enforcing, and we trust our partners to exercise their good judgment and to consult with either the legal group or the practice directors, as appropriate.

Mr. GREENWOOD. Let me interrupt you for a second. I asked Ms. Temple when Davis, Polk was retained for this purpose. And her response is that she didn't know. Mr. Baskin, Mr. Andrews, do you know when this firm was retained?

I want to remind you that I asked you last night to be prepared to answer that question this morning.

Mr. ANDREWS. Mr. Chairman, the firm was retained on October 9 and commenced work with us on October 16.

Mr. GREENWOOD. Okay. And what was the purpose for retaining that firm on October 9?

Mr. ANDREWS. Well as—if we just—for a moment, what was going on during—at that particular period of time, around that October 9 time——

Mr. GREENWOOD. Are they handling the potential litigation for the firm now?

Mr. ANDREWS. Are they handling it now? Yes, they are. What was going on at that particular time was that we were involved—the company was closing its third quarter. They were about to reach conclusions on the third quarter. There were a lot of financial reporting issues occurring during that period that were obviously unusual and were concerning. So we engaged them to help us with the financial reporting issues and with possible litigation.

Mr. GREENWOOD. On October 9, when you retained this firm, you did so because Andersen considered it likely that you were going to confront litigation?

Mr. ANDREWS. No, Mr. Chairman, that is not what I said. We engaged them to help us with that third quarter closing as it related to financial reporting issues and possible litigation and within the accounting literature, if you will, the term "possible" is used frequently but does not mean probable. We had no reason at that particular point in time to expect litigation, no.

Mr. GREENWOOD. Even given the Sherron Watkins memo that you were aware of at that time, you didn't think that it was likely that you were going to face litigation? You hired the firm that is now handling your litigation, but on October 9, you didn't hire them for that purpose?

Mr. ANDREWS. On October 9 we made the decision, the principal reason that we were hiring the firm was to help with the complex issues that were going on in the third quarter. There were a number of accounting issues. There were disclosure issues. And there were issues, as you referred to, the Ms. Watkins memo. There were a number of items going on in that third quarter that it would be normal in a situation like that, I believe in my experience, to have—we engaged legal counsel to advise us on things in many other situations.

Mr. GREENWOOD. Let me ask you, Ms. Temple, when did you decide that it was likely that Andersen was going to face litigation over this matter?

Ms. TEMPLE. I don't recall making a particular determination that Andersen was likely to face litigation or being asked to make that determination. At this time, looking back in retrospect, I can see all of the events that eventually did occur that we did not anticipate at the time. And, as Mr. Andrews stated, litigation is a possibility in this profession.

Mr. GREENWOOD. I believe you told our investigators that it wasn't until sometime in November that you thought that it was likely that there would be litigation?

Ms. TEMPLE. Once it came to my attention that the company intended to restate prior financial statement reporting periods, I definitely considered that the firm would likely be sued at that point.

Mr. GREENWOOD. When is the first time that Davis, Polk gave the company any advice whatsoever, or counsel whatsoever, with regard to document retention and destruction?

Ms. TEMPLE. I believe in my conversations on October 16, I discussed the documentation and retention issues that had arisen as of that date with Davis, Polk.

Mr. GREENWOOD. Mr. Baskin or Mr. Andrews, or Ms. Temple, you may want to answer this question. The document in Tab 29 in your binder is a copy of an Enron announcement to its employees and others on the Enron worldwide e-mail list, which I believe includes Andersen, on October 25, 2001, telling them to preserve records relating to the related party transactions, including the accounting of those transactions.

Did Andersen learn about this action by Enron, which, by the way, also seems rather late given that it is 8 days after Enron learned of the SEC inquiry, and, if so, why didn't Andersen act right then to order its employees to do the same?

Mr. ANDREWS. This is the first time that I have read this memo. But as it pertains to our actions, again we believe that it was the engagement partner's responsibility in this situation, given what was occurring in that late October period—which is when the date of this memo—that there was enough information available that, in that partner's judgment, the instructions and oversight of that partner would in fact cause us not to destroy documents, and certainly you would not convene a meeting and give instructions, if you will, if that apparently is what happened, to destroy documents.

So we would agree that during this period, it would be appropriate to, at a minimum, seek counsel before doing such an exercise. And destruction of documents in that period is wrong. We have admitted that. It is wrong. And once we learned of that, once we learned of that in our investigation, we took firm action. That is not Andersen. That is not what we encourage our employees to do. It is inappropriate.

Chairman TAUZIN. The chairman of the subcommittee has had to go to the floor to make a vote and will return shortly. His time has expired, but we will explore this question further in detail as we go forward.

The Chair is pleased to recognize the ranking member of the subcommittee, Mr. Deutsch, for a round of questions.

Mr. DEUTSCH. I had a chance to read your testimony, but not to listen, because we are trying to save time in terms of people's comments.

Mr. Andrews, if you can give me a sense of has anything like this, in your knowledge, ever occurred before in a "Big 5" accounting firm, with the destruction of documents with the time line that we are here.

Mr. ANDREWS. I want to make sure I understand.

Mr. DEUTSCH. Basically the time line. You are aware of an investigation and documents were destroyed? I mean, I accept the fact that documents should be destroyed after an audit. But I guess the disturbing issue is just the time line, that apparently people did know that there was an SEC investigation and then the documents

were still destroyed, even though they knew that there was an investigation.

I mean, that seems to me the heart of the issue. And then the question becomes, you know—I mean, why were they destroyed, then? Because that really seems like where there is a conflict. Whether it is illegal or not, we are not going to determine today. But factually, that does seem, if this occurred—would you question whether that occurred?

Mr. ANDREWS. Whether do you——

Mr. DEUTSCH. From the timing, that it occurred after—at least employees of Andersen were aware of an SEC investigation?

Mr. ANDREWS. Congressman, if I may, let me talk about the time line, what occurred, and what our conclusions are related to that in this stage of our investigation, and recognize—my qualification is that we are only partially through our own investigation. We took action at a date in that investigation when we felt we had conclusive information to take some action. But we are not completed with the investigation, as is the SEC, as is the committee investigating this, as is the Department of Justice. So it is in process.

Now, what happened during that period and what was going on, I believe I am agreeing with your statement in the sense that once the company had been notified of the SEC investigation, once the company had was a recipient of a lawsuit, once the company was clearly on high alert—and we were aware of that; I agree we were all on high notice at that point. That needs to be a very careful period of time.

And what in fact happened apparently is the next day, after receipt of the SEC letter, October 23, Mr. Duncan had a meeting of the engagement team, which then led to a massive destruction, a rush, an expedited destruction of documents. I agree. That is totally inappropriate. We do not condone that. That is not what the firm's policy would encourage to do.

Mr. DEUTSCH. Can I just inject the fact—so the time line that you are saying is even after Andersen itself received notice, not public notice, not Enron receiving notice of the SEC, but you are testifying that Andersen actually received notice and then the destruction continued?

Mr. ANDREWS. Let me clarify that. We were aware of the notice that the company had received.

Mr. DEUTSCH. Not Andersen?

Mr. ANDREWS. Correct.

Mr. DEUTSCH. There is some issue, because your regulations apparently talk about notice to Enron. That again seems to be gaming the system. A notice to Andersen itself that, you know, you are not in—my understanding is your internal regulations or procedures state that you are not obligated to—that you are not obligated not to destroy documents until you are, as Andersen, aware of an investigation.

Again, let me tell you that that perspective that I have is just, you know, looking for loopholes that are not just appropriate, the same way that Enron was looking for loopholes. If that—that distinction, I think is worth noting. If you can respond to that.

Mr. ANDREWS. Yes, Congressman, let me respond. Let me cover a couple of points. First of all, if the policy is unclear, that obvi-

ously is a problem. What we have done with the policy, once we learned of this, we have suspended that policy, put in place an interim policy, and we have engaged and hired former Senator Danforth to construct a policy that is as clear as possible.

But let me back up and cover the point of the policy that existed at that time and why this action would or would not be appropriate.

Mr. DEUTSCH. Let me also tell you, 5 minutes goes very fast, and so I just want to follow up on two specific questions. I am told specifically by our counsel that Ms. Temple—that the position? In Enron did not have a subpoena yet, and, based upon outside counsel, you were not required to put out a memo on document retention. So that was apparently your internal policy.

First of all, why was it? But then—you know, I mean, it is—is Mr. Duncan telling you, or are you able to tell us that he was following company policy? That is, that he didn't do anything wrong is his position; that he didn't do anything wrong at this point.

Mr. ANDREWS. Congressman, I cannot say more strongly, Mr. Duncan was not following company policy. Mr. Duncan broke company policy.

Mr. DEUTSCH. Is he saying that he is following company policy? Is his position that he was following company policy?

Mr. ANDREWS. Congressman, I can't respond for Mr. Duncan.

Chairman TAUZIN. The gentleman's time has expired. The Chair recognizes himself for a round of questions. First of all, I want to turn to the week of October 9. You have testified October 9 was the date that Arthur Andersen hired counsel, outside counsel, right? And the outside counsel firm was Davis, Polk & Wardwell of New York, right? Is that correct, sir?

Mr. ANDREWS. Yes, that is correct.

Chairman TAUZIN. My understanding is that is a litigation team, right?

Mr. ANDREWS. Davis, Polk is a reputable firm. I am sure they do litigation and other things. But we hired them for purposes to help us with the financial reporting and possible litigation.

Chairman TAUZIN. And possible litigation, right? October 9.

I want to turn to you, Ms. Temple, real quickly. Sometime before the week of October 12, in your interviews with us you informed us that there was a conference call about the Enron engagement team's compliance with the document retention policy.

Mr. Duncan says that it was you who raised the question about the retention policy. You had some other recollections of that conversation. Give us your recollections of what happened in that conference call. And what date was that?

Ms. TEMPLE. Sure. Let me give you the context of my role in this matter. I was asked, beginning on September 28, 2001, to participate in a conference call. I understood that the firm was addressing one accounting issue that had risen at that point in time. In between that time and October 12, I provided legal advice, including, after consultation with my supervisor and others, about specific documentation and retention issues.

Chairman TAUZIN. Ms. Temple, in that conversation that occurred right about the time that the firm was hiring other litiga-

tion counsel—you are the litigation attorney for the firm, is that not correct?

Ms. TEMPLE. My background is in litigation, correct.

Chairman TAUZIN. But they just hired an outside litigation firm to advise them on possible litigation about the same time there is a conference call and there is a discussion about the retention policy. And obviously the memo is sent out, following it, regarding that policy that includes the information about destruction of documents as well.

You said something to our investigators about conversations in that conference call referencing changing memos and deleting information from past memos; substituting a memo to the file for an old memo with a new memo. Is that accurate? Was that discussion held in that conference call?

Ms. TEMPLE. The advice I gave was different from that, Mr. Chairman. The advice I gave was——

Chairman TAUZIN. What were the questions being asked that you had to give advice?

Ms. TEMPLE. The team was discussing a draft of a memo about a particular accounting issue on asset impairment. The advice that my supervisor and I gave initially was that memo, which was being currently drafted, needed to be dated——

Chairman TAUZIN. What did they want to do that you told them they couldn't do? What did they ask you to do?

Ms. TEMPLE. I don't recall, with respect to that particular legal advice, that there was a question raised. But we pointed out to the team——

Chairman TAUZIN. Was there not a request or discussion of substituting a new memo for an old memo, backdating a memo to the file?

Ms. TEMPLE. No, there was a not a question about backdating that particular memo. But the date——

Chairman TAUZIN. Was there a question about substituting it and deleting information from the memo?

Ms. TEMPLE. There was a question in that current memo that was raised: Can we delete a sentence acknowledging that the firm had given incorrect accounting advice in the first quarter of 2001? And I said absolutely not.

Chairman TAUZIN. That is what I want to know. Essentially you said don't do that?

Ms. TEMPLE. Right.

Chairman TAUZIN. Is it customary that in those kind of discussions, when the firm finds itself in error, that anyone would suggest substituting memos or deleting information that was in memos already in the file? Was that unusual conversation?

Ms. TEMPLE. I expect the engagement partners to raise questions about documentation and seek advice, which they were doing, though other legal advice that I gave on documentation was the—the memos for any prior periods, first quarter 2001, year end 2000, could not be changed.

Chairman TAUZIN. You are telling them to make no changes. I understand that. I am asking you, was it customary? Was this unusual for members of the firm to be talking to you about changing

documents, altering documents, substituting documents that were on file already with regards to Enron operation?

Ms. TEMPLE. At the time, based on my recollection, I understood that there were good faith questions that were being asked about how to properly document the firm's——

Chairman TAUZIN. Was it a good faith question to change a memo that is already in the file with a new memo?

Ms. TEMPLE. I received the question and consulted with my supervisor——

Chairman TAUZIN. You said, don't do it.

Ms. TEMPLE. I gave the advice. To the best of my knowledge, the advice was followed.

Chairman TAUZIN. Were you shocked that they would raise such a question? Were you alarmed? Were you disturbed? Did it bother you, as litigation counsel for the firm, that any member would even suggest altering the record, altering documents, substituting memos to the file?

Ms. TEMPLE. I don't recall everything going on in my mind. I recall making sure and giving advice to make sure that the written record was complete and accurate and truthful. And I do recall seeing that my advice was followed.

Chairman TAUZIN. And my time is up, but you do recall also that October 16 memo, that you did discuss with them changing that memo so that your name is not included because you might be a potential witness? Is that correct?

Ms. TEMPLE. I do recall giving legal advice, after consultation with others, including outside legal counsel Davis, Polk, that the audit partner should document the recommendations and communications he had with the client about the client—Enron's draft press release. And I did, after consulting with outside legal counsel—it is our standard practice in the legal group to advise the engagement team not to write down and discuss in their memos legal advice that the legal group might give, because it may be a waiver down the road of attorney-client privilege.

Chairman TAUZIN. Thank you. The Chair recognizes the gentlelady, Ms. DeGette, for a round of questions.

Ms. DEGETTE. Thank you, Mr. Chairman.

Ms. Temple, I think that it would be helpful if you would take the notebook in front of you and turn to document No. 27 before we get started. Now, Ms. Temple you have been at Arthur Andersen a couple of years; is that right?

Ms. TEMPLE. I started at Arthur Andersen in July of 2000.

Ms. DEGETTE. Before that you were a litigation partner at a law firm, I believe?

Ms. TEMPLE. Yes.

Ms. DEGETTE. Okay. And I assume you are familiar with Arthur Andersen's policy on document retention and destruction?

Ms. TEMPLE. Yes.

Ms. DEGETTE. That is the document that I showed you, document No. 27, right?

Ms. TEMPLE. Yes.

Ms. DEGETTE. If you can tell me, very briefly, under what circumstances you believe documents should be retained? What—

when is it? What is the trigger under which documents need to be retained?

Ms. TEMPLE. There are several provisions in the policy that address retention.

Ms. DEGETTE. In fact, there is an exhibit to document No. 27 here, Exhibit 1, that says examples of situations to be reported. And that is a list of examples of situations where if you see that coming, then you treat that as threatened legal action under section 2.5 of the litigation procedures, and you retain them; is that right?

Ms. TEMPLE. Yes. There is a list of examples to be reported to the legal group, that calls for notification. I don't believe——

Ms. DEGETTE. That would trigger, then, a notification such as the one that you made, I think, on October 12 in your e-mail, right? It is not just threatened litigation, is it? There are other things that would trigger Arthur Andersen to recommend retention of documents?

Ms. TEMPLE. The policy does require retention of all related materials if there is threatened litigation or——

Ms. DEGETTE. Or other situation, right? And one of those situations would be oral indications from management or owners that the firm was somehow responsible for the failure of operations or the failure to detect fraud, right? That is the—that is the third one on the list of examples of situations to be reported, right?

Ms. TEMPLE. Right. This list of examples is from the policy statement No. 780, which requires notification to the legal group of those examples.

Ms. DEGETTE. Right. So now there was a memo that was written on August 15, 2001, from Sherron Watkins, an Enron vice-president, alleging improper accounting and all kinds of other problems. Was the legal department aware of that?

Ms. TEMPLE. I don't recall if I was aware of that particular document. I was aware of circumstances, about allegations by an employee of Enron, and the fact that Vincent & Elkins had conducted an investigation and concluded and reported positively to the board the week of October 8.

Ms. DEGETTE. So you are aware in August an employee had made these allegations, and then Vincent & Elkins had done an investigation also in August; is that right?

Ms. TEMPLE. Not exactly. Before October 12, I was aware that Vincent & Elkins had been engaged and completed and reported orally to the board that the results of their investigation were positive. And the engagement team also assured the practice directors who were being consulted at that time and myself that they had reviewed the information about the allegations, and that the allegations were, to the extent that they had any information in them in reference to transactions, involved transactions that the audit team had carefully reviewed in its prior work.

Ms. DEGETTE. So you thought that because Vincent & Elkins had said there was no problem, that that did not trigger any kind of requirement; is that correct? Yes or no, please.

Ms. TEMPLE. No, that is not what I would think at the time.

Ms. DEGETTE. Now, what caused you to send that memo on October 12? Did you do that on a regular basis?

Ms. TEMPLE. There were several factors that caused me to send the memo on October 12.

Ms. DEGETTE. Let me back up for a minute. How many times in your 2 years, roughly, at Andersen did you send memos like this to remind people of the document retention and destruction policy?

Ms. TEMPLE. I don't recall the number of times.

Ms. DEGETTE. Had you done it before?

Ms. TEMPLE. I believe I had referred people to the firm's policies on document retention and destruction.

Ms. DEGETTE. How many times before?

Ms. TEMPLE. I don't recall the number of times.

Ms. DEGETTE. One time? Five times? Ten times?

Ms. TEMPLE. To the best of my recollection, at least one other occasion.

Ms. DEGETTE. Was that in relation to Enron, or was that in relation to another client?

Ms. TEMPLE. No, that was not in relation to Enron.

Chairman TAUZIN. The gentlelady's time has expired. I would ask that the gentlelady have 1 additional minute and would ask her to yield, if she will.

Ms. DEGETTE. Before I do that, Mr. Chairman, I have many, many more questions. I would hope you would have a second round of questioning today. The chairman of the subcommittee is nodding, and I thank him.

And with that, I'd be happy to yield.

Chairman TAUZIN. I thank the gentlelady.

I just want to clarify your testimony to the gentlelady's questions. You indicated that Vinson & Elkins issued a positive report. I want to quote from that report: "there is a serious risk of adverse publicity and litigation. It also appears because of the inquiries and issues raised by Ms. Watkins, Arthur Andersen will want additional assurances that if anyone had no agreement with LJM, that LJM would not lose money," et cetera. Is that a positive report?

Ms. TEMPLE. As I recall the outcome of the report as reported to me——

Chairman TAUZIN. You have a copy of this—I believe we've submitted it. You have a copy of this letter, don't you, from Vinson & Elkins? You saw it yourself, didn't you?

Ms. TEMPLE. After the week of October 12, I did receive a copy.

Chairman TAUZIN. Here's the point, Ms. Temple. We're trying to get the facts here, but if you will characterize a report that indicates a decline in the value of Enron stock and a serious risk of adverse publicity and litigation as a positive report from the attorneys, we're going to have trouble with your testimony today.

Ms. TEMPLE. Later on, when I did receive a copy of the report and sent a copy to outside counsel, I did note the comments that you're referencing, but I also noted that the law firm reported that there was nothing further to follow up on at that point in time; and the law firm was representing Enron Corporation, not Arthur Andersen. And I understood and recall at the time thinking that there might be a challenge to the business judgment decisions of Enron to enter into certain trade——

Chairman TAUZIN. Did you know at the time that Vinson & Elkins had signed off on these agreements as a counsel for the firm

that may have been a conflict of interest in them commenting on them now?

