ARTHUR W. PAGE SOCIETY
FOUNDED 1983

JOURNAL

PAGE ONE Teleconferences

2001–2002

THE PAGE PHILOSOPHY

Arthur W. Page viewed public relations as the art of developing, understanding and communicating character – both corporate and individual.

This vision was a natural outgrowth of his belief in humanism and freedom as America's guiding characteristics and as preconditions for capitalism.

The successful corporation, Page believed, must shape its character in concert with the nation's. It must operate in the public interest, manage for the long run and make customer satisfaction its primary goal. He described the dynamic this way:

"Real success, both for big business and the public, lies in large enterprise conducting itself in the public interest and in such a way that the public will give it sufficient freedom to serve effectively."

THE PAGE PRINCIPLES

Page practiced six principles of public relations management as a means of implementing his philosophy.

- *Tell the truth.* Let the public know what's happening and provide an accurate picture of the company's character, ideals and practices.

- *Prove it with action.* Public perception of an organization is determined 90 percent by doing and 10 percent by talking.

- *Listen to the customer.* To serve the company well, understand what the public wants and needs. Keep top decision-makers and other employees informed about public reaction to company products, policies and practices.

- *Manage for tomorrow.* Anticipate public reaction and eliminate practices that create difficulties. Generate goodwill.

- *Conduct public relations as if the whole company depends on it.* Corporate relations is a management function. No corporate strategy should be implemented without considering its impact on the public. The public relations professional is a policymaker capable of handling a wide range of corporate communications activities.

- *Remain calm, patient and good-humored.* Lay the groundwork for public relations miracles with consistent, calm and reasoned attention to information and contacts. When a crisis arises, remember that cool heads communicate best.

Page recognized an additional truth: A company's true character is expressed by its people. This makes every active and retired employee a part of the public relations organization. So it is the responsibility of the public relations function to support each employee's capacity to be an honest, knowledgeable ambassador to customers, friends and public officials.

ARTHUR W. PAGE SOCIETY
FOUNDED 1983

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PAGE ONE TELECONFERENCES 2001–2002

PAGE ONE: AN ONGOING DISCOURSE IN CORPORATE COMMUNICATIONS

The tragic events of September 11, 2001 created repercussions throughout America. Lives were altered. Routines were disrupted. Travel was put on hold. Access to private and public buildings became more difficult. The economy was dealt a severe blow. All of this and more caused people and organizations to rethink their plans and schedules.

One of the casualties – albeit a small one in comparison to others – was the Arthur W. Page Society's Annual Conference that was to be held in San Diego two weeks after the terrorist attacks. It was not a time for chief public relations officers to be away from their offices and so, for the first time ever, the Page Society canceled its annual meeting.

But in doing so, the Board recognized that members needed a forum in which they could exchange information about the lessons and experiences of that fateful September morning and what it meant going forward. A teleconference was arranged for September 25, which would have been the final day of the San Diego meeting. Nearly 70 members participated in the call.

It was agreed that the conference call was a tremendous success and that it provided a format that could be used again. Thus was born, PAGE ONE, a fast, easy and timely way to supplement the extended dialogue that goes on at the Society's Annual Conference and Spring Seminar. Two members, Anne McCarthy and Matt Gonring, were instrumental in launching the 2002 series. But current events provided the focus. The collapse of Enron in the fall of 2001 followed by the scandals that rocked one major corporation after another in the months that followed were made to order for this new series of teleconferences.

The transcripts of the PAGE ONE Teleconferences that appear in this issue of the *Journal* are a reflection of the issues and events that corporate communications and public relations organizations were dealing with in the 15 months since September 11, 2001. Not all of the teleconferences dealt with corporate malfeasance. The Nike case that concluded the 2002 series is about free speech and shows that the issues that challenge public relations practitioners are broad and varied.

Going forward, it's expected that 2003 will provide more timely developments for PAGE ONE consideration. And for the members who are taking advantage of this new communications channel, there will be more opportunities to participate in this ongoing learning experience.

NOTE: PAGE ONE was made possible by the generosity of AT&T and its Executive Teleconference Service. Transcripts of each call are made available to members through the Page Society's Web site, www.awpagesociety.com.

LEARNING FROM THE TRAGEDIES

SEPTEMBER 25, 2001

LESSONS LEARNED FROM SEPTEMBER 11 WILL ALWAYS BE FRESH IN EVERYONE'S MIND, PARTICULARLY THOSE WHO WERE AT THE SCENE.

The Panel

Raymond O'Rourke
Morgan Stanley

Paul Capelli
CNBC

Robert T. Zito
New York Stock Exchange

James S. O'Rourke, Ph.D.
University of Notre Dame
Moderator

Jim Murphy

Welcome to all of you on this call. I'm certainly pleased you could join us. This has been clearly a challenging and tragic period for all of us. When we look back at our decision to cancel our Annual Conference last week, clearly that was the right decision to make.

I want to extend my thanks on behalf of the Board of Trustees to all the members of the conference committee for their hard work, and Matt Gonring, the chairman, for leading that committee. The conference was coming together very well. We will be sending some of the conference materials to you as a follow-up later this week or perhaps early next week, to share some of what you would have received if we had the meeting.

I also want to thank our panelists today, who will be introduced in just a minute, and to Jim O'Rourke, who has put the panel together. I'd like now to turn this over to Matt for his remarks before we begin.

Matt Gonring

Thanks, Jim. Thanks, everyone, for joining us. I know you are all disappointed, as I'm disappointed, that we weren't able to hold our annual meeting. Many of us would be in San Diego right now if not for the tragic circumstances of the last several weeks.

In any event, as the Board convened we talked about many different options. As Jim said, we certainly made the right decision by canceling, but we are looking at a number of options. We had what I felt, and I think many others agree, was a real grand slam agenda. So we've been meeting, talking with the speakers, and looking at options and alternatives on how can we recreate some of the experience of the annual meeting. We'll be getting back to you as to exactly what that will involve.

From our discussion with the Board, what clearly emerged is there is also a near-term interest to try to learn from the tragedies of the last couple of weeks. Recognizing that we need to be sensitive, Jim O'Rourke and I have conferred on the idea of having several panelists discuss some of their experiences.

We appreciate that each of our speakers has been kind enough to share of their time and their confidence. This is intended to be off the record so that we put into context and understand some of the challenges that our associates have faced. Perhaps some of the lessons that they've learned can be applied in our day-to-day schedules as well. With that, I'll turn it over to Jim O'Rourke.

