

THE EVOLVING LEGAL AND ETHICAL
ROLE OF THE CORPORATE ATTORNEY AFTER
THE SARBANES-OXLEY ACT OF 2002

WELCOME ADDRESS

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SPEAKERS

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PROCEEDINGS

MS. CHLOPAK: Good morning. I'd just like to start by thanking everyone for coming this morning. I hope you've all gotten a chance to help yourself to breakfast outside.

My name is Erin Chlopak and I'm the Editor-in-Chief of the *American University Law Review*. On behalf of the *Law Review* and the Washington College of Law, I would just like to thank all of you for coming today.

I think we have a really interesting symposium planned for you today. To introduce it to you, I'm going to turn things over to Dean Pike. Thank you.

DEAN PIKE: Thank you, Erin. Each year when the Law Review puts on symposiums I find these to be among the best events that are held throughout the year at the law school. Given the number and the quality of the events that are put on here, I mean that as extremely high praise. They are well thought out, organized, and they bring terrific people to the law school. Today's conference, I think, meets or exceeds the norm in that regard.

Today's conference raises issues about corporate governance and legal ethics. I was trying to think when or what events crystallized these issues in my mind. I couldn't think of any specifically except watching my 401(k) balance plummet, an experience that many people my age have experienced.

But I thought back to two anecdotes that I think are relevant. Way back in the dark ages I took a course that some of the students may have taken. It's called legal ethics. It was not a required course. I was lucky to have as a professor one of the nation's leading legal ethics experts and thinking back about what I learned in that course, I realized there was virtually nothing that was relevant to my career as a lawyer.

There were two things that I learned. One was, you've got to be careful of conflicts of interest. I think that certainly is true and as lawyers we have to be aware of that. Second, and this was in the 1970s when law students were perhaps more anti-establishment than they are right now, we were taught in an extremely doctrinaire manner that lawyers have an obligation to represent their clients zealously.

The students tried to push and say, "Don't we have some sort of responsibility to society and to the public?" The answer was, your responsibility is to your clients. There are constraints on how far you go, but the constraints were really in the criminal side. Transactional

attorneys were not taught that they had a responsibility to the system in any systemic way. Perhaps that's changing now.

Second, and this is totally unrelated, one of my colleagues had the good fortune to be out at Stanford University last summer. At that time, he met with some folks at the Hoover Institute.¹ For those of you who don't know the Hoover Institute, it's an extremely distinguished think tank within Stanford University—spectacularly talented people and probably the most conservative enclave in academia. Very, very, pro-market forces are present throughout that institution.

At the Hoover Institute, some folks asked my colleague to talk about what was going on with corporate governance and what was happening in Washington. He spoke for about an hour and at the end he said, with some fear in his voice, realizing that these people were going to be all over him because this was a pro-market group and he thought there were real market failures and problems—he asked them what *they* thought.

The daggers came out. These folks said, “How come more of these guys aren't going to jail? How come the lawyers aren't going to jail? How come the regulators aren't going to jail? This is outrageous.”

This led me to think, what has happened to make folks at the Hoover Institute so hostile to corporate America, at least for a couple of weeks? As one of my colleagues this morning said, their 401(k) balances were plummeting worse than ours. That may have been all that was going on. But, I think that's wrong or, at least, not entirely explanatory of what was going on.

Over the last several years, there has been a market decline, stock market decline, that we haven't seen since the 1930s. There has been a draining of confidence in the corporate sector. There is questioning of the role of lawyers, accountants, and other professionals.

The topic of today's conference is to examine those issues—a little bit of what went wrong and who could have kept things from happening. Then we're going to move on to what roles professionals should have when they're dealing with corporate matters.

For those of us who have practiced in the private sector, there is a conflict of interest that we really hadn't studied in law school. The

1. See generally Hoover Institution on War, Revolution and Peace, Stanford University, Website, *Ideas Defining a Free Society*, at <http://www-hoover.stanford.edu> (last visited Feb. 23, 2003). The Hoover Institution “seeks to secure and safeguard peace, improve the human condition, and limit government intrusion into the lives of individuals.” *Id.* at <http://www-hoover.stanford.edu/Main/brochure/mission.html> (last visited Feb. 23, 2003).

conflict is, "We were getting paid very well." I'm certainly not getting paid in the private sector now. But lawyers in the private sector get paid very well. They're dealing with very large clients who have a real incentive to push limits. I have a colleague who told me that when she was working on some financing deals, blood was shed over one or two basis points in the yield on the investments.

When your clients are paying your firm hundreds of thousands of dollars and they're pushing you to give good legal advice, you have a conflict.

The question is, "How do lawyers react to these situations?" The last panel today and the luncheon speaker are expressly addressing the ethical considerations. These are issues that our students, as the lawyers that they will become, and the bar are struggling with a great deal.

This is an extremely exciting conference, and I'm looking forward to it. I think it's a great educational service that the *Law Review* has put on, and I think we have a spectacularly good group of panelists.

Perry Wallace will introduce the first panel. Thank you and welcome to the law school.