Ms. TEMPLE. I don't recall the circumstances.

Chairman TAUZIN. You are not aware of that?

Ms. TEMPLE. I don't recall at this time.

Chairman TAUZIN. I thank the gentlelady.

The Chair recognizes the gentleman, Mr. Stearns, for a round of questions, and the chairman of the subcommittee will be in the chair. Mr. Bilirakis is recognized for——

Mr. STEARNS. That's okay. Let Mr. Bilirakis go.

Mr. BILIRAKIS. Well, we're both from Florida.

Either Mr. Baskin or Mr. Andrews, in your January 15 of this year press release, Tab 22, your firm stated that it did not believe that any work papers had been destroyed; and I ask you the question, how were you able to come to that conclusion, and are you still confident with that?

That was just a few days ago, I might add. I guess we realize that.

Mr. ANDREWS. Let me respond to that and why the press release says that, Congressman.

Our investigation is extensive, and this is very complex and will take an extended period of time. We are not finished with our investigation, what we are doing, Davis, Polk, our counsel, is conducting the investigation, and we actually have gone a second level and hired former Senator Danforth to come in and review the results of our best investigation. So we are in process, and it is far from finished, as is your investigation, as well as the SEC's.

So what we did and what happened on January 15, at that point in time, that investigation being conducted by Davis, Polk had determined enough information that we believe warranted the action we took. The point that I want to make is, that is just an interim step, the interim step, because our investigation is far from complete and we intend to complete the investigation and take the appropriate action——

Mr. BILIRAKIS. Mr. Andrews, with all due respect, you're talking about the action you took warranted the action you took. The question is, you had come to the conclusion that none of the work papers had been destroyed at that point in time, as of January 15. Is that still your conclusion?

Mr. ANDREWS. Congressman, at this point in time, there were—let me define for a moment "work paper." Audit work papers are the permanent record of the audit. At the point in time that we took the action on January 15, we were not aware, and I am not aware today, of the destruction of any audit work papers. But my caution, my only caution, is that our investigation is in process, and until we complete the investigation, obviously I cannot say that that is the conclusion until the investigation is done.

Mr. BILIRAKIS. So even today you're not acknowledging that any work papers were destroyed? So we're going through this trying to determine why they were destroyed and whether they were destroyed legally and that sort of thing, but you're not acknowledging that they have even been destroyed?

Mr. ANDREWS. Let me clarify. There are different types of documents that exist in an audit process. One is—one example would

be the permanent audit work papers, when you complete the audit. So, for instance, for fiscal 2000, we completed the fiscal 2000 audit, and there's a permanent set of work papers that is developed and retained as a result of that.

Mr. BILIRAKIS. And those are permanent and they are never destroyed. Mr. Baskin stated that earlier.

Mr. ANDREWS. They are destroyed after a statute period, which is 6 years in the United States, but they would not be destroyed. So when we took the action on the 15th, it was not because audit work papers had been destroyed. What it was a result of is the extensive destruction of other documents, e-mails and other papers that were not part of a permanent set of audit work papers, that we became aware of as a result of Mr. Duncan's meeting and actions subsequent to October 23. We think regardless of the policy, at best that was an extreme error in judgment that we as an organization don't support, don't condone and don't encourage and will not stand for.

Mr. BILIRAKIS. Mr. Andrews, you said that earlier. Now, all right, so you do acknowledge, apparently from what I understand, the destruction of e-mails, those sorts of documents, but not the permanent or the final audit documents.

So can those be reproduced? Those that you have——

Mr. ANDREWS. The items that have been destroyed?

Mr. BILIRAKIS. Yes.

Mr. ANDREWS. Let me explain what we're doing and this is one of the reasons I think that the investigation takes an extensive period of time.

When we became aware of this, again we asked our legal counsel to begin the process to intensively investigate this, which means to interview any and everybody associated with it, to get an understanding of what took place in terms of the destruction and, most importantly perhaps to do everything possible to reconstruct those records. And, for example, electronic communications, we have been able to recover a significant number of those, not all of those, and we're continuing to work to do that. So we embarked on the process to try to recover everything that is destroyed.

Now, obviously documents, hard-copy documents that are not in an electronic form, that have been shredded, we cannot recover those. Electronic documents, we're taking every effort to recover those, and that process continues. Now, we have recovered many of them, but I don't think we'll be able to recover them all.

Mr. BILIRAKIS. Mr. Andrews, what I'm trying to get at is, you heard my opening statement about lack of credibility and that sort of thing. The documents that were used by your firm to determine that—to basically—I'm going to use the word "hide" and not; I don't mean that necessarily as bad as its sounds—to hide the truth regarding Enron, et cetera, the misstatements, the voodoo accounting, if you will, that I consider voodoo and the chairman referred to; those documents were a part of your audit, your work papers, right?

Mr. ANDREWS. Congressman, documents that were part of a completed audit process that were determined to be the necessary documents that support the conclusions would be part of the permanent audit work papers.

Mr. BILIRAKIS. And those have not been destroyed?

Mr. ANDREWS. Again, to the best of any knowledge at this point, we have not determined that any audit work papers, i.e., the permanent audit documentation, we have not determined that they have been destroyed; but the investigation is in process and continuing.

Mr. BILIRAKIS. Well, my entire 5 minutes has been used up here, and I'm not sure that I've gotten an answer.

All right, thank you, Mr. Chairman.

Mr. GREENWOOD. The Chair thanks the gentleman from Florida and recognizes the gentleman from Louisiana, Mr. John, for his questions.

Mr. JOHN. Thank you, Mr. Chairman. My comments revolve around where the chairman of the committee was going with his opening comments about the time lines and maybe even the company policy of Andersen and how they structure their team. Your comment to the chairman's question about when Mr. Duncan had this meeting on October 23, that neither you or legal counsel knew about this meeting or that he was ordering the destruction of all these documents. Is that correct?

Mr. BASKIN. Yes, sir. I think that is what I said in my opening statement.

Mr. JOHN. And obviously Arthur Andersen being a very large corporation has lots of clients worldwide. Is the model where Mr. Duncan is the team leader, the engagement team leader, and whereby you put all your faith in an individual to handle a client, is that consistent with other clients in the way that you do business?

Mr. BASKIN. Congressman, yes, I think that is. We place a great deal of responsibility in the hands of our audit partners, and it takes a long time to become an audit partner, and then that is why we have the high level of responsibility left in their hands.

Mr. JOHN. Okay. So you have other members of your team and partners as you call them, that head other of your clients. Do they meet on a weekly or daily basis to talk about the way—not particularly about their clients, but the way that they have to go about following Arthur Andersen's policies such as the retention and destruction policy?

Mr. BASKIN. Well, first of all, we have to understand that our engagements range in size from very small audits that need only perhaps a couple of hundred hours to complete to very, very large audits that involve hundreds of people and thousands and thousands of hours. So the extent of time the partner spends with the staff and what they do varies a great deal, depending upon how extensive the engagement is. On a large engagement like Enron, there are many partners who are involved with one as the engagement leadership responsibility.

As far as communicating policies, we have many ways of doing that, and we rely a great deal on training. We have an internal Web site which provides access to our policies. We distribute our policies through CDs and DVD ROMs that people can put in their computers.

Mr. JOHN. Well, I guess I'm not satisfied, and I don't think the chairman was satisfied or any members have been satisfied with your answer to—from the 18 days, from October 23 of when this

meeting occurred and documents started to be destroyed, till—what is it?—November 9 when Ms. Temple sends Mr. Duncan a voice mail and told him to preserve all those documents. It is perplexing to me that no one in the highest management of Arthur Andersen had any indication of this meeting or what was going on and didn't step up to the plate and say, we on October 20—I'm sorry, October 22, the SEC has had an informal inquiry. This is not good. This is not consistent with any professional accounting practices, and I would like for you to comment on that, because I think there is an 18-day problem that I'm not satisfied with, and we need to get down to who knew and why and why wasn't it stopped until that point in time.

Mr. ANDREWS. Congressman, in terms of that period of time and what transpired in that period of time, as I tried to indicate earlier, I agree that the action that took place on October 23 and the subsequent elimination of e-mails and destruction of documents is an action that is totally inappropriate, and I believe the responsibility, as our policy states, lies with the engagement partner to have the judgment to know how to exercise within that time period, given the things that were occurring. And that judgment may be the judgment to not destroy documents. It may be the judgment to seek consultation to determine what should be done. What took place was a conclusion to eliminate e-mails, to destroy significant amounts of documents without consultation, to the best of my knowledge, with others, and that activity is totally inappropriate, and we do not condone that, and we do not believe our personnel would do those sorts of things. That's what we find was inappropriate, and that's why we've taken what action we've taken to date and we'll continue to review the situation and take appropriate action against anyone else.

Mr. JOHN. I'm out of time, but I need to end on this comment. And I respect and I understand—and that is the position you should take—but why 18 days? That is a long period of time. If there was a meeting about the destruction of documents taking place, it just seems to me that someone else knew that this meeting took place and someone higher up in management should have invoked that policy before November 9, 2001. That's just me, and I'm out of time.

Mr. GREENWOOD. The Chair thanks the gentleman, and recognizes for inquiry the gentleman from Florida, Mr. Stearns.

Mr. STEARNS. Thank you, Mr. Chairman. Ms. Temple, the questions I'm going to ask you, I'd just like a yes or no answer. If you'd be so kind. On August 15 Sharon Watkins wrote a—she was vice president of Enron, a former employee of Arthur Andersen. She wrote a memo to the President Kenneth Lay of Enron, in which she said she was incredibly nervous that we will implode in a wave of accounting scandals. Did you know of this memo before October 23? Just yes or no.

Ms. TEMPLE. To the best of my recollection, I don't——

Mr. STEARNS. Just yes or no.

Ms. TEMPLE. [continuing] recall seeing a letter from Ms. Watkins.

Mr. STEARNS. So you're saying no you did not know about Sharon Watkins' letter on October 23? You knew nothing about it? Is that your answer, that, no——

Ms. TEMPLE. I was aware that she had made allegations. I don't recall if I saw a document.

Mr. STEARNS. So you're saying yes you knew of her allegations. Is that correct?

Ms. TEMPLE. I was informed that she had made allegations, yes. I don't recall if I saw a document.

Mr. STEARNS. So the answer to my question is, yes, you knew about it. Is that correct? Yes, you knew about——

Ms. TEMPLE. I was aware that she had made allegations. I don't recall if I saw the document.

Mr. STEARNS. Okay. Now, on October 15, Vinson & Elkins was hired to look at this memo, and they indicated that there are serious risks of adverse publicity and litigation. Did you know about the Vinson & Elkins final conclusions before October 23? Yes or no. Did you know about this study before October 23?

Ms. TEMPLE. Yes. I believe I received a copy of that report before October 23.

Mr. STEARNS. So you knew about Sharon Watkins. You knew about this one. Okay the questions I have I'd like you to answer just yes or no relative to October 23. Did you know that Enron had taken $1 billion charge due to an accounting error on the Raptor transaction? Yes or no. October 23. By October 23 did you know that Enron had taken a billion dollar charge due to an accounting error on the Raptor transaction?

Ms. TEMPLE. To the best of my recollection, no—I knew that they had taken charges, but I did not——

Mr. STEARNS. That is a yes.

Ms. TEMPLE. [continuing] know about a billion dollar charge at that time.

Mr. STEARNS. You knew that—okay. Second, that the SEC had begun an informal inquiry into Enron related to a party transaction. Did you know that the SEC had begun an informal inquiry before October 23?

Ms. TEMPLE. By October 23, I knew that, yes.

Mr. STEARNS. Yes. Okay. That your own Houston and Chicago offices were disagreeing about the proper accounting and what in fact Andersen had signed off on with respect to one series of Enron transactions? Yes or no.

Ms. TEMPLE. Yes.

Mr. STEARNS. That a class action lawsuit had been filed against Enron with respect to these transactions, as well as other shareholder suits? Yes or no.

Ms. TEMPLE. To the best of my recollection, I recall an announcement on the 23 of a class action shareholder lawsuit——

Mr. STEARNS. So that is a yes?

Ms. TEMPLE. [continuing] against Enron. Yes.

Mr. STEARNS. That Andersen was assisting Enron in its response to the SEC, did you know that?

Ms. TEMPLE. Yes. On October 23, I have notes of a call with the engagement partner and senior management where the engagement partner reported to us that——

Mr. STEARNS. So that is a yes?

Ms. TEMPLE. [continuing] the team was assisting. Yes.

Mr. STEARNS. Okay. In light of your comments and your retention policy statements earlier, why did you wait until the November 9 to tell the Enron audit team to stop destroying documents, in light of all these yeses you said earlier?

Ms. TEMPLE. On October 23, according to my notes, Mr. Duncan reported to us the AA was trying to gather all documents regarding——

Mr. STEARNS. Can I interrupt you, Ms. Temple? The question is based upon all this prior information, Sherron Watkins, the Vinson & Elkins study, all of the previous things: You knew about the Raptor write-offs, you said, oh, I didn't know a billion dollars, but I knew about the Raptor transaction. You knew that the SEC had started an inquiry. Based upon all of that, why did you wait till November 9 to tell the Enron audit team?

Ms. TEMPLE. According to my notes on October 23 Mr. Duncan assured us that the team was trying to gather all documents——

Mr. STEARNS. I don't think you've answered the question, in all due—what—let me ask you this. What did you believe that Mr. Duncan's representation—no. Why did you believe that Mr. Duncan's representation that he was gathering the relevant documentation on these transactions, which clearly for purposes of internal review as to the substance and completeness of the audit trail meant that he was also gathering up everyone else's notes, e-mails, voice mails, drafts and other nonwork paper documents for purposes of preservation for litigation? Was that your job, was that his job, or was that your job?

Ms. TEMPLE. The engagement partner's primary responsibility for document retention—and he assured us, according to my notes, that they were gathering all documents regarding transactions from around the world. That was the assurance that the documents were being gathered and preserved.

Mr. STEARNS. Don't you think Mr. Duncan was gathering work papers?

Ms. TEMPLE. According to my notes, he said all documents.

Ms. DEGETTE. Would the gentleman yield?

Mr. STEARNS. I'd be glad to yield.

Ms. DEGETTE. Do your notes indicate that the documents were gathered and preserved or simply gathered?

Ms. TEMPLE. The notes state, AA trying to gather all docs, re transactions, from around the world. I understood that to be gathering the relevant documentation about all of the transactions from all around the world to have it in one place to have it available.

Ms. DEGETTE. Now, do you recall discussing——

Mr. GREENWOOD. The time of the gentleman from Florida has expired.

Ms. DEGETTE. I'd ask unanimous consent to grant the gentleman 1 additional minute so I can ask a follow-up question. Thank you.

Mr. GREENWOOD. We will be doing a second round. The gentlelady will be granted an additional minute.

Mr. STEARNS. Mr. Chairman, I ask unanimous consent to ask for an additional 1 minute, and it's not just for me, but I think we are

on to a line of reasoning, that at this point if we leave it, we lose an opportunity for this committee—this subcommittee. So——

Mr. GREENWOOD. Fair enough. Without objection, the gentleman from Florida will be granted an additional 2 minutes, some of which he may yield to the gentlelady from Colorado if he so chooses.

Mr. STEARNS. I'll yield to the gentlelady from Colorado, and also I understand the chairman here also has a question. So I yield part of my time to you.

Ms. DEGETTE. Thank you so much for your comity.

Do you recall a conversation with Mr. Duncan in which he assured you he was gathering the documents to preserve them? Do you recall specifically having that conversation, according to your notes?

Ms. TEMPLE. I don't recall the specific words, but I do recall that we had a group conference call on October 23, and I have these notes from that call.

Ms. DEGETTE. And the notes don't say anything about preservation, do they?

Ms. DEGETTE. The notes——

Ms. DEGETTE. Yes or no?

Ms. TEMPLE. The notes do not have the word "preservation" in them.

Ms. DEGETTE. And on October 12 you had just sent a memo to Mr. Duncan and his group, advising them of the Arthur Andersen document retention and destruction policy which involved destroying all of the notes and backup documents and so on, correct?

Ms. TEMPLE. No. Actually, I sent a reference to the policy to the practice director in Houston.

Ms. DEGETTE. So you never sent that to Mr. Duncan?

Ms. TEMPLE. I did not send it personally to Mr. Duncan.

Ms. DEGETTE. Mr. Odom had that, correct? Mr. Odom, did you have that?

Ms. TEMPLE. The Houston practice director, based on several factors——

Ms. DEGETTE. Just——

Ms. TEMPLE. [continuing] at that time——

Ms. DEGETTE. In this October 23 phone call, you don't recall specifically and your notes do not reflect you telling Mr. Duncan to retain records, do they? Yes or no.

Ms. TEMPLE. I don't see that——

Ms. DEGETTE. Yes or no, ma'am.

Ms. TEMPLE. [continuing] in my notes, no.

Ms. DEGETTE. Thank you.

I yield back.

Chairman TAUZIN. Would the gentleman yield?

Mr. STEARNS. I'll be glad to yield to the chairman.

Chairman TAUZIN. I'll be real quick.

Ms. Temple, if you received this e-mail from Mr. Duncan, indicating he was collecting all of these documents, and assumed that he was preserving them, why did you feel it necessary on November 9 to leave a voice mail with Mr. Duncan, directing him to preserve those documents because of the receipt of the SEC subpoena?

If he was preserving them already, why on Earth did you feel it necessary to advise him to preserve them on November 9?

Ms. TEMPLE. It is our firm practice to notify the engagement team when the legal group receives a subpoena. I believe it had been received in the general counsel's office, and I promptly notified the engagement partner and reminded about the need to—at this point in time, we'll have to collect the documents for production.

Chairman TAUZIN. Well, but you understand why common sense gets a little lost here. If you're in a position where you know that the retention policy also means destruction, you knew that, didn't you?

Ms. TEMPLE. There are aspects of the destruction guidelines in that policy, yes.

Chairman TAUZIN. So you know that the retention policy, as long as it's operating, permits Mr. Duncan and however many people he has working for him to destroy documents? You get a memo from him saying, I'm gathering them all up; and you tell us today that you assumed that meant that he was gathering them up to preserve them for litigation, not to destroy them.

Why would you even bother to say, by the way, on November 9, quit destroying documents? If you just got an SEC subpoena, why would you do that?

Ms. TEMPLE. The legal group notifies the engagement partner and engagement team when subpoenas are served. It was received by the legal group, and I felt it was appropriate to follow the firm protocol to notify the engagement partner.

Chairman TAUZIN. Now, but you see we also have the memo on November 10, and I'm going to read to you from it. It says, the first thing we must do in preparing to respond to these subpoenas and lawsuits is to take all necessary steps to preserve all of the documents and other materials that we may have relating to claims that are being filed.

Now, if that was already being done, if you had received a notice from Mr. Duncan that he's gathering them all up to preserve them, that was your conclusion, why would you say that the first thing we have to do now, now that the subpoena has arrived, is start preserving these things?

Do you see, common sense, Ms. Temple—common sense tells me that destruction was going on up until this time when the subpoena arrived and that until you said "preserve them," they may well have been gathered up for destruction, and that somebody should have known that. And was that somebody you?

Ms. TEMPLE. I never counseled any destruction or shredding of documents. And I only wish that someone had raised the question so that we could have consulted and addressed the situation.

Chairman TAUZIN. I thank the gentleman.

Mr. STEARNS. Mr. Chairman, I know my time is out. The question I had is for Mr. Baskin and Mr. Andrews.

Did you ever call Mr. Duncan in and say, Mr. Duncan, we're thinking about letting you go; we're thinking about getting your version of the story first before we let you go? Did you give him that courtesy to say, Mr. Duncan, tell us your version before we make our version? And why didn't you bring him in and just ask

him questions like that, so that we could better understand your actions?