Jim O'Rourke

Thanks very much, Matt, and thanks to Jim Murphy. I appreciate your assistance in helping to organize this teleconference. As a schoolteacher, my aim is always to see if, no matter what the circumstance, there are some learning outcomes. So we put together a small panel. I suppose I should say we might have liked for it to be a little larger, but there are some people who are simply too busy. Among those were the representatives of our airline members. John Kiker wanted very much to be a part of this, as did Tim Doke, but they're just buried in detail right now. They're advising their CEOs. I know that John Kiker is dealing with, as is Tim, an FBI investigation. His CEO is testifying in Washington, trying to convince the Congress and the President to provide financial assistance and loan guarantees. On a kind of ground level day-to-day basis, they have memorial ceremonies to attend and funerals to attend.

On their behalf, I want to say thanks to them, but we understand perfectly why they couldn't be with us.

There are several folks who have agreed generously to give of their time. In order, they are Ray O'Rourke, who is managing director of global corporate affairs at Morgan Stanley; Paul Capelli, who is vice-president for public relations at CNBC; and Bob Zito, who is executive vice-president for communications at the New York Stock Exchange.

I've asked each of our guests to speak briefly, to begin by telling us where they were on Tuesday the 11th of September, and to sort of say how the day played out for them. And then moving forward, help identify some issues for us. What are the critical issues for your firm? How do you rank order those? What's most important right now and what's likely to become more important as the days move on?

"We were the beneficiaries of some genuine heroism...not only police and firemen...but also our own security people and employees."
– R. O'Rourke

Secondly, who are the stakeholders for you and what's at stake for them? Which audiences seem most important?

Then finally, perhaps talking at a less strategic level and more tactical level, what actions have you taken? What actions do you plan to take? How do you communicate the strategy that your firm has adopted? Was a crisis recovery plan helpful, and so on?

I want to begin with Ray O'Rourke and then move to Paul Capelli. Bob Zito is still in senior management meetings at the Exchange but will join us about 12:30 Eastern Time, so Bob will just jump in when he is available.

Ray, thank you very much for joining us. Let me turn it over to you now. You have the floor.

Ray O'Rourke
Jim, it's a pleasure. Thank you very much. I didn't realize when I committed to doing this that we would be subjecting the audience to back-to-back O'Rourke's, but if they can stand it, here we go.

Let me say thank you to the Page Society for creating this opportunity, and also thanks to what I believe are many members of the audience who have written or called over the last two weeks. Many of you are friends and former clients who expressed concern and offered help. That is not unlike literally thousands of similar messages we as a firm have gotten from individuals and organizations around the world. It's really been quite gratifying. So thank you all for that.

Let me start with some of the basics. I'm going to assume that all of you have read a good deal about Morgan Stanley and what we were subjected to in the last two weeks. For those of you who read only about Morgan Stanley in the first week, I should take some time and establish a few facts.

First of all, I should say we are a very fortunate firm. I might go so far to say we are blessed. The World Trade Center was the headquarters for our individual investor and our investment management businesses, that is our retail broker business and our mutual fund business. We had nearly 3,700 people working in Number Two and Number Five World Trade Center. We occupied about 22 floors of the south tower – that was the second building that was struck – and our floors range from the 44th to the 74th floors.

As of early last week we were pretty confident that all but six of our employees have been safely accounted for, which is nothing short of miraculous. That's a word we've been using around here quite a bit lately. I think a number of factors accounted for that result. In part, a lot of the employees, who were at both Number Two and Number Five World Trade Center, had been there in February of '93 and lived through the first terror bombing down there. Somebody here described it as a collective reflex that when the first plane struck the north, or Number One tower, our people were heading for the stairs and on the way out.

Now that process, I think, was facilitated a good deal by the discipline I think we imposed on ourselves after 1993. We drilled down there frequently, not only our own fire drills, but in addition we participated actively in the Port Authority's fire drills. We appointed a series of wardens and searchers on each of our floors who were responsible for seeing that everybody got out in a timely fashion. This is something that was put in place in 1993.

Lastly, I think we were the beneficiaries of some genuine heroism, not only on the part of the police and fireman who helped us enormously, but also on the part of our own security people and some of our individual employees. Many of you have probably seen the story of Rick Rescorla, who was the head of security for Number Two World Trade Center for us. He was probably the last one of our people out in 1993, and was last seen on the 10th floor of Number Two World Trade Center making sure all of our people got out this time. Rick and three other of our security people are among those missing.

We'd also had stories of genuine personal heroism by employees. One person carried a fellow employee, a woman who was disabled, down 50 flights of stairs on his back. Another group of four employees, who, in sort of a tag team fashion, helped another disabled employee down some 65 flights of stairs.

As stories continue to come in and people begin to remember what they went through, we continue to hear more and more stories like that. It is genuinely inspirational, not just for us, but also for them in the retelling. I'll talk about how we've shared a lot of that with our employees around the world.

Jim wanted to know how I learned of the disaster. We do a weekly global Corporate Affairs conference call each Tuesday morning at 8:30. We were some ways into the call when my secretary brought me word that a Bloomberg reporter absolutely had to speak with me right away. She was the one who told me the story of a plane hitting the north tower. I relayed that – that was all we had at the time – to our team and broke off the call.

I work from our headquarters building here at 1585 Broadway. For those of you who know New York, that is right in the middle of Times Square at 48th Street. I'm up on the 39th floor. We have a clear line of sight to downtown. We were able to see not only on CNBC and CNN what was happening, but we could witness ourselves the smoke and fire emanating from Number One, and then we were able to see the second plane hit Number Two.

> "We could witness the smoke and fire emanating from (building) Number One, and then...see the second plane hit Number Two."
> *– R. O'Rourke*

Now from four miles away, which I think is about the distance between our headquarters and the World Trade Center, it looked as if the second plane struck right where our floors are. Again, our top floor is 74 and most of our people are between 65 and 74. Thank God that plane actually struck slightly above where we were. It was an extraordinarily anxious time for us, being able to actually look out the window and not being able to contact anybody.

Fortunately, though, within minutes we began to get cell phone conversations. We actually spoke with our security director, Rick, who I mentioned earlier, who told us that the evacuation was going well and that he was going to see that everybody, or as many people as he could, got out.

With that, having seen both buildings affected, the decision was taken here, at 1585, within minutes, to evacuate the headquarters building and move over to our pre-designated command center, which basically is one of our training facilities in a nearby building in Midtown.

We relocated essentially all of our management team with all of the critical support people there within the hour. We spent the day focusing on our highest priority, which was our people and trying to account for them. It wasn't until probably 10:30 or so that the first of the employees from Two World Trade Center had made their way, had walked the four miles, up to our headquarters building, and we began to get first person accounts of the evacuation and what they had seen.

While it was horrific, it was the first occasion we've had for any kind of encouragement that we might have a significant number of our people out. We got word fairly early on that the 1,000 or so people that we had in Number Five World Trade Center, where all of our asset managers and operations were, had mostly, we heard, gotten out. So while it was an extraordinarily anxious time, that was, by mid-morning, the first opportunity that we had for any sense that it was not as bleak as the view out the window suggested.

In answer to Jim's question, what was, and I'll broaden it to say, what remains our highest priority? It is our employees. I'll digress for a second to say that we announced earnings for the third quarter last Friday, and our CEO in his conference call said we had taken the decision that our investors are best served if we focus right now on our employees and our clients. I think he's absolutely right about that.

A couple of other things. What we began to understand was that a lot of our employees who had gotten out of the building had simply begun to make their way home or to safety and we had no way of locating them. We were, I think, fortunate in that Morgan Stanley owns the Discover Card. We have a number of call centers that are otherwise used for card member inquiries. I must recognize them also, if not for heroism, certainly for the management magic of the Discover Card people. We turned those call centers into basically the receiving post for all employees from the World Trade Center to call in and report on their status and report on anybody else they knew to be safe. Also, to allow friends and family of those employees to call that number and to get information. It was amazingly fast how they were able to put together a database that allowed call operators to match employee names who might have called in with information with people calling in to seek the status of a friend, relative or loved one.

We had that 800 number up and operational before noon. That was our first public communication, and virtually everyone who was covering it put that on their crawl immediately. I don't want to say we were the first company, although I suspect we may have been, to get an employee hotline number up there.

Just to give you a sense of what the Discover people then encountered: By Friday of the first week they had tallied some 55,000 phone calls coming in. Because, as you can imagine, when the networks published the Morgan Stanley 800 number, not only did Morgan Stanley people call, anybody and everybody who was, as you can imagine, very desperate for information, called us looking for any kind of information or referrals that we could provide them. The Discover people were brilliant in handling those calls and channeling them to the other 800 numbers that were being set up and coming on line throughout the day for other people to call.

> "Our (Discover Card) call centers were the receiving post for employees at the World Trade Center to call in and report on their status...When the networks published the number, everybody was calling us...In the first week, we tallied some 55,000 calls."
>
> *– R. O'Rourke*

Some of the calls, as you can imagine, were heartbreaking from family members seeking any information at all. All of those calls were dealt with sensitively and professionally. The kind of feedback that they and we have gotten from how that operation went, again, is one of the more inspirational aspects of the whole story.

We got through the first afternoon by setting up the call center, getting that call-in number out. We were also able to get a message out to all employees, and a note to clients.

We have, as part of an overall marketing initiative, gotten to the point where we're actually very good at being able to reach virtually all of our institutional clients with blast e-mails, something that even a year ago would have been difficult to do. But we've consolidated all of those lists and we've got a team of people who keep that stuff up to date. So we had 10,000 institutional clients getting an e-mail from us by the end of the day to, one, tell people what businesses were affected and which ones were not, and the fact that we were in fact operational outside of the U.S.

Part of what we saw early on in the first day and into the night were reports, mostly outside of the U.S. and predominantly in Asia, that Morgan Stanley was effectively out of business, that our headquarters were at the World Trade Center and that 3,500 people had been lost. I think it's just sensationalism and a certain amount of irresponsibility in various countries, but the trouble with that is it's deeply concerning to our people out in the regions. Thankfully, the corporate communications team from around the world was very quick to get those stories straightened out, and we were not dealing with the "survival of the company" story more then for a day or so, actually probably just a day.

We do have a worldwide internal television network that allows us to reach not only all of our institutional locations, but also our 500 or so retail brokerage offices. Phil Purcell, our CEO, was on our internal TV network the next morning at 8 a.m., and he was able to say, the best news we had was that we believed the "vast majority" of our employees had gotten out.

We made copies of that tape, and because of the time demands on him and all of our other requests for television appearances, we found it much more efficient to make copies of the internal television announcement and make it available to all of the television networks, all of whom put it to very good use.

I talked about the business continuity story. I think on the basis of making that television tape available and our client communications, plus some very aggressive media follow-up, we ended the rumors about being out of business very quickly. Even though the equity markets in the U.S. were not trading that first week, all of the 500 branches were open. All of our 14,000 FA's were on the phone to their individual investor clients, listening to concerns, and to the extent that they could, answering questions, etc. I think that was enormously effective as well.

Fixed income (that's bonds) trading began on Thursday; we were up and operational, as was the rest of the Street, which was a big vote of confidence. Not a single trade was missed. We focused, from Thursday on, all of our efforts on making sure that we and everyone else on the Street were going to be able to open for equity trading on Monday.

Going into Thursday evening, in anticipation of that, we invited all of the wire services plus the major business dailies

– *The New York Times,* the *Financial Times, The Wall Street Journal, Business Week* – into an on-the-record meeting late in the day with Phil Purcell and Bob Scott, our president. Those interviews resulted in, I think, very positive, very reassuring stories, not just about the firm, but about the expected ability of the Street to handle the reopening on Monday.

We had our first ad, which was an open letter from Phil Purcell, our chairman, in *The Wall Street Journal, The New York Times,* and *USA Today* on Thursday. I believe this to be the case: Ours was the first ad of that kind to run. And we've all seen the literally hundreds and hundreds of other ones that have run since. We took that ad and made posters of it for all of our retail offices plus all of our institutional offices. If you come in now, you would have seen them in all of our elevator lobbies and so forth. I think people found that message to be quite reassuring.

"Our very first concern...was for our people who are usually in the (WTC) area."
– Capelli

I should say that virtually everything that we did live or sent we also put up on our Intranet site. This has seen the highest-traffic two weeks for Morgan Stanley Today, which is our Intranet location, that we have, not surprisingly, ever experienced.

CNBC and Maria Bartiromo were in on Friday to interview Phil Purcell for their weekend specials in anticipation of the market opening. Again, that was as much a benefit for the firm as it was the overall markets.

Sixty Minutes II actually had a very interesting approach, which we agreed to participate in. That was to follow an employee who was relocated from the World Trade Center to one of our contingency sites, this one at Varick Street, where we're continuing to operate all of our retail businesses. They met her at her home at 5 a.m. as she was heading in. They came and filmed at the contingency site all day. They interviewed our CEO and a number of other people who had been there. That resulted in, I think, a very good, very balanced story. I've never, in my professional career, encouraged anybody to do anything on *60 Minutes* before, so it was a big leap of faith. I think it paid off enormously well. That *60 Minutes* piece was put up on our Web site. We have, thankfully, now the ability to provide streaming video and we have used that extensively.

I'll wrap up briefly by saying a couple of other things. We have the benefit of some of the most – at the risk of sounding self-congratulatory – highly respected and widely read economists and strategists on the Street. Steve Roach, our chief economist, wrote literally in two hours' time, a bylined Op Ed for *The New York Times* saying, "The economy, too, will recover," which was a very reassuring message. That ran on Monday, the day the markets reopened.

Late last week, actually on 48 hours' notice, we organized a prayer service, as distinguished from a memorial service, because a number of the families of employees we lost did not give up hope that their family members might be found. We had 4,000 people in St. Patrick's Cathedral for an interdenominational prayer service. We also broadcast that on our TV network and streamed it around the world. I think the response back from employees everywhere was extraordinarily positive and reassuring.