Mr. ANDREWS. Congressman, as we have our legal counsel Davis, Polk doing the investigation for us, it's my understanding that they have had multiple interviews with Mr. Duncan on this subject, both prior to his being dismissed. So we did in fact do what you're suggesting, and it was a very appropriate step in the process of investigating it.

Mr. STEARNS. And did he tell you he was ordered to destroy these documents?

Mr. ANDREWS. My understanding—repeat the question, please.

Mr. STEARNS. Did he tell you, he was told he was to destroy these documents?

Mr. ANDREWS. My understanding of his interview and responses he gave is that he acknowledged—or discussed, presented, if you will—what took place on October 23, the meeting and the subsequent activity of destroying documents; and also indicated that he did not seek advice or counsel and was not instructed by someone to do so.

Mr. STEARNS. Did he admit to you that he told other people to destroy documents?

Mr. ANDREWS. I did not do the interview, so I can't respond specifically. My understanding of what took place was, they held a team meeting. He was the senior partner in that——

Mr. STEARNS. Mr. Andrews, is a copy of that interview or any notes on that available?

Mr. ANDREWS. No, sir. I do not have copies of notes, and I don't know if there was documentation from the meeting.

Mr. GREENWOOD. The time of the gentleman from Florida has expired.

Let me clarify your response, Mr. Andrews. You just testified that you are not aware as to the existence of any documentation of the interviews of this law firm with Mr. Duncan?

Mr. ANDREWS. What I'm saying is that our law firm is conducting the investigation, and the information I have is as a result of what they have, what they have told me from that investigation.

To clarify, I do not have a written report on an investigation. The information is in process, and will be completed appropriately; and the appropriate results——

Mr. GREENWOOD. In the course of that information, did anyone from Andersen come forward and say, while these interviews are going on, or subsequently, that they directed Mr. Duncan to destroy documents? Or that Duncan directed them? Excuse me.

Did anyone indicate that Duncan directed them to destroy documents?

Mr. ANDREWS. Congressman, I'm not sure exactly what instructions Mr. Duncan gave. What I have been told, and it's my understanding that a team—Mr. Duncan led a team meeting in which instructions were given to apply policy No. 760, which is the one in question; and that subsequent activity resulting from that meeting led to the destruction of documents, the documents we're talking about, not work papers, to the best of my knowledge at this time in the investigation, but e-mail and other forms of documentation that existed.

Mr. GREENWOOD. All right, Mr. Andrews, I'm going to ask you to make available to this committee today all of the documentation that may exist that documents the interviews with Mr. Duncan prior to leading up to his firing.

Would you make those documents available for us?

Mr. ANDREWS. Congressman, I'd have to consult with our counsel on that. It's our intention to complete the investigation and completely share the conclusions of that investigation.

Mr. GREENWOOD. Well, this committee will need these documents and will subpoena them if necessary.

The time of the gentleman from Florida expired a long time ago, and the gentleman from Illinois, Mr. Rush, is recognized.

Mr. RUSH. Thank you, Mr. Chairman.

Ms. Temple, according to the notes that we have, you—and according to the Martindale-Hubbell Legal Directory, you graduated from Harvard Law School with honors. Is that right?

Ms. TEMPLE. Yes, sir.

Mr. RUSH. And you were a partner at the law firm of Sidley & Austin before joining Arthur Andersen's legal department; is that right?

Ms. TEMPLE. Yes, sir.

Mr. RUSH. Can you explain to us, give us some kind of an idea what you were—what type of work you were doing at Sidley & Austin? I know you were—your specialty is civil litigation, professional malpractice and securities litigation, but can you give us a further indication of the type of work that you were performing at Sidley & Austin?

Ms. TEMPLE. Yes. I worked primarily on litigation, commercial litigation, did some accountants liability litigation, represented a law firm in another professional circumstance, and did other general commercial litigation for both plaintiffs and defendants.

Mr. RUSH. So it would be correct for us to assume that you were well versed on ethical considerations as it relates to document retention?

Ms. TEMPLE. I was aware of document retention issues in a litigation context, yes.

Mr. RUSH. Okay. And when did you start at Arthur Andersen?

Ms. TEMPLE. In July of 2000.

Mr. RUSH. July of 2000. And what was your work at Arthur Andersen? Prior to being assigned to the Enron clientele and cases, what was your work?

Ms. TEMPLE. My work was on a variety of matters and in addition to the Enron matter, continues to follow up a variety of matters. Members in the legal group, we work on managing with outside counsel litigation against the firm. We counsel business people from time to time on various contracts, other legal issues, practice issues. And we also help the firm comply with subpoenas.

Mr. RUSH. So you consider yourself a top-notch lawyer; is that correct?

Ms. TEMPLE. I don't know. I probably like others to think so.

Mr. RUSH. Okay. All right.

Let me ask you, you were assigned on September 28, 2001, to Enron on the Enron-related matters. Is that correct?

Ms. TEMPLE. I was asked to participate in a conference call with some of the business people, including the engagement team, shortly before the call occurred on September 28.

Mr. RUSH. Okay. So were you actually assigned to—from your superiors at Arthur Andersen to Enron-related matters?

Ms. TEMPLE. At the time that's not how it was described to me. I was just asked to participate on this conference call with my supervisor, and as time progressed, I continued to consult with the business people on this matter relating to Enron.

Mr. RUSH. Okay.

So did you transition into being the No. 1 person as it relates to the document retention matters and the policies and that type thing? Did Arthur Andersen rely on you as a part of its legal department to inform others about retention matters as it related to Enron and other—any other kind of corporation?

Ms. TEMPLE. The way I perceived my role, advising as a legal adviser relating to Enron, was to be able to participate in conference calls as the engagement team and other business people discussed the accounting issue, and to answer questions that arose. I consulted—my supervisor participated at times in some of those conference calls, and I consulted with him and, later on, with outside counsel.

Mr. RUSH. On October 12, you informed Mr. Duncan of—in a way that was—that raised some eyebrows and some questions. You sent an e-mail—no—to Mr. Odom, stating that it might be useful for him to remind the Enron engagement team about—about Andersen's document retention and destruction policy to ensure compliance with the policy.

Now, what drove you? What motivated you to inform Mr.—or send this e-mail to Mr. Odom?

Ms. TEMPLE. There were several factors. Leading up to October 12, a few questions had been raised in the conference calls I participated in about how to appropriately document several different matters: one, a current draft of a memo describing the firm's conclusion about the right accounting method, how to date that document; two, whether we should acknowledge in writing in the current document the fact that the firm had now concluded that the prior accounting advice in the first quarter was correct; three, it also came to our attention that the memos, until the first quarter 2001, it did not fully reflect and accurately reflect the nature of the consultation that the engagement team had had at that time with some of the national accounting experts, and so gave advice to document the current memos dated currently, make sure they are complete and accurate and include all facts and conclusions, and also make sure that no prior papers or any prior reporting period is changed or deleted and that the national experts should create a document dated today that made very clear the nature of the facts that they recalled about their consultation for the prior period so there would be a clear written record of their version of the facts.

Given these questions that had arisen—and I had consulted with my supervisor about providing advice, and others. In part of that consultation we referred to the documentation, retention and de-

struction policy for guidance in giving our advice; and I thought it was useful——

Mr. RUSH. Ms. Temple——

Ms. TEMPLE. [continuing] given the confusion, to make sure that we were compliant.

Mr. RUSH. What I'm trying to home in on, focus on, is your stating that—your words stating that it might be useful for him on October 12, it might be useful for him to remind.

Why weren't you more direct? Why weren't you more forceful on October 12?

Ms. TEMPLE. The way our system works in our firm is that the engagement partner has primary responsibility for the engagement and documentation, retention and compliance with policies; they can consult with the practice directors. And I did not have the detailed information about potential other issues that were being addressed by the engagement team. I thought perhaps the local practice director who's available for consultation with the audit team might have a better idea as to whether it would be useful.

Mr. RUSH. What changed as of November 9?

Ms. TEMPLE. I'm sorry, sir?

Mr. RUSH. Where you were more forceful, what changed?

Ms. TEMPLE. November 9—if you're referring to the November 10 e-mail and that timeframe, the firm had received the subpoena from the Securities and Exchange Commission asking to produce all documents, so we sent that——

Mr. GREENWOOD. The time of the gentleman from Illinois has expired.

The Chair recognizes the gentleman from North Carolina, Mr. Burr.

Mr. BURR. Thank you, Mr. Chairman.

Mr. Odom, I feel like you've been neglected, and I'll try to——

Mr. ODOM. My feelings are not hurt.

Mr. BURR. I didn't think they would be.

Mr. Odom, you play a crucial role in this, if for no other reason than there are many meetings that individuals have speculated on what the content was that you were involved in; and you were aware of Sherron Watkins' September—or excuse me, August concerns that she raised not only to Andersen, but also to Ken Lay directly, weren't you?

Mr. ODOM. Yes, sir.

Mr. BURR. And those were conveyed to you, if not directly, through a memo from Mr. Hecker, James Hecker from Andersen, through a memo to you and to the file?

Mr. ODOM. I was copied on Mr. Hecker's memo, yes, sir.

Mr. BURR. Is it usual that concerns like that might not be shared within the legal team in Andersen?

Mr. ODOM. Concerns like?

Mr. BURR. The concerns that Ms. Watkins raised, should they or were they shared with anybody within the legal team at Andersen?

Mr. ODOM. Once Mr. Hecker got the call, the next morning we contacted firm-wide legal to inform them of the nature of the call Mr. Hecker had gotten the night before.

Mr. BURR. Now, Ms. Temple, are you in firm-wide legal?

Ms. TEMPLE. Yes, I am.

Mr. BURR. And for some reason you're not aware of the accusations at that time when you got involved in the Enron—I think you said on September 28?

Ms. TEMPLE. I believe another lawyer was consulted at that time, but it did come to my attention, general allegations, before October 12.

Mr. BURR. But on September 28 when you became a part of the Enron team for Andersen, you didn't know any of these accusations as part of the firm-wide legal team that Ms. Watkins had raised?

Ms. TEMPLE. I did not know about those allegations on September 28. About 5 minutes before the conference call occurred, I was asked to participate by my supervisor, who also participated, and the topic of discussion was a specific accounting issue that did not——

Mr. BURR. When did you become aware of the investigation that Vinson & Elkins was currently engaged in by Enron to look at these questions?

Ms. TEMPLE. To the best of my recollection, I believe it was during the week of October 8.

Mr. BURR. Mr. Odom, is there anything that you've read that has been credited to Mr. Duncan, either in his formal statements that he's made or in his answers to questions by this committee that you find to be false?

Mr. ODOM. I have no knowledge of any false statements.

Mr. BURR. Is there any point that you thought David Duncan had diverted from, anything other than what he was instructed by individuals within Andersen, as it related to document retention?

Mr. ODOM. I don't know what Mr. Duncan did with respect to document retention. So I really can't answer that question.

Mr. BURR. Was there any point where Mr. Duncan asked you, or anybody that you might have been knowledgeable of, to destroy documents that were pertinent and should have been protected?

Mr. ODOM. No, sir.

Mr. BURR. Ms. Temple, what was your understanding of why Andersen hired Davis, Polk?

Ms. TEMPLE. To the best of my recollection, I understood that Davis, Polk was hired as an additional resource for the legal group to consult with on ongoing issues.

Mr. BURR. Was the legal group consulted on the hiring of Davis, Polk?

Ms. TEMPLE. I did not participate in that decision. I was informed by my supervisor——

Mr. BURR. How many other representatives from the legal team were involved intricately in the Enron team at that time, and which ones were consulted about the hiring of Davis, Polk?

Ms. TEMPLE. I don't know who was consulted about the hiring. I do know that my supervisor told me that the decision had been made to retain Davis, Polk.

Mr. BURR. And when was your first contact with individuals at Davis, Polk?

Ms. TEMPLE. To the best of my recollection, October 16.

Mr. BURR. Did Davis, Polk have any input into your October 12 memo as it related to document retention?

Ms. TEMPLE. As far as I recall, no.

Mr. BURR. Were there any individuals other than you that had input into your October 12 e-mail on document retention?

Ms. TEMPLE. I don't recall reviewing a draft of the e-mail, but I do recall discussing the document retention issues.

Mr. BURR. Was there an initiative that you started on your own or was it suggested to you to put out this e-mail?

Ms. TEMPLE. No one suggested to me to put out the e-mail.

Mr. BURR. Did you ever have a conversation relative to that e-mail, prior to its distribution, with your direct supervisor?

Ms. TEMPLE. I don't recall discussing the particular e-mail. I recall discussing the document retention policy and the legal advice we should give on documentation and retention.

Mr. BURR. On 10/12 when you distributed that e-mail on document retention, were you aware at that time of the preliminary findings that would be reported on 10/15 from Vinson & Elkins as it related to their investigation on a—stimulated by Enron?

Ms. TEMPLE. The facts that had been reported to me by the engagement team were that Vinson & Elkins had given an oral report to the board that there was nothing further that Enron needed to do as a result of their investigation.

Mr. BURR. So you were aware of what the conclusion of their investigation was?

Ms. TEMPLE. That was what was reported to me, yes.

Mr. BURR. Did that in any way, shape or form shape your decision about the fact to send an e-mail about document retention on October 12?

Ms. TEMPLE. I don't recall all the things going on in my mind at that particular time. I do recall that I was motivated by the fact that questions had been raised about appropriate documentation and retention of prior period papers——

Mr. BURR. Were there any meetings within the legal team that talked about the Vinson & Elkins findings that would be reported publicly, prior to their report publicly?

Ms. TEMPLE. I recall generally keeping my supervisor up to date on events as they occurred. I don't recall any specific discussion of the Vinson & Elkins report.

Mr. BURR. On October 16 you made a request for—from Mr. Odom, Gorgal & Golsby, to delete your name from a press statement. What was the reason for that?

Ms. TEMPLE. Actually, it was a request to delete a reference to my name and legal advice that had been provided in an internal Arthur Andersen memo that was to go into the audit work paper file; and the reasons for that were to avoid potential argument later on that the attorney-client privilege had been waived, and I made that recommendation after consulting with our outside counsel on that point.

Mr. GREENWOOD. The time of the gentleman from North Carolina has expired.

Mr. BURR. If the chairman would indulge me for one additional question.

Mr. GREENWOOD. Without objection, the gentleman from North Carolina will be granted an additional minute.

Mr. BURR. Can you share with us the exchange with your outside counsel and specifically the date that that took place?

Ms. TEMPLE. I believe I had a discussion on October 16 about appropriate documentation and how it would be good practice not to disclose in writing legal advice obtained from the legal group so that one cannot argue later that there was a waiver of the attorney-client privilege.

Mr. BURR. Did you counsel with him because you suspected that there would be litigation in this case?

Ms. TEMPLE. No. I sought counsel about appropriate documentation. The firm receives hundreds of subpoenas a year, and if there's documentation that's going in the work paper file, we, as a standard practice, don't like to have the auditors document and describe the legal advice, because it might be waived.

Mr. BURR. I would take for granted that the decision to hire outside counsel is not something that happens weekly at Andersen or many other companies. Clearly, somebody believed that a litigation team was needed. That decision was made on October 9, which makes at least this committee very interested in the meetings that took place, the decisions that one arrived at.

Clearly, after that October 9 date, decisions were made by you and you alone as you have stated, to remind individuals of the—of the document retention policy. Decisions were made to delete the legal staff's names from documents for fear that attorney-client privilege would be breached. It leads one to believe that there was a great understanding that some type of litigation was, if not imminent, certainly in the future.

You're a lawyer. You're a seasoned person. At what point did you feel that litigation was in fact a reality?

Ms. TEMPLE. To the best of my memory, I don't recall making a definite decision that, yes, we're definitely going to be sued here——

Mr. BURR. You got a pretty good sign when they hired outside counsel, didn't you?

Mr. GREENWOOD. The time of the gentleman has long expired.

Ms. TEMPLE. I knew there was a possibility, yes.

Mr. GREENWOOD. The Chair recognizes the gentleman from Kentucky for 5 minutes.

Mr. WHITFIELD. Ms. Temple, you indicated to a number of people that your memo of October 12 regarding the retention policy was precipitated by the fact that there had been some incorrect accounting advice given regarding the first quarter of Enron's financial statements; and in fact, that they were not adequately reflected and so forth. Is that correct?

Ms. TEMPLE. There had not been a conclusion that the first quarter financial statements were accurate. It was incorrect accounting advice, and to my understanding, the firm was working diligently to determine what the appropriate accounting advice should be.

Mr. WHITFIELD. But there was incorrect accounting advice given, correct?

Ms. TEMPLE. That was my understanding.

Mr. WHITFIELD. Okay. Now, prior to October 12, did you have any conference calls relating to that issue with Mr. Odom or Mr. Duncan prior to issuing that October 12 memo?

Ms. TEMPLE. As I recall, I believe there were a couple group conference calls where the engagement team was consulting with

other practice directors within their organization about this accounting issue, and I believe—I don't recall all of the participants, but I believe Mr. Duncan and Mr. Odom participated.

Mr. WHITFIELD. Is that right, Mr. Odom? Did you participate in some conference calls with her prior to October 12 about that issue?

Mr. ODOM. Yes, sir.

Mr. WHITFIELD. And is it true that you recall someone in those calls asking the engagement team how they were with respect to compliance with the retention policy?

Mr. ODOM. I believe I recall the question of—I don't think we called it necessarily the "retention policy." We called it our "document policy," whatever the——

Mr. WHITFIELD. Our document—yeah. So that was mentioned. And did you take any action as a result of that?

Mr. ODOM. I may in fact have gone through and seen if I had old drafts in my office that were not part of the current work, and I may have also looked at some old e-mails that I'd been delinquent in deleting. I do not maintain Enron files.

Mr. WHITFIELD. So you may have, or you did?

Mr. ODOM. I believe I did, but I couldn't swear to it.

Mr. WHITFIELD. Okay. So even prior to that, you at least went through some of your files and deleted some of them?

Mr. ODOM. I believe I did, yes, sir.

Mr. WHITFIELD. So her e-mail on the 12th, how did you interpret that e-mail? Did you interpret that she was suggesting that documents be destroyed or removed?

Mr. ODOM. I took it that she was reminding—we needed to remind the engagement team as to what our policies were.

Mr. WHITFIELD. Okay. Now, on October 15, Mr. Duncan wrote in his file that he was quite concerned that a press release from Enron talking about their financial statement was going to include nonrecurring charges; and he was quite concerned about nonrecurring, using that terminology, because he said he felt like that was misleading—that that would be misleading to the public.

And he also said that he was going to talk to Mr. Rick Causey. Who is Rick Causey?

Mr. ODOM. You're asking me?

Mr. WHITFIELD. Yeah.

Mr. ODOM. Mr. Causey is the chief accounting officer at Enron.

Mr. WHITFIELD. So, trying to read Mr. Duncan's mind here, it seems to me that since you all were having conference calls about inadequate advice given on the Enron account in the first quarter, and now in a press release they're saying we have these losses because of nonrecurring charges, and he thinks that that is not accurate.

And then he goes on to say that Mr. Causey basically came back and said, well, don't be concerned about it or don't worry about it or something to that effect. Are you aware of that?

Mr. ODOM. What tab are you in, sir, so I can read it?

Mr. WHITFIELD. Tab—I think it's 7. He says that—the release was issued early Tuesday, October 16, which essentially was the original—anyway, Rick said, I've raised the issue internally and that the press release had been thoroughly reviewed by our legal

team, and so despite Mr. Duncan's concern that it was misleading, the internal legal team review decided evidently to let it go. Is that your——

Mr. ODOM. I believe that's correct.