Lastly, we dealt late last week and continue to deal with an interesting sidelight on this whole story, which is the possibility that in addition to the terrorist attacks there may have been some aggressive market manipulation going on, including the short-selling and buying of puts in our stock. Obviously it's not the kind of story we can have a lot to comment on, but that has also become something of a preoccupation. I'm sure if Tim Doke and John Kiker were here, they would tell you that they too were some of the companies that were targeted by these apparent efforts. So we've dealt with that as well.

I've gone on a good deal longer maybe than my allocated time. Let me just say that in answer to Jim's last question, what was your highest priority? It was our employees first and then our clients. I think we said if we take care of both of those, everything will follow in its place.

J. O'Rourke
Ray, thank you very much. We appreciate that. If you'll stay with us as we get downstream a bit, we'll take questions.

Let me move now to Paul Capelli, vice-president for public relations at CNBC. Paul, you're not actually down in the financial district but you're over in New Jersey. How did things play out for you on the 11th?

Paul Capelli
Sure, Jim. Thank you very much for inviting me to participate on this call today.

CNBC is a Fort Lee, New Jersey-based organization, as you mentioned, but as a financial news channel the events of two weeks ago deeply touched many of our staff here at CNBC.

Our employees worked closely with many people that are located in the lower Manhattan financial district.

Luckily, as a CNBC group, we did not lose anyone in the tragedy, although there was an NBC employee in the building at the time, who unfortunately was lost.

Let me start out by giving you a snapshot of where I was, so you kind of see where my perspective is coming from. I was on my way across Bergen County, New Jersey by car that morning and had called into the office just a few minutes before 9 a.m. and connected with one of my colleagues, who informed me that there was an accident that was being reported, that it looked as if a plane had flown into the World Trade Center. At CNBC, with our focus being business and financial news, we aren't immediately trained to think of a major event or breaking news or catastrophe to be something that we immediately would focus on or rally around as a CNN or MSNBC or NBC news would. So I just remember thinking at the time, "This is terrible. This is going to be a really unusual day."

> "Being a financial news organization...we're not structured to report and maintain breaking news coverage...But we wound up with about 95 percent of our coverage being our own programming."
>
> *– Capelli*

I actually had stopped and was going into a coffee shop right at the time when the news came across the radio that the second plane had hit. I just sort of remember at the time going through the motion of thinking how stunned I was. I guess the realization hit and I sort of said out loud to the group there in the coffee shop what had happened. And then it just became very clear what was going on, that we were under some sort of an attack.

As I got back to my car and began to head into the office, it was really within minutes after that happened that the George Washington Bridge was shut down and then literally, all of the Fort Lee area was closed off, due to the proximity of the town to the George Washington Bridge. Much of my day from then on out transpired via cell phone from my car throughout the morning. And then ultimately, as we were able to clear the streets and turn around, I was able to work back from home.

I can tell you that the very first concern, from a CNBC perspective, was our people. We have a number of folks that are usually there in the area. We were able to, very quickly, determine that the people that would normally be there were safe. So by the morning we knew that CNBC staff was accounted for, which was fortunate. We made the decision here to evacuate our building, only maintaining the people that we needed to continue our news operations.

I mentioned, being a financial news organization, the next issue after knowing people were safe was we had to make a decision about how we were going to report this news. We're not traditionally structured to report and maintain breaking news coverage. It's not what we normally do here. But given the significance and the fact that we're so closely tied to the financial community and because we were positioned to report what was happening, we decided to maintain a focus of just trying to wrap our arms around what was going on and report the unfolding events.

Maria Bartiromo was at her usual post, down on the floor of the New York Stock Exchange, as was Bob Pisani. Ron Insana happened to be having breakfast that morning in midtown Manhattan when he got the news. With journalistic instincts, he got up from his breakfast and jumped in a cab, headed downtown and just told the cab driver, "Bring me as far south as you can get me." He was actually down there on site around the time the second plane crashed into the building.

We wound up with about 95 percent of our coverage our own original programming, as opposed to switching over and covering what NBC or MSNBC, our sister stations, were doing.

In the early hours CNBC was just focused on relaying the news, trying to give people a sense of what was occurring and sticking with our team, which was our *Squawk Box* team that was on the air. We let them run through their normal scheduled time, just sort of trying to do the best we could to explain what was happening. We also kept from the beginning, special attention on the financial community, as we knew that was who was most likely tuned into our channel.

As the day evolved, we focused on just disseminating accurate and clear information. We knew a major story, beyond what took place and the human tragedy, was the impact of the people who were involved in conducting the nation's business and how this tragedy was going to impact the business and financial markets. We continued to report about the impact of the loss of people and the infrastructure, but then also the pending market opening and what the government reaction was to what was taking place, and how companies that were affected by the tragedy were dealing with these events.

Logistically, there was a great demand right away for a lot of our reporters. We were doing cut-ins to NBC stations around the country. We normally do 10 or 15 of them. I think we did 40 or 50 on that day. Early on we made the decision to have CNBC function as a conduit for those companies and institutions that were affected, so that they could communicate to their employees and their customers.

Pretty early on, we removed the traditional CNBC ticker and began to scroll the 800 numbers, the employee hotlines, trying to do whatever we thought we could, so that family members could find out what was happening. We did this through the course of the day. Like all television, we were commercial-free, and really just focused on the need to understand what was happening from a human and a business level.

Through Wednesday we also focused on when the domestic markets would reopen, as, again, next to the human tragedy, this was a major concern. We were really offering a perspective on the direction that the markets would take when they did open. We were providing commentary on what the impact of this event would be, both on the domestic and the global economy. We kept with this news throughout the day and then also made a decision to broadcast our CNBC Asia and CNBC Europe programming overnight. In the U.S., there was no way to indicate what this was going to mean from a business and financial perspective, so being able to allow people to tune into the overseas markets gave them some sense of what was happening around the world.

On Thursday, once it became clear that the financial markets would open on Monday, we began to focus on providing the information about how the market opening would occur, looking at the possibility of rules changes, logistics, what people need to know to get back to work in lower Manhattan. Again, being the channel where the industry would focus, we wanted to continue to be the information conduit and a news source for the financial community.

Over the weekend we made the decision to open up our airways to the SEC, the New York Stock Exchange, NASDAQ, and basically said, "You have our airtime for four hours on Sunday, so that you can communicate all the logistical and safety information that employees will need to get back to their jobs come Monday morning." So through this "Market Reopening Information Center" that aired on CNBC Sunday night, we were able to do just that. We also made a decision to broadcast a special version of *Business Center*, and that aired on Sunday evening from the floor of the New York Stock Exchange. We think by being there and broadcasting live that evening, it really helped communicate to the financial community that it was safe to be in lower Manhattan. We expected that there was probably a lot of anxiety for people that, as the markets were opening and tens of thousands of people would be returning to work, if it would be safe to be there. So we were pretty proud that we were able to logistically make that happen. Bob Zito and his team were, of course, a huge part of that, and I'm sure he'll talk in more detail about some of those things.

It also just put CNBC in a unique position to get our truck down there and be on site Monday morning. In addition to the human tragedy, people wanted to know – what does this mean from a business perspective? Many eyes were turning to the opening of the markets on Monday morning. We were able to be positioned there inside and outside of the Exchange and really report what was going on.

"There was a great demand (from NBC stations around the country) for a lot of our reporters. Instead of the normal 10 or 15 cut-ins, we did 40 or 50 on that first day."
– Capelli

As far as the impact on our organization going forward, there are a number of issues we're looking at as a news organization. One of the major ones, just really being a tonal issue. The way that the news is being presented, as you know, has changed. If you look at programs we have in the morning like *Squawk Box*, it's known to be a very irreverent program. We certainly needed to take a look at that and adjust how we're presenting that show.

Once the markets opened, we took a strong and hard look about how we present a broadcast with sensitive coverage of the impact of the markets. From an internal communications prospective, we were out on the first day with communications from our President on that Tuesday evening. We had internal communications that we sent out to our newsroom that really focused our people on looking and considering that, against the backdrop of this human tragedy, we really needed to provide a clear and dispassionate depiction of what was going to happen once the markets opened. Given the times, to use the word dispassionate, it seems unusual. But as journalists it's something that we needed to do. So we were just highly sensitive to our tone and standards of objectivity. We didn't want to celebrate if the market went up or lament if the markets went down, or in any way contribute through our coverage to either feed or in any way impact what was happening. We really looked at how our people interacted with one another on air, as well.

We knew that we would have a very large audience once the markets reopened, and so from a business standpoint we made a strong effort to really present news in a way that was very easy to understand, not using financial jargon. Normally in cable news, we deal with a few hundred thousand viewers. CNBC traditionally focuses on the individual investor and the financial community, which is a pretty savvy audience. But given what was going on, we knew we'd have a much broader and wider audience. As it turns out, more than a million people tuned in, and in cable terms that's a lot, at 9:30 on Monday to see the opening bell. So we continued to try to help make sense for a lot of people, seeing a great impact on their individual financial situation.

Looking at critical issues to the organization, it was and continues to be taking care of the people at CNBC. As you can imagine, we have been working around the clock here. From an internal communications perspective, using our Intranet, we had regular communication from our president and from our head of business news. We were also doing a lot of small things for our employees, just to kind of keep them going, everything from free food and snacks and bringing in crisis counselors that we've had on staff here. One of the things that you might not think about, there's just a lot of footage that the average person is never going to see but that people need to look at and screen to decide what's going to go on the air. Just the impact that has on individuals has really been traumatic for a lot of people. So we've just done a lot of things along those lines.

We had our own clothing drive through our Intranet. We've had links to charities so people could contribute. Our parent company, GE, pledged $10 million for the families of the firefighters, the police officers, and the emergency rescue personnel. CNBC made a pledge to the American Red Cross. I think all of these things that we've been doing and communicating from an employee perspective has meant a lot and helped people keep going through a very difficult time.

Other critical issues from a PR perspective, involve managing how we present ourselves externally. On the media relations side of things, we've gotten a lot of calls, a lot of requests. As a group, we've taken the posture of being very responsive, providing information if asked. We've made our anchors and reporters available for numerous TV, radio and print interviews, and we continue to do so. We have not proactively solicited any of our people, which some outlets made the decision to do and others didn't. If you're in the New York area, you may have seen some of the New York newspaper coverage that was highly critical of some other news organizations that were soliciting their people for availability on what was happening.

Going forward, I think that we need to acknowledge that all information and all public relation's efforts are going to go through the September 11th screen. We're looking at what this means from a business perspective. We acknowledge that our viewers are primarily the individual investor. We're looking at them as being a key audience and understanding that they've suddenly been subjected to a combination of dramatic short-term financial losses, high market volatility, a shift in the dynamics of the major industries and uncertainty regarding the global economy. We're looking at that, and really trying to look at it from a viewer perspective and think what we can be doing to continue to present them the information that's most relevant.

> "Against the backdrop of this human tragedy, we really needed to provide a clear and dispassionate depiction of what was going to happen once the markets reopened."
> *– Capelli*

We've been airing some new programs. For example, last Thursday we had Maria Bartiromo with Tyler Matheson host a one-hour town hall meeting with the vice-chairman of Fidelity Management and Research, Peter Lynch, to really guide and provide individual investors through the aftermath of these attacks. That program got a fantastic response. It was actually picked up over the weekend by all the NBC affiliate stations. So we're going to continue to kind of look at doing those types of things.

We had a *Wall Street Journal* editorial board meeting, as well, last Thursday and will be doing another one of them tomorrow evening. We're really just helping people to deal with and understand what's taking place. From a communications perspective, I think there's going to be a lot going forward about how we communicate, how CNBC is evolving with some of that programming.

We're really just looking ahead now, from a business perspective, to what all this is going to mean. We're going to be doing some senior management planning, looking at how we allocate resources. Certainly the core of the CNBC brand is going to remain focused on the financial markets, the individual investors. But I expect there will be a shift going forward in how we approach all this and that our public relations team here is going to play a key role in communicating that shift and positioning the evolution of the network. I think I've used up my time here.

J. O'Rourke
One of the things I like about corporate communication professionals is that so few of them are reluctant to speak. While we wait for Bob Zito to join us, I do have a couple of questions. Paul, while I still have you here, let me ask you about a phenomenon I frankly wasn't aware of until this week. It's the phenomena of story branding.

(For those who come downtown everyday), "you've got a very vivid reminder of what happened on September 11 and it's not pleasant...I can tell you, for this entire community, life will never be the same."
– Zito

NBC began by identifying its story of the coverage of the events of the 11th and the weeks after as the "Attack on America." They're currently branding it as "America on Alert." FOX began with "America under Attack" and now is using "America United." CBS said it was "Terrorists Attack" and now it's "Terror Hits Home." CNN, pretty consistently from the beginning, has been using the tagline "America's New War." ABC is using "America Attacked." And the *The New York Times* has been using an interesting phrase called "A Nation Challenged."

Paul, I'm wondering if you have some thoughts about what it means when breaking news is branded in the same way that products or services or the identity of an organization is branded? Can you tell us what some of the thinking is that goes into that and what it means for the viewer?

Capelli
Yes. I can share some thoughts on that, because I was involved in discussions here at CNBC with our senior management. It was quite unusual for CNBC to go with the tag of "Attack on America," which we had for the first few days.