Mr. WHITFIELD. Then Nancy Temple wrote a memo to Mr. Duncan on the 16th, which is 1 day after his memo in which he's concerned about this misleading recurring charges statement, and she says, Dave, "Here are a few suggested comments." I recommend deleting reference to consultation with the legal group and deleting my name on the memo. I also suggest deleting language that might suggest we have concluded the release is misleading.

Why did you write that memo, Ms. Temple?

Ms. TEMPLE. I wrote that after reviewing the draft and consulting with our outside legal counsel. First——

Mr. WHITFIELD. Outside. Which outside?

Ms. TEMPLE. Davis, Polk, the comment regarding referencing legal advice. Again, it's standard practice and consistent with the advice from outside counsel that the auditors should not describe the nature of the legal advice in their audit documentation, because it might be arguably a waiver of attorney-client privilege later on; and Davis, Polk agreed with that, and——

Mr. WHITFIELD. If Mr. Duncan was concerned about misleading the public with this nonrecurring charge, why did you suggest deleting that? Because it might suggest we have concluded the release is a mistake?

Ms. TEMPLE. There's only one sentence they suggested deleting for two reasons, because it was inaccurate factually and——

Mr. WHITFIELD. It was inaccurate factually? How was it inaccurate?

Ms. TEMPLE. The sentence refers to enforcement actions undertaken against companies by the SEC in a case where they believe the presentation was materially misleading. I have been aware of only one enforcement action, and the circumstances were different than the case involving Enron. I had not reviewed an entire draft press release of Enron, but I knew that Mr. Duncan and others within Andersen had, and provided comments, but under the professional standards, the press release is the responsibility of the company, not of the auditor. The auditor was trying to be helpful, and it was my understanding, based on the discussions with people within Andersen, that Andersen had not concluded that the press release was misleading.

Mr. WHITFIELD. But the person in charge of the Enron account was quite concerned about it. And yet subsequently, as it turns out, he probably was correct. It was misleading.

Mr. GREENWOOD. The time of the gentleman has expired.

Mr. WHITFIELD. Very last question.

In this memo you went further to say, "I would consult further within the legal group as to whether we should do anything more to protect ourselves from potential Section 10A issues." What are 10A issues?

Ms. TEMPLE. That is a reference to a provision in the Federal securities laws that imposes certain obligations on auditors in certain circumstances. And as an extra precaution, I sent these documents to Davis, Polk and asked them to review them to see if they had

any suggested advice for additional steps that Arthur Andersen should take in these circumstances. And the advice was, no, we were doing the right thing.

Mr. GREENWOOD. The time of the gentleman from Kentucky has expired.

The Chair recognizes the gentleman from Texas, Mr. Green.

Mr. GREEN. Thank you, Mr. Chairman. And I appreciate the courtesy of the Chair in allowing me—obviously this is not the first time I have asked to be waited on with the oversight and investigation on other issues. I appreciate the courtesies in the past and particularly today.

Representing a district in Houston, you can imagine the nationwide publicity when you see this current week's Newsweek about burned and greedy execs, and clueless accountants left Enron bankrupt and little guys in the lurch, how it affected investors around the country.

But when you are from Houston and you have a district that not only had employees but also people who placed their trust in Enron for 16 years, and also in Arthur Andersen who is an 88-year-old company or partnership, in that trust.

Enron was such an integral part of our community, obviously employing, you know, thousands of people and individuals investing in it, but our arts community, our medical community, even our baseball stadium has their name currently. And you can see the frustration.

And that is why I guess there are 11 committees in Congress looking at it. And the Justice Department.

Of course, I am mildly disappointed. It seemed like this week not only Arthur Andersen's shredding of documents, but Enron doing it up until the civil lawyers found out, and hopefully the Justice Department would be more aggressive as the criminal prosecution I think it would be—much more than the civil lawyers who are filing the lawsuits. But maybe that has gotten their attention.

Let me ask some questions, though, and follow up on all of my colleagues who have done really good in trying to bring out some of the facts of what happened leading up to Ms. Temple's memo.

October 9 was when the firm decided to retain outside counsel. Mr. Baskin, would that——

Mr. ANDREWS. That is correct.

Mr. GREEN. How long did it take? Did you interview other firms, or were there—was the decision made to retain outside counsel prior to October 9?

Mr. ANDREWS. Congressman, I wasn't directly involved in hiring outside counsel. My understanding is we—we engaged them on October 9, and that they commenced work around October 1.

Mr. GREEN. But, the decision was made to retain outside counsel prior to October 9. Do you have any idea of the timeframe on the decision looking at Arthur Andersen for that?

Mr. ANDREWS. My understanding is we made the decision and engaged them on October 9.

Mr. GREEN. So it was a decision and so you hired them. So there weren't any other firms that were considered?

Mr. ANDREWS. I don't know.

Mr. GREEN. Okay. And you have no idea when the search began for another outside counsel? I assume that Arthur Andersen has a lot of outside counsel that they have the opportunities to retain.

Mr. ANDREWS. Congressman, that is right. We do have any number of other firms engaged on various other matters.

Mr. GREEN. And I guess, to sum up all of the questions, people are wondering, and I am glad that the testimony brought out today that Ms. Watkins, who is a former Arthur Andersen—was she a partner in Arthur Andersen before she moved to Enron?

Mr. ODOM. No, sir, she was not.

Mr. GREEN. But she was an employee of Arthur Andersen and then moved to Enron?

Mr. ODOM. I believe that is correct. Well, actually she left Arthur Andersen some years ago and went somewhere else before she went to Enron, is my understanding.

Mr. GREEN. And she sent—not only in her current job, but she talked to Mr. Hecker. On testimony you just said that you were aware of Mr. Hecker's memo to file around the time that he did it in August 21?

Mr. ODOM. Yes, sir.

Mr. GREEN. Did that make it up just past the Gulf Coast Region of Arthur Andersen?

Mr. ODOM. Yes, sir.

Mr. GREEN. So I guess, as a lawyer, then Arthur Andersen had somewhat constructive notice, even though the subpoena didn't get there until November, that there was possible litigation and maybe even criminal activity?

Mr. ODOM. I am not a lawyer, Mr. Green.

Mr. GREEN. That is why you have legal counsel from—with Arthur Andersen, but also the ability to hire outside counsel.

But on August 21, the memo to the—to the Arthur Andersen-Enron audit team, to the file and to you, and so the partnership was aware of the concerns of Ms. Watkins in late August—August 21, 22?

Mr. ODOM. Yes, sir.

Mr. GREEN. And so the decision then from August 21 to October 9, was—you know, 7 weeks to do that—to decide on hiring outside counsel, but the constructive notice on that was there was potential litigation; and I also—as a lawyer, I understand that there is always potential litigation, particularly when are you dealing with a company like this.

And why would there be the necessity for sending a memo on October 12, reiterating Arthur Andersen's policies, when constructive notice may have been given in August, but actually you didn't respond until the subpoena, on not destroying possible evidence?

Ms. Temple, was there some other reason for the October 12—because, granted, you may not have had knowledge, but Arthur Andersen as a partnership had knowledge in late August, and yet in October, after the stock continued to go down, and the company was imploding, there was notice to the local office.

Ms. TEMPLE. I can tell you, sir, the facts, as best I recall them, leading up to October 12.

I did learn that this employee had made allegations. I also learned that the legal group within Arthur Andersen had been con-

sulted. I consulted and conferred with that lawyer. I learned that Arthur Andersen encouraged this employee to raise the allegations within the highest levels of the Enron organization, and that the Arthur Andersen engagement team had assured the legal group and others that they had followed up on the allegations by addressing them with the general counsel of Enron and learned that Enron had engaged an outside law firm to conduct an independent investigation.

I learned that the auditors had obtained information about the nature of the allegations, reviewed that information, and reported to senior people within the firm and the legal group that they had reviewed carefully during their audit work the accounting for transactions referenced in the allegations, and that they followed up and learned that the law firm had reported that the company did not need to take any further action.

So those were the circumstances.

Mr. GREEN. That was the middle of October?

Ms. TEMPLE. That I knew of by October 12.

Mr. GREEN. Okay. So before October 12 you were aware of Ms. Watkin's memo?

Ms. TEMPLE. I don't recall if I saw the memo that Ms. Watkin's wrote. I do recall knowing that she had made allegations.

Mr. GREEN. And you don't have a timeframe before you sent the memorandum on the—reiterating Arthur Andersen's policy on the destruction of documents?

Ms. TEMPLE. To the best of my recollection, I learned about all of the facts that I just described during the week of October 8.

Mr. GREENWOOD. The time of the gentleman from Texas has expired.

The Chair recognizes the gentleman from California, Mr. Waxman for 5 minutes.

Mr. WAXMAN. Thank you very much, Mr. Chairman.

One of the great mysteries surrounding the collapse of Enron is the identity of the secret partners with whom Enron engaged in various complicated and undisclosed financial transactions. These partnerships allowed Enron to move debt off its balance sheet. No one knows for sure how many partnerships there were, but some press reports have said there could have been hundreds or even thousands of them. These secret partnerships appeared to be extraordinarily lucrative for the partners.

As the Washington Post recently reported, the secret partnerships were set up in a way that guaranteed that the secret partners would not be at risk if the ventures failed. Andrew Fastow, the former Enron official who participated in some of the partnerships, reportedly made $30 million from his role in these partnerships.

I am concerned that the document destruction that went on at Arthur Andersen and at Enron may affect our ability to learn who these secret partners were. In fact, it is possible that the document destruction may be intended to cover up the details of these partnerships, including the identity of these secret partners.

We know from the press accounts that some of the documents shredded by Enron have the names of the secret partnerships such as Jedi clearly visible on them. I would like to ask whether any one

of you at the table knew that Arthur Andersen knew of the identity of the secret partners.

Mr. Andrews? Mr. Odom?

Mr. ODOM. I will try. On the LJM 2 transactions, which are the large funds that Mr. Fastow raised, there exists a private placement memorandum, I think it is 144A—is that—am I saying that right?

144A. It is a private placement memorandum, which I think exists, that I believe has the names of the people who subscribed to that partnership.

Mr. WAXMAN. Is that document intact or has it been shredded?

Mr. ODOM. That is an Enron document.

Mr. WAXMAN. Do you know if any of the documents destroyed at Andersen related to these secret partnerships?

Mr. ODOM. I have no knowledge.

Mr. WAXMAN. Do you know whether any of the documents destroyed at Enron related to those secret partnerships at Enron?

Mr. ODOM. I have no knowledge.

Mr. WAXMAN. I am assuming that if anybody else at the table——

Mr. ANDREWS. No, I have no knowledge of the Enron activities.

Mr. WAXMAN. How about of the Arthur Andersen activities?

Mr. ANDREWS. As the documents that I have discussed, Congressman, that we believe were destroyed were not permanent audit work papers, but memos and documents, paper documents and e-mails, in this—that were destroyed in that late October period, the ones that we can recover, which were some of the electronic documents, we will obviously, when the investigation is done, know the content of those and be able to obviously answer that question.

Documents that were shredded or destroyed, we cannot address what was in those items or in those papers, as they were shredded. But we are making every effort to recover every document that was destroyed in our organization. As we said, we certainly do not condone that and will make every attempt to recover it so that the record is there to investigate for us, for you, for the SEC, and for the Department of Justice.

Mr. WAXMAN. Well, there are many Members of Congress who would like to know about who those secret partners were. Can any of you give us information or direction about how to get this information, aside from what you have already indicated? Whom should we call before the committee? What documents should we subpoena to learn the identity?

Mr. ANDREWS. Well, Congressman, I think the investigations are pursuing, whether it be the SEC, the Department of Justice, or Congress or ourselves, looking at all information that is available.

Now, most of the documentation, the original documentation around partnerships or any other source documentation like that would first and foremost be the documentation of the company. We, as auditors, do not create the documentation. We review those records. So the best source of the information that you are referring to, of course, would be at the company itself.

Now, when we do our audit, we do review items within that audit. To the extent we need documentation to support the audit,

we do retain those in our audit work papers. We are and will continue to make our documentation that we have, including everything we recover, available to all appropriate investigating bodies. So anything that we have will be available appropriately for the investigation, including anything we can recover from the e-mails that were destroyed in that—or eliminated in that late October period.

Mr. GREENWOOD. The time of the gentleman from California has expired.

Mr. WAXMAN. If I can ask this one point: Will you be submitting to this committee that information when you have it?

Mr. ANDREWS. Congressman, we will cooperate fully with this committee, as I think we have to date. When we complete our investigation, we will certainly share with you the conclusions of our investigation, including the subsequent oversight of that by former Senator Danforth.

Mr. GREENWOOD. The Chair recognizes the gentleman from Massachusetts, Mr. Markey.

Chairman TAUZIN. Before the Chair does that, can I clarify something? Just 30 seconds.

I want to inform the gentleman and all members that our original request for documents from Enron covers the requests for knowledge about the partnerships. And that document request is in the process of being complied with. So we don't have it all yet, but we obviously are going to share it with all members and staff when we have it.

Mr. GREENWOOD. The Chair yields 5 minutes to the gentleman from Massachusetts, Mr. Markey.

Mr. MARKEY. Thank you, Mr. Chairman, very much.

Ms. Temple, when you sent the October 12 memo, you were really sending it because you were concerned that Andersen might be sued, either by the SEC or by Enron investors, weren't you?

Ms. TEMPLE. No, I don't recall that being in my mind at the time. I was concerned about making sure that we had accurate and complete documentation.

Mr. MARKEY. Mr. Joseph Berardino on Meet the Press on Sunday said the policy of Andersen is not to shred documents, not to eliminate documents, if you have a reasonable basis to anticipate an investigation. By October 12 you already know there is a reasonable expectation that there will be litigation.

Now, Mr. Odom, I see that on October 12 you forwarded Ms. Temple's e-mail on to David Duncan, the Andersen partner in charge of the Enron account, with the notation, "more help."

Now, can you tell us just what did you mean when you referred to this memorandum as "more help"? How is an order to start shredding helpful to you, especially on October 12?

Mr. ODOM. I was actually being facetious, Congressman Markey. What I was referring to is the fact that all of us knew where our document retention policy was, yet we had gotten a note attached to it, with a doc link attached to it. So it was really just a reminder. But it was not something that was——

Mr. MARKEY. On October 12, "more help" is just being facetious?

Mr. ODOM. Yes.

Mr. MARKEY. Now, Ms. Temple, now just 4 days after you sent the "12, 2001, start shredding the documents" memorandum to Mr. Odom, I see that you sent an October 16 e-mail to David Duncan commenting on a draft memo he had prepared, expressing concerns about a press release that Enron had put out regarding third quarter 2001 results. In this e-mail you recommended deleting any reference to consultation with the legal group and deleting your name from the memo.

You have acknowledged that you were concerned that being mentioned in this memo could result in your being named as a witness in future litigation. If so, following Mr. Berardino's statement, why didn't you direct Mr. Duncan to stop the shredding?

Ms. TEMPLE. Congressman Markey, I did not instruct Mr. Duncan to shred documents. In my October 16 e-mail, I did not anticipate being a witness in any particular proceeding with respect to Enron.

This is standard advice provided by the legal group.

Mr. MARKEY. You said there is no "particular," but Mr. Berardino is saying if there is a "reasonable" basis to anticipate an investigation. At this point, don't you have a reasonable expectation?

Ms. TEMPLE. As I recall, it was a possibility. But I don't recall any discussion of any reasonable anticipation of litigation or making that conclusion.

Mr. MARKEY. So you were also concerned that Mr. Duncan's draft would be read as a suggestion that Andersen viewed the Enron press release as being misleading to investors, weren't you? And if so, why didn't you order the shredding to stop if that was your concern?

Ms. TEMPLE. Congressman, I was not aware of any shredding activities. Based on my discussions with Mr. Duncan and others and our outside counsel——

Mr. MARKEY. Your memo was interpreted, as you know, as a shredding order. That is what began immediately at Andersen in Houston.

Ms. TEMPLE. I don't know what actually happened, what the facts are.

Mr. MARKEY. So you were also worried that Andersen would be required to comply with the financial fraud reporting requirements of Section 10A of the Securities Exchange Act, the Wyden-Dingell-Markey amendment that requires accountants to immediately report evidence of financial fraud to senior management, the board; and if they take no action within 5 days, to report the fraud to the SEC. You make that clear.

If so, why didn't you order the shredding to stop?

Ms. TEMPLE. Congressman, there was no conclusion that there was any financial fraud. In fact, there was a conclusion that there was no misleading statement. After consultation with others in the firm and Davis, Polk, I was being careful in asking Davis, Polk to look at all angles and all issues and advise us. And the conclusion was there were no further steps to take.

Mr. MARKEY. Well, let's move to October 17. On October 17, the SEC opens an informal inquiry into Enron's dealings, and over the next several days numerous lawsuits are filed against Enron. The

document shredding continues all through this period to November 9.

Why didn't you order the shredding to stop then?

Ms. TEMPLE. I was not aware of any shredding activity.

Mr. MARKEY. You had sent a memo on October 12. You knew that that was something that could reasonably be interpreted as a shredding order.

Ms. TEMPLE. I intended by October 12 reference to the firm's documentation retention policy to focus on the documentation issues that had arisen in the retention counseling advice I had provided leading up to the 12. I specifically told the engagement team to retain the relevant documents.

Mr. GREENWOOD. The time of the gentleman from Massachusetts has expired. Without objection, the gentleman will be granted an additional minute.

Mr. MARKEY. Is it your legal opinion that Andersen is free to shred documents relating to its work with Enron until such time as it actually receives a subpoena from the SEC or is formally named as a defendant in a class action lawsuit by Enron's employees or other investors?

Ms. TEMPLE. I have not reached that legal opinion.

Mr. MARKEY. Was that your view at that time? That is the important thing.

Ms. TEMPLE. I was not asked to reach a legal opinion at any particular time. And I was unaware of any shredding activity.

Mr. GREENWOOD. The time of the gentleman from Massachusetts has expired.

The Chair recognizes the gentleman from New York, Mr. Engel, for 5 minutes.

Mr. ENGEL. Thank you very much, Mr. Chairman.

I am very concerned about the conflicts of interest that have to exist when an auditor also serves as a consultant. To be blunt, a lucrative consulting contract depends on a company's financial health. And in this case I am forced to wonder if Andersen was willing to turn a blind eye to questionable accounting practices and partnerships so as to maintain its other contracts with Enron.

Some of the financial transactions that Andersen blessed in its role as auditor are, at face value, reckless and unwarranted. Obviously, Andersen failed in its role as auditor to provide investors with proper information. This all brings to mind the question of ethics.

According to the American Institute of Certified Public Accountant's Code of Professional Conduct, "Integrity requires a member to be, among other things, honest and candid within the constraints of client confidentiality. Service and the public trust should not be subordinated to personal gain and advantage. Integrity can accommodate the inadvertent error and the honest difference of opinion; it cannot accommodate deceit or subordination of principle."

What we now find before us indicates to me that many, many people at Enron and Andersen failed to uphold basic principles of honesty and integrity, and with so many unprincipled choices, far many more people were hurt as a result.

It is evident to everyone now that Enron's become one of the greatest business scandals in our Nation's history, and obviously,

if the scandal is as dark, portions—billions of dollars of investment retirement have been lost due to the dirty dealings of a few greedy people. And as a Congressman, I look forward to changing our Nation's laws so as to prevent this type of abuse from ever happening again.

A lot of my colleagues have asked specific questions. I wanted to ask some general ones. I would like—let me start with Mr. Baskin and say, does providing consulting and auditing services set one on a path that will cause professional ethics to be challenged? Is it not a conflict of interest to provide consulting and auditing services at the same time?

Mr. BASKIN. Congressman, I do not believe that that is inherently an ethical problem for auditors.