I know that what we were doing was to capture the sentiment of what's happening. Even though you look at it as a branding, I think what we try to do is to really capture and reflect what was happening, and try to then relay and communicate the coverage and what was happening in the world. Very much, those first few days, "Attack on America," which I think a number of the networks went with, really summarized what was being reported.

I know on our network, even for us to do that, again, not being a breaking news organization was somewhat extraordinary for us. I know that we evolved then to, I forget exactly what it was, "America Heals," or something along those lines, over the course of the end of the week and the weekend. Again, we looked to sort of summarize and be reflective of what was going on and what our programming was about.

J. O'Rourke
I presume most of that continues out to the Internet Web site and to other products that you produce?

Capelli
Yes. That's correct.

J. O'Rourke
Ray O'Rourke, if I might ask you what you hear on the streets these days about corporate communications and PR budgets. What's likely to happen? Are you likely to get more money or less or are things going to stay pretty much as they were?

R. O'Rourke
I would say, Jim, to the extent we've talked about budgeting at all, we are on the eve of our budgeting process. Actually, that's all been pushed back a couple of weeks, understandably so. Whatever may happen to our budgets here, and I wouldn't presume to talk about others, will happen irrespective of what we went through in the last two weeks. It's no secret that it's been a particularly tough market, tough three quarters now for the securities industry. We were mindful going into this, mindful of that two weeks ago, and that hasn't fundamentally changed.

Speaking personally though, I don't see that I would be going in for big incremental commitments, based on what we have been through in the last two weeks. Most of the infrastructure items that I mentioned that allowed us to be as quick and as comprehensive in a lot of communications that we did, are already in place and improvements to those things are going to happen, irrespective of what we've been through.

J. O'Rourke
Okay. Let me ask you what you think at this point about corporate philanthropy budgets. We've read and heard about a number of large corporations, large organizations that have made unprecedented contributions to the September 11th Fund, to the New York firefighters and police fund, to the American Red Cross and to others. There have been substantial amounts of money raised. It's obviously heartwarming to see Americans step up and contribute to people when there's an immediate need. What does that do to corporate philanthropy budgets going forward? Does that pretty much gut the budget for a year or

more, or is it likely that they'll be able to make commitments to other charitable activities that they'd already been affiliated with? What's your sense of that, Ray?

R. O'Rourke
Again, I wouldn't presume to speak for others. I would tell you that we as a firm have made a $10 million commitment. We have set up the Morgan Stanley Victims Relief Fund, and we are matching employee contributions up to a minimum, I think, of $10 million. Discover Card is shortly going to announce their own sort of unique fundraising effort along those lines. In addition, those of you who know the Discover Card know that one of its differentiators is their Cash Back Bonus. For years they have allowed cardholders to make a donation of their Cash Back Bonus to a couple of different charities. They are about to add the American Red Cross to that.

Having said all of that, it has been our understanding from the start that this $10 million commitment that we are making is incremental to the expenditures of the Morgan Stanley Foundation. So this is over and above that commitment. I think anyone else to whom we have made commitments and the program areas where we've traditionally focused are not going to suffer as a result.

J. O'Rourke
Okay. My last thought really concerns publicizing good works. If you're doing good things, you're obviously doing what's right. But there is, deep in the soul of any public relations or corporate communications professional, the urge to get credit for it, somehow publicize what the company is doing. Let me start with you, Ray. Where's the line, the line of propriety, between taking credit for good work you've done and simply making people aware of what you've done?

R. O'Rourke
Let me start by saying it may in fact be the case that deep in the heart of PR people there is the urge to publicize, but I would say that I don't think PR people are any different from anyone else. We all recognize that virtue should be its own reward. That said, my own read of the way these victims' relief funds have been announced, is that they have been done with an admirable degree of restraint.

In our own case, we put out an internal announcement on the fact of the creation of the fund. We did not put out a press release to that effect. Obviously given the level of scrutiny we are under, word of that fund became known very quickly, and we certainly acknowledged it. I think a lot of firms who have made contributions and established funds who wouldn't otherwise have publicized them have seen competitors, or others in their industry, setting up funds, making contributions. They find themselves in a position where they would be sort of conspicuous by their absences if they didn't, at a minimum, acknowledge the fact of their own funds.

Overall my sense of what's been communicated about this so far is that it's been admirably restrained.

J. O'Rourke
Good. It's 12 noon in the Central Time Zone and 1 o'clock in the East, or very close to that. May I ask if Bob Zito is here yet?

Bob Zito
Yes. I just joined.

> "It was extremely important to America, and to the world, that we got back up and trading on Monday (September 17)."
> *– Zito*

J. O'Rourke
Hi, Robert. How are you?

Zito
Fine. Thanks.

J. O'Rourke
Good. A couple of questions. First, quickly, how is the market?

Zito
The market right now is relatively flat. The Dow is down 30, the NASDAQ down about two. S&P is up two.

J. O'Rourke
Bob, thank you for agreeing to join us. You're a great colleague and a friend. We all remember being at your place, not long ago, having drinks and hors d'oeuvres on the floor of the Exchange. It was a great thrill for me to see how the markets work. My sense is that things are going well there. First, talk a bit, if you will, about September 11th, and then talk about the New York Stock Exchange and about the equity markets and how things are going.

Zito
Things going well is a relative term these days. Every day, for those of you on the call who come downtown, you've got a very vivid reminder of what happened on September 11th and it's not pleasant. Every day people are leaving the trading floor to go to memorial services for colleagues and friends and that's a very difficult experience. There are still a lot of people in this community who are having tremendous

difficulty coming to grips with what happened. I don't know that for some it will ever be the same. As a matter of fact, I can tell you for this entire community life will never be the same.

When we say things are going as well as they can, we're talking about from a systems perspective. From a systems perspective everything here is fine. The New York Stock Exchange could have opened that day. They could have opened the next day. But for obvious reasons that have been well documented, we decided not to. The entire industry supported that. We did that in concert with the NASDAQ. This was a situation where this entire industry came together as one and said that the rescue effort and the people issues that were taking place in all of our companies were much more important than trading during the course of that week.

> "After the second plane hit, we made the decision in concert with the SEC...to delay trading...When the plane hit the Pentagon, we made the decision to not open on Tuesday, the 11th."
>
> *– Zito*

It was, however, extremely important to America, and I think to the world, and certainly to all of our companies, that we got back up and trading on Monday. Verizon did a phenomenal job, in terms of rebuilding its infrastructure in lower Manhattan, to make all of the member firm community connected with each other, with the clearance and settlement houses, so that when we came up on Monday, it was seamless.

We were not at 100 percent, in terms of line capacity. That said, I think those of you who know the Exchange know that our capacity is significantly overbuilt. Even though we weren't at 100 percent, we did record volume on that Monday. We never had a hiccup. I think by now Verizon has made it so that the system is 100 percent operational.