Mr. ENGEL. Well, let me ask you, as managing director of the professional standards group of Andersen—you can be considered the conscience of the company—what is the Andersen code of professional standards, and has it lived up to these standards based on everything we now know?

Mr. BASKIN. Our code of professional standards in the United States is the AICPA standards that you read from.

Mr. ENGEL. Does Andersen require its members to be—its accountants to be members of the American Institute of Certified Public Accountants?

Mr. BASKIN. I believe we require our audit partners and others who need to be members to be members, yes.

Mr. ENGEL. Okay. So you are obviously aware that the AICPA has an extensive code of professional ethics?

Mr. BASKIN. Yes, sir.

Mr. ENGEL. Then obviously it had to have been obvious to you that that code was being violated; was it not?

Mr. BASKIN. I was not directly involved in the Enron engagement, and so it was not obvious to me, no. I was not aware of it.

Mr. ENGEL. Are you aware that violating these standards and subsequent expulsion is cause for a company to fire an employee?

Mr. BASKIN. I am sorry. Could you repeat the question?

Mr. ENGEL. Well, violating these American Institute of Certified Public Accountant Standards would be reason to fire an employee?

Mr. BASKIN. I think that certainly would be something that we would have to consider, yes.

Mr. ENGEL. Would you not logically say that the destruction of financial documents after a Federal investigation has been launched would be a violation of that code?

That is not even grey; it is certainly, to me, black and white.

Mr. BASKIN. Congressman, I would want to know the facts about who was investigating, what part of the SEC was doing the investigating, what were they looking into. Was it financial statements or was it some other aspect of their reporting? But before I would conclude that we had crossed some threshold—I don't think that simply because someone in the SEC is investigating is sufficient.

They communicate with our clients quite often, and on a continuous basis.

Mr. ANDREWS. Congressman, could I address your question?

First, with regard to your reference to the AICPA Professional Code of Conduct, we as an organization fully subscribe to that, as

well as to any of the other SEC-related independence guidelines that we as an organization have to comply with. We totally concur with that. We believe in this engagement we have complied with those rules.

The issue related to document destruction, we didn't look at that from an AICPA Code of Conduct standpoint, we looked at it as an incredible, gross error in judgment at a minimum, and certainly probably a violation of our policy; and that is why we would take that action.

But we fully subscribe to the requirements of the AICPA Code of Conduct, as well as the SEC rules and regulations around those subjects, as well.

Mr. ENGEL. Well, let me ask you——

Mr. GREENWOOD. The time of the gentleman from New York has expired. The Chair will do his usual granting of 1 additional minute.

Mr. ENGEL. Can an accountant be personally sued for malpractice as doctors and lawyers can be? And should not accountants be held legally responsible for negligence?

Mr. ANDREWS. Congressman, accountants can be and are sued, as the firm is. So both individually and as a firm we are accountable.

Mr. GREENWOOD. The time of the gentleman from New York has expired.

Chairman TAUZIN. Would the gentleman—he had a little time. I want to clarify something for the record if the gentleman will allow me. Will the gentleman yield?

Mr. ENGEL. Certainly.

Chairman TAUZIN. Let me make something clear on the record for all of those attending these sessions, either in person or by television.

Someone made a statement earlier that we had passed a law in 1995 relieving the accounting profession of litigation liability. That is not correct. Under that act accountants are responsible proportionately for nonknowledgeable violations. And when they are in knowledge of something negligent, they are liable fully, in joint and several liability with their client. That is current law. That has never been repealed. It has not been repealed in the 1995 act.

Second, the 1995 act did not relieve accountants of liability for making intentionally wrong statements. All the act did was codify a court decision, a Federal appellate court decision, relative to forward-looking information, we think the company is going to do well, but here are the things that could hurt it if it doesn't do well, that kind of stuff.

Third, the act that was discussed earlier did not change, nor touch nor repeal nor alter the Supreme Court decision on aiding and abetting; it had nothing to do with it. It retained accountant's liability when they are negligent knowingly, fully and completely, and when they are not knowingly, they are proportionately liable with their clients. That is the current state of the law.

I thank the gentleman for yielding.

Mr. ENGEL. Thank you for clarifying that. I think it is an important clarification.

Mr. GREENWOOD. The Chair thanks the gentleman. And the Chair will recognize himself, and we will begin a second round of questions for those members who wish to participate.

It has been the position of Arthur Andersen all along that the buck basically began and stopped with Mr. Duncan, that he was not directed by superiors to destroy documents or to command others to destroy documents. Now, is that correct?

That is your position that is—I understand Mr. Berardino has testified to. That is what your press releases have said. That is what you have all said today in your testimony.

Mr. ANDREWS. Congressman, I would like to clarify that.

What I have said and what I believe the firm has said at this point is that we are engaged in an extensive investigation of what happened. We are part of the way through that. At this point in time, we had enough information to take the action we took on Mr. Duncan, based on the gross errors in judgment.

That investigation continues. And I assure you that wherever that investigation leads, to whomever it leads, we will take appropriate action.

So our investigation is in process and certainly far from finished. We don't mean to suggest that should it lead elsewhere, we in any way would resist taking it in that direction.

Mr. GREENWOOD. Very well. Early on, I think perhaps September, Arthur Andersen created the Core Consultation Team. I believe many of you, Mr. Andrews served on that, Ms. Temple served on that, Mr. Odom served on that; is that correct?

Mr. ANDREWS. Congressman, no, I was not part of the Core Consultation Team.

Mr. GREENWOOD. You invited—for instance, the memo of October 23 that came out from Mina M. Trujillo, regarding a conference call from the Core Consultation Team, was copied to you, Mr. Andrews. Did you participate in that conference call?

Mr. ANDREWS. Congressman, I did not participate in that conference call.

Mr. GREENWOOD. You did not participate in the consultation of the consultation group? You were not a party to the discussion?

Mr. ANDREWS. I am familiar with the Consultation Team. Yes, I did have conversations at times with the Consultation Team. I was not party to that call.

Mr. GREENWOOD. Why was the Consultation Team created?

Mr. ANDREWS. The Consultation Team was created because, as we said, had indicated, during the third quarter there were a number of activities going on in terms of transactions and other things that have been discussed.

And that Consultation Team—there was a—there was, because of the nature of the activities, the degree of things being considered, the complexity of the things being considered, that was created. And it is our policy and our culture to encourage consultation. And so that would be appropriate.

Mr. GREENWOOD. You had senior members, you had people from Chicago on this team, Rich Corgel was on this team, he was Practice Risk Management Group Director, a superior position to Mr. Duncan certainly and to Mr. Odom; is that correct?

Mr. ANDREWS. Mr. Corgel is what we call U.S.—he is in charge of our U.S. Practice Director role. Mr. Odom is a Practice Director as part of the Corgel team.

Mr. GREENWOOD. Let me get to this. What I want to know is, when you had these discussions and there was a conference call that was scheduled for 4 on October 23, on the agenda was "status of documentation," and that is Tab 13.

This document that I am referring to, Tab 13, I would like you to take a look at that. And there is a long list of agenda: "SEC, third-party actions, legal representation, status of documentation, response to SEC."

Mr. Odom, are you looking at this document?

Mr. ODOM. Yes, sir.

Mr. GREENWOOD. Now, in this conference call, I have included Mr. Duncan, but also included senior management from both Houston and Chicago.

Was there discussion at all about the document retention issues? Because, what Ms.—"status of documentation" is listed in this as an agenda item. And Ms. Temple is saying that was there to talk about the need to collect data from around the world to analyze Enron's decisionmaking, and this was not about a discussion of documentation that ought to be retained or destroyed. Is that your testimony?

You are saying—you have testified, Ms. Temple, that that was the—that the "status of documentation" is on that list for the purpose of—that was there so you could discuss the need to retain documents. Is that your recollection? That is why that was on there?

Ms. TEMPLE. My recollection was that—an inquiry as to the status of the ongoing current work by the engagement team in the third quarter and the issues that the team was trying to deal with as they arose.

And my notes from that conference call indicate that the engagement partner reported that Arthur Andersen was trying to gather all of the documents regarding the transactions from around the world.

But I believe——

Mr. GREENWOOD. And was that for purposes of litigation or for purposes of preservation?

Ms. TEMPLE. I believe that was for purposes of getting all of the relevant information together, to understand the facts and to preserve the facts.

Mr. GREENWOOD. Okay. Is that your recollection, as well, Mr. Odom?

Mr. ODOM. Yes, sir. I believe it is my recollection.

I would also like to clarify that the initial core team of the people to whom the memo was sent to, and the cc's were people who were invited to participate in this first call, and I did participate in this call. I did not participate in all of the core calls after that, although I did in some.

Mr. GREENWOOD. Let me ask you this question.

Mr. Berardino in his press release gave the reasons why Mr. Duncan was fired. He said he was fired because he ordered the destruction of documents.

Who told you, who told your team, who told your attorneys that Mr. Duncan ordered the destruction of documents? Did Mr. Duncan tell you that?

Mr. ANDREWS. Mr. Chairman, that information related to that conclusion, and that is in Mr. Berardino's memo or press release of January 15 as the result of the investigation work we had done to that point in time.

Mr. GREENWOOD. Who said Mr. Duncan ordered the destruction of documents? Was it Mr. Duncan or was it someone who was destroying documents at Mr. Duncan's command?

Mr. ANDREWS. My understanding is that it was a result of information from all of those interviews, including interviews with Mr. Duncan, review of the information that we had on that, as well as others.

Mr. GREENWOOD. Mr. Duncan acknowledged that he destroyed documents contrary to Andersen's policy or that he ordered others to destroy documents contrary to Andersen's policy?

Mr. ANDREWS. I did not directly interview Mr. Duncan. I don't want to suggest that he made the statement that it was contrary to Andersen's policy.

What Mr. Duncan did was conduct the meeting on October 23 and give instructions—and provide instructions to comply with the policy.

Mr. GREENWOOD. How do you know that? Did he say that he did that? Did others in the firm say that he did that?

Mr. ANDREWS. Mr. Chairman, my information is as a result of the information shared with me as a result of the investigation that we have going on, which included interviews with Mr. Duncan and others, as well as review of documents that have been recovered.

Mr. GREENWOOD. Did Mr. Duncan create this initiative to comply with policy or in opposition to the policy?

Mr. ANDREWS. Mr. Chairman, Mr. Duncan would have to answer that question.

Mr. GREENWOOD. So no one in Arthur Andersen has ever said, Mr. Duncan told me to destroy documents?

Are you aware of any employee who said, Mr. Duncan told me to destroy documents?

Mr. ANDREWS. I do not know the answer to that. Again, once the investigation is completed——

Mr. GREENWOOD. But you have said—the Arthur Andersen press release asserts that Mr. Duncan conducted himself in, using poor judgment, violation of policy.

My question is, how did Arthur Andersen come to that conclusion when you have not indicated that either he admitted it, he came forth and said, You know what I did? I broke the rules. I don't know what got into me. I started telling people to destroy documents. And you have not said, and by the way, these are the employees who destroyed the documents pursuant to Mr. Duncan's directions, and that is why we fired the guy.

Mr. ANDREWS. Let me clarify. Mr. Duncan conducted a meeting that——

Mr. GREENWOOD. Let me just clarify before you clarify.

The Andersen press release says, "Although the firm is still working to collect all of the facts, it has learned that at the direction of the lead partner, an expedited effort to destroy documents in Houston was undertaken."

So how did you learn that?

Mr. ANDREWS. We have learned that as a result of interviews with Mr. Duncan and others.

Mr. GREENWOOD. So Mr. Duncan said, I led an expedited effort to destroy documents?

Mr. ANDREWS. No, that is not what I am saying, Mr. Chairman.

What I am saying is that he conducted a meeting with a group of the engagement team with the policy——

Mr. GREENWOOD. How do you know that? How do you know that he did that?

Mr. ANDREWS. Through the interviews that we have conducted.

Mr. GREENWOOD. With whom?

Mr. ANDREWS. With our investigators.

Mr. GREENWOOD. No. Whom did the investigators query?

Mr. ANDREWS. Mr. Duncan, as well as others.

Mr. GREENWOOD. And who are the others?

Mr. ANDREWS. I don't have the information on the others.

Mr. GREENWOOD. We will need to know who those others are.

Mr. ANDREWS. But what I want to make clear is, as a result of that meeting, after that meeting, an extensive document destruction and e-mail removal process resulted. So clearly, to us, the results of that meeting led to that activity, and Mr. Duncan was engaged——

Mr. GREENWOOD. We know that that expedited effort didn't occur because of telepathy. So therefore either Mr. Duncan said, It is time to expeditiously, and contrary to our policy, start destroying documents; or he didn't.

And he doesn't admit that apparently. He has not said I—he didn't come to your investigations and say, you know what? Mea culpa, I told these people to destroy documents contrary to our policy. It was a rush. It was expedited.

Nor have you indicated to us at any time that his underlings came and said, Boy, this is what we were told. We were told to hurry up and rush and destroy documents.

He didn't tell our investigators that he did this.

Mr. ANDREWS. I am not here to defend a policy. What I have said is that the activity that resulted from that meeting, large quantities of destruction of documents, is at best an incredible error in judgment and totally inappropriate and not consistent with what we would intend to take place or what this firm stands for.

Mr. GREENWOOD. Why do you think Mr. Duncan went about this?

You fired him. Pretty strong action. What does the company think motivated Mr. Duncan to go forward with this expedited rush to destroy documents, putting his job on the line, I would assume putting at risk all of those under him who were engaged in destroying documents in an expedited, rushed fashion, contrary to your policy. Why would he do that?

Mr. ANDREWS. Mr. Chairman, I don't know. And I hope by the time the investigation is done——

Mr. GREENWOOD. Nobody asked him why he did that? Before you fired him, nobody said, Why did you do this? What got into your head?

Mr. ANDREWS. I am sure our investigators had inquired along many different lines. But what——

Mr. GREENWOOD. You are sure of that?

Mr. ANDREWS. I am clear they interviewed him, yes. They have interviewed him on multiple times.

Mr. GREENWOOD. Before you came to testify about all of this, did you ask your investigators what the heck he said?

Mr. ANDREWS. My understanding is that he said that he conducted the meeting, he shared the policy, or discussed the policy, with the people at the meeting, and the resulting actions——

Mr. GREENWOOD. He passed out the policy and said, Here is the policy?

Mr. ANDREWS. I don't know exactly how he passed it out or if he passed it out. But he discussed the policy.

Mr. GREENWOOD. They just took the policy that had been sitting around for years and said, We'd better get to work here?

Mr. ANDREWS. Mr. Chairman, I don't know how he conducted himself at the meeting because I wasn't present.

Mr. GREENWOOD. My time has expired.

The Chair recognizes the gentleman from Florida, Mr. Deutsch.

Mr. DEUTSCH. Thank you, Mr. Chairman. And I think we actually, absolutely know more than we did before the meeting started, not as much as I think any of us want to know.

I want to shift focus a little bit, because I think this is going to probably be the last round, and at least give each of you an opportunity to touch on this. And it goes back to my original opening statement of the sort of big-picture issue, which is really regulatory safeguards.

The whole premise of what we believe happened is that Enron was gaming the public accounting system. At least that is a very likely sort of scenario, that they, through these partnerships and through offshore issues, were putting losses in those areas that, effectively, their balance sheets did not reflect; and analysts, Wall Street analysts or for that matter any investor trying to understand what was going on with Enron, was not able to do.

From any of your perspectives, from the public accounting side—you know, again this is sort of more the big-picture issue as opposed to some of the details that we have dealt with. But from that perspective, can you offer suggestions to us that—is the system broken?

If you recall, most of—I think all of you were here for my opening statement. Are there other Enrons out there? Are there other companies that are doing effectively exactly the same thing that Enron is doing? And for that matter, all of them have big five accounting firms, and the big five accounting firms—again, not the issue of destruction of documents, but the issue of reporting under present, you know, accounting rules, clearly is a skirting of the rules, clearly is a gaming of the system.

Now, again I am not ready to say that that gaming was illegal. It was awful. It was terrible. I was about to say when my colleague was talking about maximum security prison, that might be too

good a condition for some of those people. But the reality is, in terms of that issue, which was really the big issue, do any of you have any comments that you would like to make on that?

I know it is not why you were asked to come here, but you have a lot more experience in the public accounting world than I do.

Mr. ANDREWS. Well, Congressman, let me comment on it.

I think the intent and objective of financial statements and other disclosures should be to inform users of those statements in a way that there is clarity to that information, so they can make informed decisions, whether for investment reasons or for others. So I totally concur with that.

And I believe we do need to improve that process for that clarity to be at the level it should be. Because the investor, or whoever uses financial statements, needs to be able to understand them for their purpose.

Mr. DEUTSCH. Is it a fair thing to say that no one could really look at your reports, Andersen's reports, about Enron and really understand what was going on in Enron?

Mr. ANDREWS. Congressman, our responsibility with Enron as—they are Enron's financial——

Mr. DEUTSCH. I am not saying you did anything wrong. Because there are some very, very smart people—this is also a company that didn't pay taxes for 6 years at the same time people are making billions of dollars off of tax, so gaming the system.

And again the whole thing we have talked about, you know, even to the last day of gaming the system, of changing the pension manager to lock people in for an additional 60 days.

In a sense, it is our job to prevent this. And I don't know how—you know, we can't stop all crooks, especially white collar crooks. But our job is to do the best we possible can.

You can respond.

Mr. ANDREWS. Well, Enron was a very complex company. There is no question that their financial statements and related disclosures are complicated. Many have said that they are difficult to understand.

So, again, to the test of do you have the clarity that some are requesting in those financial statements, from that vantage point can an investor understand everything?

But very sophisticated investors had those financial statements. They have a responsibility to understand them as well. The company and ourselves have a responsibility to make sure those financials are materially presented—fairly presented in conforming with generally accepted accounting principles.

But as you observed, many have commented on the perplexity. But this is a very complex company.

Mr. DEUTSCH. But again we kind of look at the other sides. But at this point we have no one—I am not aware—for instance, the bond rating companies basically didn't downgrade on a continuous basis. The company imploded.

At the same time—and, you know, you talk about people being able to read it. These are the most sophisticated people in the world trying to look at the statements that you provide them, and they don't know what is going on. It is not the employee with the

$500,000 401(k); it is literally the best analysts in the world couldn't understand what was going on with your statements.

And again I am not ready to say you did anything wrong. But the other issue is, if Enron did it, how do I know that there are not other companies out there that are doing the same sort of things, and that from a financial market basis—I mean, one of the incredible success stories is the transparency that you as an institution, Arthur Andersen, along with your colleagues in the accounting profession, provide.

I mean, the system works. I mean, we have had unprecedented strength in our economy for one of these reasons. We have access to capital unprecedented in the history of the world for your successes. And what I am saying is that, you know, it failed incredibly here.

And, you know, is it going to happen again? Is it going to happen this week? Is it going to happen next week? Next month? For one company? For two companies? For three companies? Because obviously there were individuals who made a lot of money gaming the system.

I mean, who walked home, as Congressman Rush pointed out—I mean, there are a lot of people who are sitting on tens, hundreds of millions of dollars because of their involvement with Enron.

Mr. ANDREWS. Congressman, I can't comment on the other companies obviously.

But, first of all, as to financial statements, Enron was a business failure. I don't think the financial statements caused the business failure.

Mr. DEUTSCH. Right. And I agree, businesses do fail. But people in public markets, let me just say—my time has expired, but just a last question.

In the case of the efforts that Enron used, the partnerships and the offshore partnerships and the offshore investments, in terms of shifting the debt that we are now aware of, that have now been disclosed, if Arthur Andersen was in another company today and those same things were going on—this has nothing to do with the destruction of documents—what would your statement be?

What would you be saying in your public accounting report about that company today, knowing what we know about Enron? Would it be the same? Would you be issuing the same report?

And again, this is really the heart of the issue. I mean, you know, if that same situation is going on today, is Andersen saying everything is fine with the company?

And you have these internal debates, but ultimately, hey, they are really sharp, they really know the rules, we are not supposed to report those partnerships because they are off book. I mean, let's—we don't have to. And everyone sort of winks at each other knowing what is going on.

Again, I have to be—you know, you have very, very smart people involved. And you know the people at Andersen, the partners who are in charge of Enron, knew exactly what they were doing. They knew exactly what Enron was doing in terms of this shifting. I am 100 percent convinced of that.

Now, did they violate the law? Probably not. Did they violate accounting practices? I don't know. Did they, you know, did they en-

gage in something which created a disaster for untold people in so many ways? Absolutely.

And I guess my question is, you know, are you reevaluating it now? Are the other—you know, four firms reevaluating it? Because what would you do now? What would you do today with Enron in terms of your transparency, to tell the market, to tell the world what is going on in that company? Would it be the same report?

Mr. ANDREWS. Well, the financial statements need to have appropriate application of the principles and the appropriate disclosure. And I think the Enron situation has certainly heightened attention to that. And actually the SEC and others have already taken some actions to recommend enhanced disclosures, particularly in the management discussion and analysis around risk factors and other items. That reaction, I believe, is in direct reaction to the situation with the Enron engagement.

So there is strong encouragement to make sure that the risks are appropriately presented and disclosed, either in the financial statements or other parts of the 10-K or annual report of the company.

So, to your question, I think many of us, and we have said this, that the financial reporting model can be improved so that it is better; disclosure can be improved in many ways.

And so I think we definitely would subscribe to that, yes. And I think progress has already started. I think the profession is looking at that. The SEC is looking at that, as is Congress. So I think there will be improvements. I think out of any situation like this, let's hope that we all learn and changes occur to improve in whatever direction is appropriate. I would agree that financial disclosures would be one.

Mr. GREENWOOD. The time of the gentleman from Florida has expired. The Chair recognizes the chairman of the full committee, Mr. Tauzin.

Chairman TAUZIN. Thank you, Mr. Chairman.

Before I begin this line of questions, I want to go back, Ms. Temple, to a question Mr. Markey asked about your interpretation of obstruction of justice and the requirements of retention of documents when, in fact, a proceeding is started. And I want to put you all on notice about that point, because I don't want to lead you into answers that might put any of you at risk unless want to be there.

But my understanding, Ms. Temple, is that obstruction of justice can apply even before a proceeding is commenced when documents are destroyed with the intent to make them unavailable to a proceeding that is likely to be commenced, in order to make sure that those documents are not available for that proceeding and that those documents would, in fact, be relevant to that proceeding.

Now, I don't know if I've got it exactly right, but that is pretty much my understanding of obstruction of justice. And I wanted to say that before I ask you all of these questions.

I want you all to respond yes or no if you can. I want to take you through a timetable now of SEC activities in this matter.

Beginning with October 17, SEC sends its first letter to Enron requesting information regarding third quarter losses.

Please answer, each of you, whether you are aware of that letter at that time.

Mr. ODOM. No, sir, I was not.

Ms. TEMPLE. I was not aware of that letter on October 17.

Chairman TAUZIN. When did you become aware of it?

Ms. TEMPLE. To the best of my recollection, I received a copy of the letter on October 25. No later than October 23, perhaps a day or two before, I learned that the SEC had written a letter to Enron asking for documents about related party transactions.

Chairman TAUZIN. Mr. Odom, did you learn of that letter at any time?

Mr. ODOM. Yes, sir, about the same time Ms. Temple did.

Chairman TAUZIN. How about you, Mr. Baskin?

Mr. BASKIN. No, sir. I was not aware of the letter at that time.

Chairman TAUZIN. Have you ever been aware of it?

Mr. BASKIN. Yesterday I became aware of it.

Chairman TAUZIN. How about you, Mr. Andrews?

Mr. ANDREWS. No, sir. I definitely was not aware of it on October 17.

Chairman TAUZIN. When did you become aware of it?

Mr. ANDREWS. I am not sure. But sometime in the latter part of October.

Chairman TAUZIN. Now, Mr. Duncan did give us an extensive interview prior to his taking the Fifth Amendment, as you know. In that interview, he says that he learned of the SEC inquiry of Enron on October 19-20, and that he informed others at Andersen, including Odom and Temple, on that date.

Do either of you deny that?

Mr. ODOM. I was not in Houston. He may have called me at home, but I do not recall the call.

Chairman TAUZIN. Ms. Temple?

Ms. TEMPLE. I don't recall at this time. To the best of my recollection, I recall focusing on the requests or learning about the requests on the October 23 call.

Chairman TAUZIN. On October 22, Enron publicly acknowledged an informal inquiry had been started by the SEC—publicly acknowledged. That is when I learned about it, when America learned about it.

Did any of you learn about it with us on that date?

Mr. ODOM. Yes, I believe that is the date.

Chairman TAUZIN. So on the 22nd you learned publicly that Enron acknowledged an informal inquiry by the SEC?

Ms. Temple?

Ms. TEMPLE. Yes, I believe that is correct.

Chairman TAUZIN. Mr. Baskin?

Mr. BASKIN. I honestly don't recollect knowing about it, no, sir.

Chairman TAUZIN. Mr. Andrews?

Mr. ANDREWS. That is probably the time that I became aware of it as well, so I said, sometime subsequent to the 17th.

Chairman TAUZIN. Mr. Baskin, you really don't think you knew about it when Enron announced that there was a public announcement that the SEC has started an informal inquiry?

Mr. BASKIN. I try to read the Wall Street Journal most every day. And I probably read about it, but I don't recall.

Chairman TAUZIN. So you probably were aware of it.

That is not the end of the SEC activities. On October 31, the SEC upgraded its informal inquiry into a formal investigation. Did

any of you know about that decision by the SEC to formally upgrade it to a formal investigation?

Mr. Odom.

Mr. ODOM. I certainly knew about it the day that Enron announced it.

Chairman TAUZIN. How about you, Ms. Temple?

Ms. TEMPLE. Yes. I learned when Enron announced it, yes.

Chairman TAUZIN. How about you, Mr. Baskin?

Mr. BASKIN. What I read in the newspaper.

Chairman TAUZIN. How about you, Mr. Andrews?

Mr. ANDREWS. Somewhere around that time, yes.

Chairman TAUZIN. Thank you.

It wasn't until November 8 that the subpoenas were issued. Now, November 8 the subpoenas were issued. On November 9, Ms. Temple, you leave the voice mail.

On November 10 you write this extraordinary memo. It is a good one. This really is a good one. It says, we don't want anybody to falsely accuse Arthur Andersen of destroying documents. That is what it says. So we are not only going to preserve current documents, I want you to preserve all of your new documents. Save everything. And I want to read to you from that memo.

On the second page this is what you told everybody to do—everybody now. No. 1, existing documents. "effective immediately, all existing Enron-related documents and materials must be preserved and nothing should be destroyed or discarded."

Now, I have got a very simple question to ask you. If that was the policy that was announced on November 10, effective immediately, what policy was in effect on November 9?

Ms. TEMPLE. The firm's written documentation retention and destruction policy.

Chairman TAUZIN. Right. Which permitted destruction?

Ms. TEMPLE. Right. Only in certain circumstances. And the firm's policy continued to be in place.

Chairman TAUZIN. Well, let me make sure I've got this on the record.

On November 9, the day before this policy was issued, "effective immediately," the policy of Arthur Andersen was that it is okay to destroy documents that might be related to the Enron investigation by the SEC and this committee. Is that correct?

Ms. TEMPLE. The policy states that if there is threatened litigation, no related material shall be destroyed. It also states that in any circumstance, all materials relevant to the opinions and findings of the auditors shall be maintained.

Chairman TAUZIN. But, you see, you felt it necessary, not on the date that the SEC announced an informal inquiry but on the date Enron announced it. You didn't find it necessary to write this memo the date that the SEC upgraded its investigation from informal to a formal investigation; you only found it necessary to write this memo saying, keep everything, don't destroy anything, the day a subpoena was issued.

And up until that time, the policy of Arthur Andersen was, it is okay to destroy documents if you think that it fits our policy of document destruction; is that right?

Mr. Andrews, you are itching to answer. Go ahead and answer.

Mr. ANDREWS. I think the reason the memo is written at that point, once a subpoena is received, there is no question there should be no destruction of documents.

Chairman TAUZIN. You don't think there was any question documents shouldn't be destroyed when you learned that a formal inquiry had been instituted by the SEC?

Mr. ANDREWS. Well, prior to the receipt of a subpoena what I would expect, and we expect, our people to do is understand the facts and circumstances when a situation——

Chairman TAUZIN. How about when the SEC starts a proceeding against you? Is it not the responsibility of all of the folks at Arthur Andersen, every accounting firm, to not destroy documents that might be relative to that proceeding?

Mr. ANDREWS. Whenever there is a proceeding against us, absolutely we wouldn't destroy documents.

If I may, may I——

Chairman TAUZIN. Well, please tell me when in the time line I described to you, in your opinion, any one of you, please tell me, on behalf of Arthur Andersen, when you thought it was wrong to destroy any more documents? What date was that? Was it the date that you found out the letter had been written? Was it the date that you found out publicly, when we all found out that Enron announced an informal inquiry by the SEC? Was it the date that the SEC announced a formal inquiry? Or was it only the day you got a subpoena saying, turn over the documents.

When in that time line was it the responsibility of Arthur Andersen to stop destroying documents? Please tell me. Any one of you.

Mr. ANDREWS. I believe the responsibility existed prior to the receipt of the subpoena.

Chairman TAUZIN. I think it did, too. When did it?

Mr. ANDREWS. The events around October 17, 18, 20, all of the things that were happening, the receipt of the SEC letter, the announcement of the quarterly results and the resulting litigation, that those were factors that the engagement partners——

Chairman TAUZIN. I think so, too. And I want to ask you, Ms. Temple, if you agree with Mr. Andrews—tell me if you don't agree with him, first of all. You don't agree with him?

Ms. TEMPLE. I agree that the policy requires retention of related materials——

Chairman TAUZIN. If you agree that the destruction should have stopped back in October when Mr. Andrews said it should have stopped, why didn't you write this memo then, saying retain everything, don't destroy anything anymore, and all of your new products, save it too, because we're under investigation and there's litigation coming and you better make sure that nothing is destroyed for the sake of the reputation of our company and for the sake of the integrity of the investigation? Why didn't you issue it then?

Ms. TEMPLE. The issue was not raised with the legal group——

Chairman TAUZIN. Nobody raised it.

Ms. TEMPLE. [continuing] at that point in time. The policy was in existence to require detention——

Chairman TAUZIN. Does it have to be raised, Ms. Temple, when you are the counsel representing this company internally on litigation? Does anybody have to raise it, or is it somebody's responsi-

bility in the company to say, stop destroying documents, we're under investigation? Whose responsibility was it if it was not yours? Did somebody have to raise it? Whose responsibility, Mr. Andrews? Was it the president? Was it you? Who was it?

Mr. ANDREWS. In our policy, that responsibility—the policy that we're revising, and I acknowledge we're revising—in that policy, that responsibility is with the engagement party.

Chairman TAUZIN. With an accountant, not a lawyer? You give the responsibility to an accountant to decide whether it's legally permissible to destroy documents relative to a proceeding? Let me just tell you, I don't know what's going to happen out of all of this, I really don't. I hope you're all okay. I don't know. But I'll tell you this. Every accounting firm that is listening to this had better listen very carefully. If all of your policies are to let accountants decide when it's legal to destroy documents in a pending investigation, an awful lot of people are going to be in trouble down the road, not just in this case. I hope you think seriously about what kind of policies you have on the retention of documents and whether those policies are clear, are vague, or whether you just send memos out for somebody else to interpret or whether you eventually recognize, as you did, Ms. Temple, at some point, that they needed guidance on what not to do and what to do. And they should have gotten that guidance a long time sooner.

We wouldn't be here. We'd be scheduling the Enron hearing right now. But we're here discussing what happened at your company, because this guidance never went out when it should have gone out and because your company did not have a clear policy on making sure the documents were not destroyed once a notice was given by the SEC that it was checking into your business. That has got to change. If you don't change it, I promise you we will. Thank you very much.

Mr. ANDREWS. May I respond?

Chairman TAUZIN. Yes, sir.

Mr. ANDREWS. I'll comment on what I think should have taken place and I'll comment on the policy. What I believe should have taken place—I don't expect our audit personnel, as you say, the accountants, to understand the law. That's why we have other experts involved.

Chairman TAUZIN. Indeed.

Mr. ANDREWS. What we do expect, a person in a responsible position, an audit partner, to have an understanding of the policy as well as the judgment to consult, and we encourage consultation. So we do not expect an engagement partner or audit partner or anyone else to make these decisions alone, but we do expect them to understand the policy and to have enough knowledge to raise the question and seek advice in this situation——

Chairman TAUZIN. Except, Mr. Andrews, except—and I'll conclude, Mr. Chairman—except once a legal proceeding is commencing or about to commence, all of that changes, and if you rely upon your accountants to seek advice instead of giving them advice at that time, all of you are going to be in deep trouble as we go forward.

Mr. ANDREWS. My comment on the policy, I am not here defending our policy in the sense that it was complete and robust and an-

ticipated all of the guidance that it should. That's exactly when we realized this situation had occurred, which was in early January, we suspended the policy we have. We put in place an interim policy that essentially required retention of everything and engaged a reputable firm to come in——

Chairman TAUZIN. Mr. Chairman, I want to make a request upon Arthur Andersen, if you don't mind, Mr. Chairman. The chairman has asked you to find out who the others were who destroyed documents. I think you ought to do a thorough survey within the company of everybody who destroyed documents, No. 1. I know you didn't keep logs of what was destroyed. Now, I asked about that. Is there a log kept under your policy of what was destroyed and what was kept? And the answer was, of course not. Then you'd know what we destroyed. So there are no logs kept.

I'm going to ask Arthur Andersen to do that, to go back and reconstruct as much as you can about what was destroyed that we can't recover from hard drives. I want you to be clean with us about what was destroyed and what was not destroyed to the extent you can. And if you're as clean as you can be about it, then we're not going to have as many problems as we've had at this hearing. But the clear picture we're getting at this hearing is that somebody felt it was a good idea to get rid of an awful lot of documents before our investigators got busy and other investigators got busy. That is the clear message I'm getting and it's not a pretty one.

Mr. ANDREWS. Can I respond to your points?

Chairman TAUZIN. Yes, sir.

Mr. ANDREWS. First of all, in terms of the investigation and other people, our investigation will be complete and comprehensive, and we will take whatever action based upon that investigation that's appropriate.

Chairman TAUZIN. You have my request. I hope you fill it.

Mr. ANDREWS. I do. Trust me, we will do it and we're in the process of doing it, and when it's completed we will take those actions. And on top of our investigation being led by Davis, Polk, we have in addition to that engaged former Senator Danforth to come in and look at what we found, to see did we do it thoroughly, was it completely. We, the firm, are not placing any restrictions on the scope of that review at all, and it will be thorough and it will involve everyone that was involved in this process.

Chairman TAUZIN. Just be aware that we too will be examining the work you do to see that it was thorough and complete, not just Senator Danforth.

Thank you, Mr. Chairman.

Mr. GREENWOOD. The time of the gentleman from Louisiana has just expired. The Chair recognizes the gentlelady from Colorado.

Ms. DEGETTE. So I'll have a commensurate amount of time?

Mr. GREENWOOD. When you're chairman you will, yes.

Ms. DEGETTE. Mr. Odom, I believe that you got the October 12 e-mail from Ms. Temple about the document destruction and retention policy. Is that correct?

Mr. ODOM. Yes, ma'am.

Ms. DEGETTE. And I believe you told our staff that to get a memo like that was very unusual. Correct?

Mr. ODOM. I don't recall—I mean, I don't remember using those exact words.

Ms. DEGETTE. Okay. Well, you had never gotten a memo like that reminding you of the policy, had you, sir?

Mr. ODOM. I have never gotten one with a doc. link on it like that, no, ma'am.

Ms. DEGETTE. One with a doc. link linking you back to the document retention policy. Is that correct?

Mr. ODOM. That's right.

Ms. DEGETTE. And how long have you been with the company?

Mr. ODOM. Since 1969.

Ms. DEGETTE. Thank you.

Now, Ms. Temple, I wanted to ask you about something. This October 12 memo that you sent out to everybody, was that your decision to send that memo out?

Ms. TEMPLE. This e-mail?

Ms. DEGETTE. Yeah.

Ms. TEMPLE. The particular e-mail in the Web site reference——

Ms. DEGETTE. No, no. I want to know who decided to send this—that it would be a good idea to send this e-mail out to everybody. Was that you?

Ms. TEMPLE. I believe I thought of that based on the discussions about the legal advice and the reference to the policy I had with others.

Ms. DEGETTE. Okay. Now, who did you have those discussions with?

Ms. TEMPLE. I discussed the legal advice about appropriate documentation with my supervisor and others——

Ms. DEGETTE. And your supervisor was Don Dreyfus?

Ms. TEMPLE. Yes.

Ms. DEGETTE. Okay. And who else was involved in those discussions?

Ms. TEMPLE. I believe a senior risk management or practice director by the name of Jim Freidlief.

Ms. DEGETTE. And Jim Freidlief also?

Ms. TEMPLE. Yes.

Ms. DEGETTE. And you decided to send that e-mail out to remind people of the document policy because there were concerns about the growing thunderclouds over Enron?

Ms. TEMPLE. No. Because of the questions that had arisen about appropriate documentation and retention——

Ms. DEGETTE. People were wondering what documents they should retain or destroy. Right?

Ms. TEMPLE. I testified earlier about the specific questions——

Ms. DEGETTE. No. Just—you know, just yes or no I think would be good.

Ms. TEMPLE. No. It was about questions about specific documentation issues that had arisen.

Ms. DEGETTE. Uh-huh, about what should be kept or destroyed?

Ms. TEMPLE. About how to date current period documents, about whether to acknowledge in writing—how to acknowledge in writing currently the fact that the firm had concluded that the prior accounting——

Ms. DEGETTE. Those questions that you testified to or that you're delineating right now, does this policy that you linked in your e-mail answer those questions?

Ms. TEMPLE. It was used as a reference in providing advice to answer the questions.

Ms. DEGETTE. Okay. But you gave the link to the entire policy, correct, not just one section?

Ms. TEMPLE. Correct.

Ms. DEGETTE. Now, at that time, Arthur Andersen had not been served with a subpoena as of October 12. Correct?

Ms. TEMPLE. Correct.

Ms. DEGETTE. And there is some sense, I think everybody here will agree, that there was probably some concern about pending litigation as of that time. Right?

Ms. TEMPLE. To the best of my recollection, I don't recall——

Ms. DEGETTE. Well, you knew that there were probably—that there was a sense there might be lawsuits; I mean, really, didn't you?

Ms. TEMPLE. I don't recall that being a focus of discussion or——

Ms. DEGETTE. I don't want to talk about a focus of discussion. I mean, you're a Harvard-trained lawyer. You're a litigator. You're an SEC expert, all of the things we've been talking to. You knew there might be a risk of litigation didn't you?

Ms. TEMPLE. I knew there was a possibility of litigation——

Ms. DEGETTE. Thank you.

Ms. TEMPLE. [continuing] but we did not discuss it.

Ms. DEGETTE. Now, Arthur Andersen's policy does not require retention of all documents when there is simply a risk of litigation but, rather, when Arthur Andersen is served with a subpoena, doesn't it?

Ms. TEMPLE. The policy has several different provisions requiring retention——

Ms. DEGETTE. I know, uh-huh.