The AMEX, as many of you know, is still not back in their facility. They hope, later this week and early next, to reoccupy their facility. However, they are living here, from an equity standpoint, and in Philadelphia from an options standpoint, for the time being and until they get the all clear to go back into their facility.

That's kind of a nutshell as to where we are from an operations standpoint. From an emotions standpoint, I think it's going to take a lot of time.

J. O'Rourke

Bob, can you describe just for a couple of minutes what the morning of the 11th was like and how the decision was made to close the Exchange, and what the sense was of people who were working on the floor and working along Broad Street, along Wall Street, that day?

Zito

Yes. Let's look at it from the professional side and from the communications side, as opposed to the broader issue. From a communications standpoint, when the first plane hit, those of you in lower Manhattan know that there was a tremendous noise in lower Manhattan and nobody really knew what that noise was. It sounded here like we had just been buzzed by an F-15. It's a noise that none of us ever wants to hear again. You heard this plane coming over you. Then you heard an explosion or a crash. Nobody knew what had happened, except that when you looked out windows, you saw papers flying in the air like it was a ticker tape parade welcoming home the Yankees after their world championship. The difference this time was that a lot of paper was burning or it was charred.

You then, on the networks, start seeing these images of the Trade Center and the notice that a plane has crashed into the Trade Center, so that explained your noise. No one as yet has said this is a terrorist attack. Most people felt it was an accident. Then a short time later, of course, you hear that same noise. If you're watching television, you see the second plane coming in and that's when everyone knew it was a terrorist attack.

The trading floor was getting ready to open. Those of you who know the trading floor know that that is sometimes the busiest time of the day, as brokers are getting orders to specialists, as specialists are disseminating market look so that brokers can go back to their clients and tell them how an individual stock looks like it's going to open. It's an extremely hectic time of day, but the noise had obviously distracted everyone to the point that now everyone is glued to monitors on the trading floor instead of watching what was happening in the marketplace.

We have a standard operating procedure here that when there is something that will impact the market in some way, shape or form, we convene as a management group on what we call the ramp. It's kind of our control tower at the Exchange. The chairman is there and it's there that we make decisions and give marching orders. We all input what we know and we make decisions based on what will happen at that central point.

We started, about a year ago, instead of using news services to disseminate information, using CNBC and CNN. We just found it quicker and we found that the news services are monitoring CNBC at that point as well. We used them as our PR newswire, almost, if you will. Instead of a call to Dow or Reuters, I will simply brief Maria Bartiromo and Christine Romans, who typically are on the floor in the morning. They immediately go on the air and we've got our news out there.

What we did that morning was, after the second plane, we made the decision in concert with the SEC – our chairman was on the phone with Harvey Pitt from the SEC – to delay trading until we could assess exactly what was going on. We got that information out. When the plane hit the Pentagon, we made the decision to not open on Tuesday the 11th. We got that information out.

The issue for us came when the first building came down, because it really shook lower Manhattan as if it was a small earthquake. As those of you who were downtown know that day, it just got pitch black down here. When the building came down, our lights flickered, the building shook, the windows shook, some of our front windows were broken. There were obvious concerns, I won't call it panic, but there was concern on the trading floor that we would possibly be next.

> "Everyone who was in the facility that day, about 5,000 people, were either in the basement or on the trading floor (until it was safe to leave)."
>
> *– Zito*

Dick immediately got on the PA system – he was getting briefings from the NYPD and the FBI almost every 10 or 15 minutes – and told people that we were in no danger, that the best place for them at that point was on our trading floor, not out in the street in the smoke, ash and debris, and really shut the facility down so that no one could leave. We felt that was the best course of action at that point.

We kept everyone on the trading floor. We evacuated our building. We evacuated our staff from upstairs, got them down to the trading floor and into the basement, so that everyone who was in this facility that day, about 5,000 people, were either in the basement or on the trading floor.

It was about two hours after the second building came down that the NYPD felt that the dust had settled enough so that we could start letting people out with clear knowledge that they could only walk east, to the river. There were emergency ferries set up to get people back to New Jersey. People were actually walking over the Brooklyn Bridge, through the Brooklyn Battery Tunnel, and I believe the Staten Island Ferry was running as well, to get people back to Staten Island. We just used the trading floor and an old-fashioned PA system as the way to communicate with employees.

J. O'Rourke

Bob, how is the mood now and what are the thoughts about critical issues going forward? What's sort of foremost in your mind, as a communication professional, and is there some sense of strategy or direction at this point?

Zito

I think there are a number of things. Number one, our primary concern still is people, and helping people here deal with what's happened. Everyone in this community has someone very close to them that they've lost, whether it's a co-worker, whether it's a customer, whether it's a family member; everybody in this community has lost someone in this incident, so people are still the priority.

We have overbuilt the New York Stock Exchange to a significant extent. That said, fortunately we proved, by moving the AMEX over to our trading floor in a matter of days, that a marketplace in the United States can quickly be up and running in an alternative location in a very short period. We actually have two locations that, with minimal effort, we could move people to and begin trading. Those are our two data processing facilities. One is in lower Manhattan. One is not in Manhattan. But we could quickly move people there and continue trading if need be.

What we are looking at, however, is the possibility of building another site, not in lower Manhattan, that, if need be, we could quickly have up and running as an alternative site.

The pundits out there who like to say this is proof that physically convened trading is a thing of the past just don't get it, because we are not the largest trading floor in Manhattan. Almost every one of our major member firms has a larger trading room, if you will, in Manhattan. Some of them have large trading rooms in Connecticut. Any place that you're going to do trading, you're going to physically convene people, whether that is at a firm or whether that is at a facility like ours, which some have called a utility. In NASDAQ's case, those member firms who participate in the

NASDAQ market have trading rooms that they can conduct their NASDAQ trading from. NASDAQ has central processing facilities, whether it's the one in Maryland or whether it's the one in Connecticut, which have the same vulnerability as a site like the Verizon site down here, which, when the Trade Center collapsed, took out 80 percent of the phone lines in lower Manhattan.

So from an operational standpoint, what we're looking at as a priority is the possibility of adding a fourth site and that's a very real possibility moving forward. But people are the primary issue. An additional site, the secondary issue.

Then I think the third issue would be when we simply get back to business as usual. My guess is that will be closer to the end of the year, with full resumption of business as usual with listing celebrations, promotional events and all that stuff, probably sometime in 2002.

J. O'Rourke
Bob Zito, on a personal note, thanks for doing this. I know I'm stepping out of my role as moderator, but I must say, I hear what a hero Dick Grasso is and I want to tell you that we are impressed. People who live out here in what we used to call fly-over country, are genuinely impressed with the courage and the dedication to duty that we see on the part of people in the financial community and in lower Manhattan. Thanks to you and thanks to all of your co-workers for all you've done to make us proud.