Ms. TEMPLE. [continuing] and it requires retention if there's threatened litigation——

Ms. DEGETTE. Okay. Stop for a second. Why did you not send out an e-mail on October 12 telling people to retain all documents?

Ms. TEMPLE. At that point in time, there was no litigation against Enron that I was aware of. There was no litigation against Arthur Andersen——

Ms. DEGETTE. Right.

Ms. TEMPLE. [continuing] that I was aware of——

Ms. DEGETTE. In truth—and I don't want to mislead you, okay? I only got this document this morning. So it's taken me a few hours to look through it, but luckily I've had a few hours to look through it. And here's what I think the document says. The thing that says retain the documents in case of threatened litigation is in the executive summary. Right? And it's on page 2, paragraph 9 of the executive summary. That refers you to paragraph 3.5.3, which I think is a typo and really means paragraph 4.5.4, because 3.5.3 talks about the kinds of information to be destroyed. 4.5.4 says in the event Arthur Andersen BU is advised of litigation or subpoenas regarding a particular engagement, the related information should

not be destroyed. See policy statement 780. Right? Your adviser behind you is nodding his head yes.

Ms. TEMPLE. I see where that is, yes. Thank you.

Ms. DEGETTE. And policy statement 780 says that you are only to retain documents other than the—other than the documents you're supposed to destroy if you're served with a subpoena. Right?

Ms. TEMPLE. Well, I think you have to read the retention policy, which also provides that all information relevant to the findings and opinions should be retained in 3.5.3.

Ms. DEGETTE. Well, that's your work papers. Right?

Ms. TEMPLE. It says information having relevance to our opinions or findings to be a part of the central client engagement files.

Ms. DEGETTE. Right. Except for 3.5.3 talks about all of the different things that should be destroyed. That's what we're talking about here today.

Mr. Andrews, you don't know of any essential documents being destroyed by Mr. Duncan, do you?

Mr. ANDREWS. What I know is that a large amount of documents were destroyed. At this time I'm not aware that any of those were what I call the permanent audit work papers.

Ms. DEGETTE. Right. What we're really talking about is the backup papers, which you had said then, later on in November, should be retained.

What I'm getting at here, Mr. Chairman, is I think the problem is with Arthur Andersen's policy, because Arthur Andersen's policy says if you're threatened with litigation, then you are to notify, and then it has the whole notification procedure of who you're to notify, but it does not say that you are to retain these backup papers. And the only time you are legally required, or under Arthur Andersen's policy—which it applies, I assume, to all of its clients—the only time you're required to retain those is if a subpoena is served, which is exactly what Ms. Temple did.

And so my opinion, after looking at this, is that Mr. Duncan probably interpreted this e-mail on October 12 saying, oh, okay, I'm supposed to destroy all these documents, like drafts and preliminary versions, et cetera. That's what she's telling me. And then in November when they get the subpoena, they say, loop, we're not doing it. And I think the problem is that this policy allows reckless destruction of documents, and I think that that's what the problem is. And with that, I'll yield back any time I might have.

Mr. ANDREWS. Could I comment on that?

Mr. GREENWOOD. Yeah. You may certainly, Mr. Andrews.

Mr. ANDREWS. First, with respect to the policy, again, I think we have acknowledged that we do not think the policy is as robust and well written as we would like, after we discovered this, and that's why we suspended it and introduced an interim policy. And we'll have, I would imagine, as sound of a policy as possible to cover all of these circumstances.

Now, having said that, no policy can anticipate every situation that you can imagine. What I have said and what we have said is that what took place at the end of October, the volume of e-mail elimination, the volume of document destruction, is completely out of character with this policy, in my opinion. And even if it's not out of character with this policy, it is in fact a gross error in judgment

and totally inappropriate and totally different than anything I've ever experienced in my career.

Ms. DEGETTE. Let me just say something to you, Mr. Andrews. I was a litigator for 15 years, and I advised a lot of businesses. I didn't do SEC work, and I didn't work with "Big 5" accounting firms. My clients were small businesses. But I will tell you that when I knew of threatened litigation against a client, I called them up, and I said, don't destroy a thing. And sometimes I had to go over and physically take possession of papers.

And that's I think the ethical obligation of every attorney who represents a client, and it's the ethical obligation of every accounting firm or auditor who represents a client. I don't think that that is so unreasonable, that that should have been in your policy for all of these years, and I hope to God it's in the interim policy that you have adopted.

Mr. GREENWOOD. The time of the gentlelady has expired. My mother, I think, would say that your policy was dumb like a fox.

The chairman recognizes the gentleman from Florida, Mr. Bilirakis.

Mr. BILIRAKIS. Thank you, Mr. Chairman. Mr. Odom, does Andersen rate all of its clients on the basis of risk management—on a risk management scale?

Mr. ODOM. Yes. Yes, sir, we do.

Mr. BILIRAKIS. What is—has been the rating for Enron?

Mr. ODOM. It's always been at least maximum.

Mr. BILIRAKIS. At least maximum?

Mr. ODOM. Yes.

Mr. BILIRAKIS. Now, is maximum the highest?

Mr. ODOM. There's a max star.

Mr. BILIRAKIS. There's a max star. Has it also been a max star?

Mr. ODOM. Yes, sir.

Mr. BILIRAKIS. When was it at a max star? And max star is the highest?

Mr. ODOM. Yes, sir.

Mr. BILIRAKIS. When was it a max star?

Mr. ODOM. It was a max star in 2000 and I think in the year—I don't know prior to 2000, but in 2000 it was a max star. In 2001 it was rated max, but we update that rating as the year goes on, and I'm sure it would have hit max star again before we did an audit—had we done an audit.

Mr. BILIRAKIS. All right. Now, the criteria that you use in order to establish these ratings—there is a criteria, apparently, that you use. Right?

Mr. ODOM. That's correct.

Mr. BILIRAKIS. All right. Is that criteria reflected in the work papers?

Mr. ODOM. Yes, sir, it is.

Mr. BILIRAKIS. It is. And those work papers are available?

Mr. ODOM. I believe they are, yes, sir.

Mr. BILIRAKIS. Boy, this better be more than a belief. I sure hope that's more than a belief. Mr. Andrews?

Mr. ANDREWS. Yes. As consistent with what we have done, we said we'll provide the information that this committee or the SEC or the Department of Justice has requested.

Mr. BILIRAKIS. Okay. And when we get into that portion of this set of hearings, those work papers—those work papers will be available? They're not—they're available now—you're saying they're available now because they have not been destroyed, and there is no criteria for having destroyed them, right, in your retention policy as I read it?

Mr. ANDREWS. Right. The actual audit work papers themselves, certainly nothing will be destroyed now, and as I—I'd like to just make sure I clarify one thing, because I may have not been as clear as I could have when you were questioning me earlier. I just want to make sure that we understand what an audit work paper is. An audit work paper is the permanent record, if you will, of the audit itself. That's where once you've done all of your work, reviewed all of the documents, it's where you reduced your documentation that becomes the permanent support for that audit conclusion. As I said earlier——

Chairman TAUZIN. Would the gentleman yield?

Mr. BILIRAKIS. Yes.

Chairman TAUZIN. Again, that may not be the most important papers, however. The most important papers might be the Andersen consulting documents.

Mr. BILIRAKIS. The initial papers.

Chairman TAUZIN. I'm understanding that Enron would contact Andersen for consulting services, we want to set up this partnership, we want to set up this financing arrangement and we want to know if it will pass audit later on, so comment on the structure and the financing of this situation so that it will pass audit later on. And then Andersen issues a consulting report to its client, like Enron, saying it's okay to set up Raptor. It's okay to set up Jedi the way you propose it; or no, it's not, and here's how you should change it if it's going to pass audit standards later on.

Those consulting documents are probably much more important, Mr. Bilirakis, than the audit work papers. Is it possible that consulting documents were destroyed in this period when there was document destruction going on so massively, Mr. Andrews?

Mr. ANDREWS. Well, let me comment. First of all, a client in a situation you have a complex transaction or they need to request, if you will, accounting advice regarding how a transaction might be accounted for, that would be a normal dialog that would occur with a client.

Chairman TAUZIN. But answer my question. Is it possible that those documents were destroyed?

Mr. ANDREWS. In that documentation, to the extent that that documentation is important to an accounting and audit conclusion, they would become part of the audit work paper files. Your question about documents that were destroyed, as I said, at this point in time in your investigation, what I know was destroyed was a large quantity of e-mails and then other hard documents that were shredded. Now, the documents that were shredded, I do not know what was——

Chairman TAUZIN. Let me——

Mr. ANDREWS. [continuing] the e-mail——

Chairman TAUZIN. Any of you know whether consulting service document reports were destroyed? Any of you know? Ms. Temple?

Ms. TEMPLE. I have no facts about——

Chairman TAUZIN. Mr. Odom?

Mr. ODOM. I do not know what was destroyed.

Chairman TAUZIN. Mr. Baskin, you have no knowledge?

Mr. BASKIN. I have no knowledge.

Chairman TAUZIN. Thank you, Mr. Bilirakis.

Mr. BILIRAKIS. Well, so getting back into the risk management analysis, Mr. Odom and Mr. Andrews, whoever it might be more apropos, the original documentation, the original work sheets where you set out the criteria and your analysis and everything of that nature, and then that led to this final conclusion, I guess it is, which would be the document that Mr. Andrews is telling us would remain in the file. Would that original document be available, not the conclusion, if you will, but the original documentation that led to that conclusion? I mean, that's a work paper any way you look at it.

Mr. ANDREWS. If your question is related to the work paper that led to that conclusion and that risk assessment——

Mr. BILIRAKIS. Yes.

Mr. ANDREWS. [continuing] there would be documentation in the audit file related to that.

Mr. BILIRAKIS. And that would not have been destroyed? There's no way that the retention—the retention policy would have encouraged or required that to be destroyed?

Mr. ANDREWS. Obviously the documents are shredded. I don't know what was in that, but to the extent that it's part of the permanent core audit files, the core materials, it would——

Mr. BILIRAKIS. I think you can see where I'm leading here. A point was raised, that you're an auditor on one hand, but then you're also the consultant, and so you can see where the potential problem might rise. So your analyses are so darn important in terms of the risk management analysis, and why you graded them so high, in fact the top risk at one point, and then why you dropped it down the prior—the next year to just plain max. That's awfully important.

Now, Mr. Andrews, hopefully that's all available in terms of the risk analysis area, as well as what led—disappointingly—I would say, to Andersen basically blessing the Enron documentation, the financial statements and everything of that nature. This hearing is focusing obviously on the destruction of documentation, and I'm not belittling that.

But I am really concerned with the thought process that has gone into—resulting in all of this having taken place, and hopefully whatever it is that we can do to keep it from happening again. I know that people are aware now and whatnot, but it's just terrible, and can anyone—I don't know whether I have any time left. The red light is on. I was told they had——

Mr. GREENWOOD. We're keeping very strict rules today. The gentleman from Florida has an additional minute. If he would like, he will get the same indulgence.

Mr. BILIRAKIS. Can anyone explain, very briefly, in 1 minute, why the risk analysis dropped from max plus to max?

Mr. BASKIN. I don't know the answer to that.

Mr. BILIRAKIS. Does anyone have the answer to that? Who does that? Who makes the ultimate decision?

Mr. ANDREWS. The way the process works, the engagement partner, the engagement team makes the initial assessment, and to the extent that the risk ratings are at certain levels—and in this case a maximum risk rating requires, then, the consultation with others in the firm, and that in fact is what occurred in this situation. As to why it changed from max star to max, I don't know.

Mr. BILIRAKIS. So it goes back to Mr. Duncan again?

Mr. ANDREWS. That's where the process begins, but then once he goes through the process, the engagement team completes its analysis. If it results in a risk rating at a maximum risk, it then requires further consultation. And that's in fact what occurred.

Mr. BILIRAKIS. Ms. Temple, very quickly—I haven't gone into you at all—you're house counsel. Were you aware of this risk management rating? Have you been aware of it all along?

Ms. TEMPLE. To the best of my recollection, I learned about the level of risk management rating much later. I don't recall the exact time, but much later.

Mr. BILIRAKIS. Much later after all the problems——

Ms. TEMPLE. After I——

Mr. BILIRAKIS. You became aware of?

Ms. TEMPLE. [continuing] was initially consulted on September 28, and I don't recall exactly when I exactly learned about the risk rating. Probably sometime in November is my best recollection now.

Mr. BILIRAKIS. Well, see, that's what looks bad, is you yourselves in your own minds, you've established a risk management rating, and you rate them as really bad—rated them as really bad guys; but then you continued on, and obviously it was for the money, I don't know. If there wasn't millions of dollars at stake, I guess we could sort of understand that.

Mr. ANDREWS. Can I respond——

Mr. BILIRAKIS. Well, very briefly, sir. I don't mean to tie up——

Mr. ANDREWS. [continuing] very briefly?

The risk process is designed so we assess the risk environment within a client, and as Mr. Odom said, we do this on all of our clients. And depending on what that risk rating is, it will influence various actions that we take on our audit; including, for example, because this was maximum risk, it required Mr. Duncan to consult with others in the acceptance of that client. It also drives certain other procedures we do in the course of the audit. So the risk rating is a very important part of helping us determine the scope of the audit, the consultation that occurs on an audit, and it has a very meaningful purpose in our audit process. And each year we go through a process of reassessing the risk of each of our clients in that regard, and it drives certain processes and audit procedures as a result of that. I mean, so it is a very important component of the audit process.

Mr. BILIRAKIS. If you hadn't been a consultant also earning whatever the fee was for that, would you have—would you have continued on as an auditor, taking into consideration that very—the highest risk rating that existed?

Mr. ANDREWS. Congressman, I do not believe our role as consulting played any part of our decision in reaching that conclusion.

Mr. GREENWOOD. Time of the gentleman from Florida has expired. The Chair recognizes the other gentleman from Florida, Mr. Stearns.

Mr. STEARNS. Thank you, Mr. Chairman. Mr. Odom, I just—as I understand it, you have been relieved of your duties. Is that true?

Mr. ODOM. I am no longer the practice director for the Gulf Coast market, sir.

Mr. STEARNS. Say that again slower, sir.

Mr. ODOM. I am no longer the audit practice director——

Mr. GREENWOOD. Perhaps you could bring your microphone a little closer, Mr. Odom, please.

Mr. ODOM. I am no longer the audit practice director for the Gulf Coast market circle.

Mr. STEARNS. And when did that change occur with your job description, or when were you relieved of that duty?

Mr. ODOM. It was announced in the same press release where Mr. Duncan was discharged.

Mr. STEARNS. Okay. And did they call you in and say to you, Mr. Odom, we are going to relieve you of your duties; you've been with the company since 1969?

Mr. ODOM. I did get a telephone call, yes, sir.

Mr. STEARNS. And who did the telephone call come from?

Mr. ODOM. Rich Corgill.

Mr. STEARNS. And who is Rich Corgill?

Mr. ODOM. He is the head of the U.S. Practice directors.

Mr. STEARNS. And what did he say to you?

Mr. ODOM. He told me that the firm had decided that they needed to make management changes in the Houston office and that I was one of the management changes.

Mr. STEARNS. And were you surprised?

Mr. ODOM. I was not surprised that the firm had decided to do something to demonstrate that they were being active in dealing with, obviously, the perception problems. I was disappointed.

Mr. STEARNS. Do you feel that you're a part of the problem and that's why you were let go and that's why you sort of did not protest or indicate that they were wrong and that you wanted to be a part of the proactive program to clean this up? Why did you just acquiesce so easily?

Mr. ODOM. I've been with the firm a long time, Congressman Stearns, and sometimes you have to trust other people's judgment. And you don't always have to agree with them, but you can trust their judgment.

Mr. STEARNS. In your position which they relieved you of, how many people worked—responded or worked for you?

Mr. ODOM. Actually, I didn't have any employees.

Mr. STEARNS. Oh, you just had a title?

Mr. ODOM. I just had a title.

Mr. STEARNS. Okay. So they just——

Mr. GREENWOOD. Would the gentleman yield? I'll give you plenty of time. You know that.

Mr. STEARNS. Okay. Sure.

Mr. GREENWOOD. Mr. Odom, did you say that they changed your responsibilities to demonstrate that they were making changes. Did they tell you what you did wrong?

Mr. ODOM. No, sir they did not.

Mr. STEARNS. Mr. Chairman, that's what I was going to ask. Well, if someone called me up and said they wanted to relieve me of a position, even if it was just a title position with no people working for me, I'd ask them why. And you never asked why?

Mr. ODOM. I asked what the reason was, and I was told the firm felt they needed to make some bold moves to regain confidence in the Houston community.

Mr. STEARNS. Is it true that you told our committee staff that some clients in the past had been upset that old or extraneous documents had been unnecessarily maintained and discovered during IRS and SEC inquiries? I mean, our staff indicated that you told them that.

Mr. ODOM. That's correct.

Mr. STEARNS. Is it also true you told the committee staff that with a high-profile client about to take a big charge, people will want to look at Andersen's files, people with, in your words, "adverse interests to Enron and Andersen." Is that true?

Mr. ODOM. I think I said that was a possibility, yes, sir.

Mr. STEARNS. Now, based upon those two statements that you just admitted that you told the committee staff, and when they called you up, I find it implausible that you wouldn't say to them in a candid discussion, why—ask why you were being relieved and what the story was, and they were explaining it to you in certain code words, saying, hey, we're trying to—I'm not going to use the word "cover-up," but there seems to be something going on here to see a man of your stature to be let go, you accept it mightily and to step forward for the company's benefit, and you step down, and now you're in a different—total different title, and you just acquiesce to it. It seems to me, based on what you said to the staff, that there seems to be something else out of mind, out of sight, going on here. Am I wrong?

Mr. ODOM. Yes, sir.

Mr. STEARNS. Okay. Tell me how I'm wrong.

Mr. ODOM. I don't know of anything out of mind, out of sight.

Mr. ANDREWS. Congressman, could I——

Mr. STEARNS. Yes.

Mr. ANDREWS. Since I obviously was involved in those decisions, I'm probably more appropriate to answer it, if you will allow me to. The actions that we took, that's announced in that press release, were really two separate actions. One related specifically to the document destruction issue and the action we took at that point in our investigation, which is incomplete as I've said, was to relieve Mr. Duncan of his responsibilities, dismiss him from the firm. Three other engagement partners were relieved of their responsibility but are still with the firm, certainly pending the rest of our investigation.

The second action that we took was really not directly related to the document destruction. It was in fact an action we believed, as an organization, we needed to do to begin the process of rebuilding the trust in the Houston community, as well as a statement beyond

Houston, externally and internally, that we are serious about getting this issue behind us and doing the things that we need to do.

Mr. STEARNS. Mr. Andrews, couldn't Mr. Odom have done it in his position? Why did his position have to be changed? Couldn't he have done this? He's a loyal employee.

Mr. ANDREWS. Again, this was a judgment, we made that collectively; the management changes we made, we believed as an organization, were changes we needed to make to rebuild the confidence.

Mr. STEARNS. Mr. Odom, it looks like to us that the reason you were let go, and based upon the comments you told the staff, is these folks were out to work on the files, and here it is mid-October, and they've got all of this possibility of the SEC and the Justice Department and our committee and others coming down, that they wanted to make this adjustment, as you say, because of adverse interests to Enron and Andersen. It wasn't a salubrious effect. It was basically that they were trying to get rid of these files and to instigate a process to do it.

And based upon what you say, wouldn't you agree that adverse interests were coming at Enron and Andersen and that that's why—using you sort of not as a scapegoat but somebody to say, well, we're changing things?

Mr. ODOM. I don't believe that to be true, Congressman Stearns.

Mr. STEARNS. Well, you also indicated that they're upset some old extraneous information was still being kept, dealing—discovered during some SEC inquiries in the past, and they wanted to make sure that that information wasn't there either. So——

Mr. ODOM. That had nothing to do with Enron.

Mr. STEARNS. Yeah, no. But I'm just saying that we have here you being let go in early to mid-October when Andersen was trying to clean up their files, and it appears that it was less than ingenuous. That's my point.

Mr. ODOM. It wasn't early to mid-October.

Mr. ANDREWS. Congressman, I was involved in that decision. First, January 15 was the date of the action. The management actions we took have nothing directly to do with the audit engagement itself. And so I'm not privy and I haven't seen the comments that you have there regarding Mr. Odom's testimony, but nonetheless, it has no core connection to that whatsoever.

Mr. STEARNS. Thank you, Mr. Chairman.

Mr. GREENWOOD. The time of the gentleman from Florida has expired. Mr. Odom, have the firm's investigators who were doing the investigation, Davis, Polk, have they interviewed you?

Mr. ODOM. No, sir, they have not.

Mr. GREENWOOD. Mr. Andrews, have they interviewed Mr. Bauer, Tom Bauer, the engagement partner?

Mr. ANDREWS. I——

Mr. GREENWOOD. Also put on administrative leave?

Mr. ANDREWS. Again, I don't know all they have and all they have not——

Mr. GREENWOOD. We understand they haven't. It just seems a little odd that you've taken this administrative action. You tell us today that you're busily engaged in getting to the bottom of this,

and you've got a couple of big guys that you've laid off that you haven't even talked to yet.

Mr. ANDREWS. Mr. Chairman, I do not know if our investigators have interviewed Mr. Bauer or not.

Mr. GREENWOOD. Well, you know they haven't interviewed Mr. Odom. He just told you that.

Mr. ANDREWS. Yes, he did.

Mr. GREENWOOD. What are you waiting for?

Mr. ANDREWS. Again, our counsel is performing the investigation. We commit to you that that will be a full, complete investigation. And we, Andersen——

Mr. GREENWOOD. They're charging you by the hour and they haven't gotten Mr. Odom yet——

Mr. ANDREWS. But we are not restricting in any way the scope of that investigation. We want it to be full and——

Mr. GREENWOOD. Mr. Andrews, will you give us a list of all of the members of the firm who have been interviewed in this internal investigation by Davis, Polk and who you expect to have interviewed during the course of this investigation?

Mr. ANDREWS. Well, we certainly will fully cooperate and provide a full reporting and accounting of our investigation, yes.

Mr. BILIRAKIS. Mr. Chairman?

Mr. GREENWOOD. I'm asking you a straightforward question. We would like a list of the people within the firm, for that matter outside the firm, who have been interviewed as part of this internal investigation that we thought you were going to tell us about today. And we would like a list of the individuals you anticipate interviewing in the course of your investigation, because it's obviously critical to everything we've spent the last 6 hours here doing.

Mr. ANDREWS. May I have a moment?

Mr. ODOM. Mr. Chairman, may I clarify one thing?

Mr. GREENWOOD. Mr. Odom, you wanted to say something?

Mr. ODOM. Yes. I did have an appointment to meet with Davis, Polk in New York a couple of weeks ago, and actually flew up there, and they were unable to meet with me. But I don't know whether that was their investigators or whatever.

Mr. GREENWOOD. When was that?

Mr. ODOM. I think it was about 2 weeks ago.

Mr. GREENWOOD. Mr. Andrews, have you completed your consultation?

Mr. ANDREWS. Uh-huh.

Mr. GREENWOOD. Do you want to say something?

Mr. ANDREWS. Yes, yes. What I will do is, since Davis, Polk is conducting the investigation, I will talk with them as soon as we complete the hearing, and I will put them appropriately in touch with whoever from the committee to——

Mr. GREENWOOD. And you'll direct—you're the client, you're paying them—so you'll direct them to provide us the information we're asking for?

Mr. ANDREWS. I will direct them to immediately talk with you, and you request the information of them, and we'll make sure that that happens immediately.

Mr. GREENWOOD. Thank you. Thank you.

The Chair recognizes the gentleman, Mr. Green, for 5 minutes. Pardon me, just yield for a moment.

Mr. BILIRAKIS. May I have 30 seconds out of order?

Mr. GREENWOOD. Sure.

Mr. BILIRAKIS. I just wanted to follow up, Mr. Andrews, very quickly, on the work paper thing. You can see it's sort of sticking with me. Now, these papers are—you've requested that they be submitted from whatever your—the various offices are regarding the Enron situation. And they're filed in one central location; is that correct? Are they—is there a central location for all of this documentation in Houston?

Mr. ANDREWS. Well, Enron was a very complex company in many geographical areas, and the work papers themselves, to the extent work is done in other offices, the work papers themselves would be maintained in the other offices.

Mr. BILIRAKIS. In the other offices. They haven't been pulled into—all to one central location yet. Is that right?

Mr. ANDREWS. Well, at this point in time, I believe they have, but normally—I thought your question was related to how do audit work papers typically get created and where are they——

Mr. BILIRAKIS. Now, are they numbered? Are they lettered, numbered? Is there some sort of identification?

Mr. ANDREWS. Well, an audit engagement file does have an indexing scheme and an order to it, yes.

Mr. BILIRAKIS. They're numbered, Mr. Odom?

Mr. ODOM. Mr. Andrews and I are both old auditors. He can answer the question just as well as I can.

Mr. ANDREWS. They are indexed, and there's a filing order to them and all that sort of thing; yes, we certainly capture the information of what files exist and what the descriptions are of those files.

Mr. BILIRAKIS. All right. Thank you.

Mr. GREENWOOD. The time of the gentleman from Florida has expired. The Chair recognizes the gentleman from Texas, Mr. Green, for 5 minutes.

Mr. GREEN. Thank you, Mr. Chairman, and thank you again for the courtesies. Let me follow up on both Mr. Bilirakis—Chairman Bilirakis's—the high-risk rating or higher rating for risk, I would assume, equates that Andersen has to spend more time with a client, then the higher the fees. Is that correct? Mr. Odom, Mr. Andrews? The higher the risk, the more time, if you're going to continue with a client, the more it's going to cost that client?

Mr. ANDREWS. Congressman, as I said before, the higher the risk rating, it will require you or lead you to do additional procedures and consultation, which would be more time, yes.

Mr. GREEN. So the higher—okay. So what Chairman Bilirakis said, that it obviously—if—even if it's in Enron, which is the seventh largest company, you know, it would be a substantial fee, because those fees have been talked about, you know, $52 million, a million dollars a week. Now, I know auditing was a small percentage of that, so to speak, compared to the consulting, but it was rated as higher. When was that done? When was that decision made on the higher—that Enron made—that it needed a higher risk rating?

Mr. ANDREWS. Well, the risk rating process occurs annually, and the last——

Mr. GREEN. Do you have it in a month—what month did it occur last year?

Mr. ANDREWS. The 2001—which, of course, we never completed the audit—the documentation that at least I think you have been provided information—early February.

Mr. GREEN. Oh, early February of last year. So that was also the discussion at one time—and I know this has been publicized—about a memo about whether continuing Enron as a client. So——

Mr. ANDREWS. I think that's the right timeframe, yes, sir.

Mr. GREEN. Let me go to some—and I'm sorry——

Mr. ANDREWS. If I could clarify one point, though, in terms of the fees. Actually, the audit-related fees on Enron were $25 million, essentially half of the total fee.

Mr. GREEN. And then 27 for the consulting. Okay.

Mr. ODOM. Excuse me, Congressman Green—of that consulting, a lot of it is work that is typically done by the auditor, you know. So, I mean, correct me on this, Dorsey, but the SEC requires when you report fees in the matter that you're looking at them, that the top fee, the audit fee, be only the fee for the annual audit. So if the auditor, for example, does a statutory audit in the United Kingdom that is not part of the annual audit, that gets plopped down into consulting.

Mr. ANDREWS. As do tax fees and comfort letter and registration statements.

Mr. GREEN. Mr. Andrews, let me go back to—and again, like a lot of members, we have a lot of things we have to do, and then come back when it's our turn. I apologize for having been gone, but during—while I was gone, you mentioned something about the clarity of Enron's financial statements and that—I was told that—we've talked in our office to numerous Wall Street analysts who could not tell what was going on at Enron by looking at the financial disclosure statements signed off by Arthur Andersen. And is it Arthur Andersen's opinion or your opinion, and maybe you gave it earlier, that Enron's quarterly financial statements accurately reflected Enron's financial position? Is that what was said earlier in questioning, that——

Mr. ANDREWS. Congressman, your question referred to quarterly financial statements?

Mr. GREEN. Did their quarterly financial statements accurately reflect Enron's true financial position?

Mr. ANDREWS. We don't audit the quarterly financial statements.

Mr. GREEN. Okay. The annual financial statements, you know, the annual financial statements, all those partnerships that were—and I know partner—those—to take out liability is something that is not unusual in the industry, but yet Enron took what is not unusual and then shot the moon with it. In the annual financial statements, are you saying that those were—that someone—even Wall Street analysts could tell the true financial position of Enron?

Mr. ANDREWS. In terms of the Wall Street analysts, you know, obviously we would have to address that question to them. I don't know what they did or didn't understand. I would hope if they

didn't understand them, then they wouldn't recommend investing in the stock——

Mr. GREEN. That will be subject to another hearing that we——

Mr. ANDREWS. Right. So I can't comment on what they would. The company's responsibility and ours is to make sure that those financials are presented and conforming with generally accepted accounting principles, which includes the basic financials and the disclosures as well. And at this point in time those financial statements made by the company have been restated and our opinions have been withdrawn. So that has since changed.

Mr. GREEN. Starting in 2000, October of 2000, some folks on Wall Street actually started to figure out that there was something going on. And are you familiar with the story in the Wall Street Journal, "Heard on the Street," in October of 2000 from a James Chanos? Are you familiar with that?

Mr. ANDREWS. Congressman, I don't recognize it, no.

Mr. GREEN. The story cited this short seller named Mr. Chanos who began saying that in October of 2000, Enron's books were not clear. His position, obviously, has been borne out, as we know, from October of 2001. Maybe all of us should have read the Wall Street Journal closer in October of 2000. In his—I have never heard of any financial analysts I've spoken with with Enron that said they were—that their financial disclosures are easily understood. And that's—and I guess that's been reported widely, too, and I—that it was so difficult to understand Enron's true financial picture.

Do you feel like, again, those annual statements reflected the true financial picture at Enron?

Mr. ANDREWS. Congressman, again, our reports have been withdrawn now, so we don't have an opinion on those statements. But the point I would make is that Enron is an extremely complex company, and I think any complex company of that magnitude, the financial statements are going to be complex. It's hard to simplify complex issues and those disclosures can be improved. Can the accounting model be improved? Absolutely.

Mr. GREEN. Again, those partnerships were signed off on at the time, and I know you've retracted that, but at some time in the past they were the typical way that Enron was doing business, I guess, and they were signed off. But I know that's been retracted.

But let me go on to Mr. Odom and go back to the October 12 e-mail that you received from Ms. Temple and——

Mr. GREENWOOD. This will be your final question, Mr. Green.

Mr. GREEN. Okay. Thanks, Mr. Chairman. And was it your testimony you had never received a memo in your 32 years with Arthur Andersen—because you said you started work in 1969—that explained or denoted what Enron's destruction of documents policy was?

Mr. ODOM. This had nothing to do with Enron's destruction policy——

Mr. GREEN. Well, no. With Arthur Andersen's policies.

Mr. ODOM. I do not recall someone sending me a memo saying, you know, here is a doc. link to our policies. Clearly, on many engagements and many training sessions, we've talked about what Arthur Andersen's policy was, because we try to teach our people to comply with our policy.

Mr. GREEN. But you never received anything like that from the legal side of Arthur Andersen?

Mr. ODOM. No, sir.

Mr. GREEN. And so you looked at it as advice, I would assume, from legal counsel?

Mr. ODOM. I looked at it. I didn't view this really as advice from legal counsel, no, sir. Somebody had sent me a doc. link. I knew Nancy was a lawyer, but I didn't take it as being legal advice.

Mr. GREEN. Well, normally when a lawyer sends you——

Mr. GREENWOOD. The time of the gentleman from Texas has expired. I see that the gentleman from California has arrived. Does the gentleman wish to inquire?

Mr. WAXMAN. I do, Mr. Chairman.

Mr. GREEN. Before my colleague has his time, it seems like—I'm glad our committee is going to continue this, because, you know, there are so many questions that are still—haven't been answered, and I just appreciate the time today of this subcommittee and, Mr. Chairman, of the full committee, because obviously there's a lot that needs to be discussed.

Mr. GREENWOOD. We'll be back. The gentleman from California, 5 minutes.

Mr. WAXMAN. I want to follow up on the questions I asked in the last round. Mr. Odom, you indicated that with regard to the partnership LJM 2, there's a, "private placement memorandum" that details the names and identities of the secret partners. Mr. Odom, some press reports have said there could have been hundreds or thousands of secret partnerships. Can you tell us approximately how many secret partnerships Enron had?

Mr. ODOM. I do not know the number of partnerships.

Mr. WAXMAN. And do any of the other witnesses have any answer?

Mr. ANDREWS. I do not know the number.

Mr. WAXMAN. Is it fair to say it's hundreds?

Mr. ODOM. I'm not sure what you mean by secret.

Mr. WAXMAN. Partnerships.

Mr. ODOM. Partnerships weren't necessarily secret, but they did use a number of partnerships. Hundreds would be a fair statement. Perhaps more.

Mr. WAXMAN. Perhaps more. Do you know, would it be as much as a thousand?

Mr. ODOM. I don't know.

Mr. WAXMAN. Are there private placement memoranda for each of the partnerships that Enron had created?

Mr. ODOM. I don't believe so.

Mr. WAXMAN. Okay. And I'd like to ask the chairman a question. Mr. Chairman, obviously this is a very important issue. We have a situation where I believe secret partners may have made a lot of money without being exposed to any risk. At the same time, shareholders and employees lost millions. And I understand that currently the committee subpoena may cover documents that identify some of the partners but not necessarily all of them, and I want to ask the chairman of the subcommittee and the chairman of the committee if they will subpoena the necessary documents to reveal

the identity of all of the secret partners and make them available to all of the members of the committee.

Mr. GREENWOOD. We certainly will, Mr. Waxman, and we'll be happy to work with you in that regard.

Mr. WAXMAN. Thank you.

Chairman TAUZIN. Would the gentleman yield? Among other things, let me read you what we have already requested from Enron. A list of all Enron's SPEs, partnerships, other subsidiaries, a list of all the Enron officers, individuals, entities who hold or held equity interest in any Enron SPE, subsidiary or partnership——

Mr. WAXMAN. If I could reclaim my time, my point is that we could look at the precise language of the subpoena better, but it will certainly be—if I understand Mr. Greenwood's statement, it would be the intent of the Republican leadership on this committee to get by subpoena all the necessary documents to reveal the identity of all the secret partners and make them available to the members of the committee.

Chairman TAUZIN. It's not only our intent. It's the working agreement I have with Mr. Dingell to make sure we get all of that information. We've requested it. We expect Enron to deliver it to us. They're in compliance right now. If it is not delivered, we will all have something serious to say about it.

Mr. WAXMAN. Thank you. Do any of the witnesses know or have you heard discussions of the identities of any of the secret partners? Mr. Odom?

Mr. ODOM. I've seen a listing of some of the investors in some of the partnerships. I don't know that they're secret. There is a listing of some of the investors and some of the partnerships.

Mr. WAXMAN. And from your recollection, would you give us, for the record, some of the names that you've heard of as partners?

Mr. ODOM. I don't recall the names, but many of them are names you will recognize in terms of retirement systems and things like that.

Mr. WAXMAN. Andrew Fastow, a former Enron official, reportedly made $30 million from his role in these partnerships. Did other Enron or Andersen executives participate in or profit from these secret partnerships, and what can any of you tell us about the identity of these secret partners?

Mr. ODOM. It's already been disclosed, I believe, that in the Chewco partnership, an Enron employee named Michael Koppers had an interest, I believe in the LJM 2 prospectus. There are two other Enron employees who are mentioned as being part of LJM 2, ex-Enron employees, Mr. Glisan is one of them, and I don't know who the other one was. It could have been Mr. Koppers again. I'm certainly not aware of any Arthur Andersen people.

Mr. ANDREWS. When you ask the question, you may not have intended it this way, but you mentioned Andersen investors. We're not allowed, obviously, to invest in our clients.

Mr. WAXMAN. I understand. I said Andersen executives.

Mr. ANDREWS. Oh, Andersen executives, as investors in——

Mr. WAXMAN. Well, did any of the Andersen executives participate in or profit from these partnerships?

Mr. ANDREWS. Congressman, no; we're not allowed to invest in our clients.

Mr. WAXMAN. And do you have any information about those partners that were involved with Enron?

Mr. ANDREWS. I'm not part of the audit engagement team, so I'm not familiar with the audit itself. It's my understanding that on the related party transactions, I think that is what you're referring to, that those particular investments, that the board took specific action, took exception to its policy and put in special oversight procedures related to that and to deal with related party transactions.

I'm not familiar with the individual names and the individuals involved, but that's my understanding of what was done. And, of course, Andersen in no way would be an investor or anybody at Andersen would not be an investor in anything. We're not allowed to do that from an independent standpoint.

Mr. GREENWOOD. The time of the gentleman from California has expired. We thank the witnesses.

Chairman TAUZIN. Would the gentleman yield first?

Mr. GREENWOOD. The Chair yields a minute to the chairman.

Chairman TAUZIN. I want to tell Mr. Waxman also that our staff is attempting to interview the partners that we are aware of that had been mentioned here by the witness, and we're in the process of attempting to do that. We've written letters to them; investigators on both of our staffs are doing their work as we speak. So the gentleman should be aware of that as well.

Mr. WAXMAN. And so you are involving the Democratic staff.

Chairman TAUZIN. Yes, sir. I think I made the announcement at the beginning of the hearing. Mr. Waxman, you should know that Mr. Dingell and I reached an agreement at the onset of this investigation that we would share investigative staff and consult with each other as we go through the process.

Mr. GREENWOOD. Mr. Andrews, will you provide the committee with the interim policy that you've—we have that.

Mr. ANDREWS. Do you have that?

Mr. GREENWOOD. All right. Thank you. I want to thank witnesses. It's been a long day. You've been here for 5 hours. I'm afraid you might have to consider this practice, because we may have to have you back, because at the end of the day here, we still don't have evidence that suggests that Mr. Duncan, who did not testify, is a rogue employee of Andersen. We still don't have information from you that suggests that Mr. Duncan admitted to errors. We still don't have information that you've interviewed individuals who have implicated Mr. Duncan in ordering them to violate the policies of the company, and we still don't have any information as to what documents were actually destroyed at Mr. Duncan's orders. So we have a lot of information we need to gather from you, and we may need to call you back.

Mr. ANDREWS. May I say something?

Mr. GREENWOOD. Yes.

Mr. ANDREWS. I just want to reiterate, as we are here today, our commitment to cooperate fully as your investigation is in process. When we have completed with that, we intend to share it with you. We will continue to share documents, we will continue to cooperate. And so I just want to make that clear; and we're working to recover any of these destroyed documents we can to provide for our own

investigation, as well as to make available to you, the SEC, and other parties.

Mr. GREENWOOD. Thank you, Mr. Andrews.

Mr. ANDREWS. We intend to fully cooperate.

Mr. GREENWOOD. And we'll need to cooperate with you not only when you've completed your investigation, but in the course of your investigation.

All of that said, this hearing is now adjourned.

[Whereupon, at 2:36 p.m., the subcommittee was adjourned.]