Zito
We appreciate it, Jim. Dick did a phenomenal job. We made a decision early on that we had to be very visible. We had to be out there. It was not done alone. As some of you may have read, Dick convened, with Harvey Pitt, a meeting of major member firms the day after on September 12th. It was a very warm thing to see companies that you knew were tremendous competitors sitting around a table asking each other how they could help. The primary concern was people, and really it was a table of 20-some competitors just looking across at each other saying, "How can we help? How can we help you get back up and running? What facilities do we have that you can take advantage of?"

I think the media still has not quite gotten the grasp of us and NASDAQ doing things hand-in-hand. When Holman Jenkins last week in *The Wall Street Journal* wrote a little bit of what we thought was a scathing piece, it took one phone call to get Dick and Wick Simmons from NASDAQ to agree to co-author a letter blasting the opinion that he had surfaced on the pages of the *Journal* the day earlier. Dick made a call to Peter Kann to talk about how insensitive he felt Jenkins' piece was. I called Stieger. I know that my colleagues at NASDAQ did the same. It's an interesting time. It's really a case where everyone, I think, in this country has rallied together. It's kind of a warm thing to see. But, of course, I would have given anything to have not seen it.

J. O'Rourke
A writer in *New Yorker* magazine said flatly, "The age of cynicism is over. Things certainly have changed. What I know is that it may be difficult, indeed, to return to normal. The best we can do is move forward and rely on one another."

Are there any questions?

Teleconference Coordinator
We do have two lines in queue. We have a question from Frank Ovaitt. Please go ahead.

Frank Ovaitt
First of all, I want to say I think this program has really been superb. My congratulations to each of the panelists, as well as to Jim Murphy, Matt and to Jim again for pulling it together. In fact, what I had was more of a suggestion than a question, which is that we could well benefit, week after week, for some period to come, doing this again with the set of panelists from the public sector, from the public service organizations, from international relations organizations. There are so many different angles on this that it would really be helpful to us as public relations professionals to keep hearing those points of views.

Murphy
Frank, we have a Board meeting on Friday and I'll certainly tee that suggestion up. We don't want to overdo this. We want it done in good taste and appropriateness, but we will certainly consider that.

Ovaitt
Terrific. Thanks very much.

J. O'Rourke
Thanks, Frank. Another question?

Coordinator
Yes, from Linda Kingman. Please go ahead.

Linda Kingman
I also want to thank you all for taking the time to do this. I'm sure you don't have much time to spare right now.

The question that I have is for Ray O'Rourke. It relates to *60 Minutes II* following your employee around as he or she came back to work. I wondered, were you concerned that you didn't want to be in a position of exploiting that employee and the grief that they were going through? How did you make the decision to participate in that story?

R. O'Rourke

A couple of things. One, I think we had had extensive conversations with a couple of candidate employees. We had about four, actually, that were possible candidates, all willing to do it. None of them expressed the kind of reservations that you identified and you would think that there might have been obvious cause for concern.

The person that we chose actually had the interesting job at the contingency site. She had been there through the weekend getting it set up. She was what they called down there one of the go-to people, so she was a designated problem-solver, extraordinarily enthusiastic, committed employee and she was very eager for the opportunity. While we anticipated the question and we raised it with each of the four possible candidate employees, we were mindful that all of them were emphatic in reassuring us that it was not something that they were concerned about.

The second thing was we had lengthy conversations with *60 Minutes II* about exactly what it was they wanted to get every step of the way. Thirdly, quite honestly, taking a step back from it, notwithstanding CBS or *60 Minutes*' well-deserved reputation among PR people, there were very few discernable, serious downsides to the story. The other thing was the real opportunity, against which we weighed the minimal downsides as we saw them, with the ability to communicate to a vast audience. Remember, we have 15 million individual investor clients, many, many of whom would be watching *60 Minutes*, that that business was up and running, and they had no reason to be concerned about Morgan Stanley, whatever other concerns they might have. That was too good of an opportunity to pass up.

J. O'Rourke

Thanks, Linda. Thanks to you, Ray. Jim Murphy, it is about 22 minutes past the hour and we probably overstayed our welcome in most time zones. Any last thoughts?

Murphy

I just want to thank all of you. I think this has been a significant event for us, as an organization. I'm really appreciative of our panelists, Ray, Paul and Bob, for joining us. We will take under advisement the suggestion that we continue these dialogs and we'll keep you posted.

Thanks all of you for attending today.

J. O'Rourke

Thanks, Jim Murphy, and from South Bend, Indiana, thanks to all of our listeners today. It has been gratifying to see how true professionals perform in a time of crisis. Look after each other and stay in touch. That concludes our teleconference.

BEYOND ENRON: CORPORATE COMMUNICATIONS IN A CHANGING AND HIGHLY CHARGED ENVIRONMENT

MARCH 13, 2002

THE COLLAPSE OF ENRON CHANGED THE LANDSCAPE FOR COMMUNICATING WITH VARIOUS STAKEHOLDERS. HERE'S WHY.

PAGE ONE Panel

Michael Myers
Senate Committee on Health, Education, Labor and Pensions

Steve Lipin
The Brunswick Group

Thomas J. Frecka, Ph.D.
University of Notre Dame

James S. O'Rourke, Ph.D.
University of Notre Dame
Moderator

Dave Drobis

Good morning or good afternoon, wherever you are. I want to welcome you all to PAGE ONE. Thank you very much for joining our first and what we hope will be a series of teleconference discussions on relevant issues for our profession. We have more than 70 of our members signed up for today, which is terrific. Before I turn this over to our moderator, Jim O'Rourke, I want to thank him, along with Matt Gonring and Anne McCarthy, for putting this together. They've done a terrific job. Thank you also to AT&T for their very generous sponsorship of this teleconference.

Jim, it's all yours

Jim O'Rourke

Thanks very much, David. Good morning and welcome to PAGE ONE. From the campus of the University of Notre Dame in South Bend, Indiana, I'm Jim O'Rourke and I'll be your host for the next hour. Today's program is the first in a series of teleconference discussions for the Arthur W. Page Society. Our topic this morning is "Beyond Enron: Corporate Communications in a Changing and Highly Charged Environment." Our objective is to look at issues affecting the economy, our industries, and in some cases those businesses that employ us or are in some way a part of our professional lives.

We have three guests with us this afternoon in the Eastern and Central time zones and this morning in the Mountain and West. Michael Meyers is staff director and chief counsel to the United States Senate Committee on Health, Education, Labor and Pension. Mr. Meyers worked for Senator Edward M. Kennedy in a variety of capacities since 1998, working on issues ranging from the patient's bill of rights to education reform, increasing the minimum wage. He's a specialist on issues related to immigration and foreign policy as well. Mr. Meyers also served two years in the Clinton Administration as director of policy for humanitarian and refugee affairs in the Department of Defense. Prior to his work in the Senate, Mike worked for the United Nations' high commissioner for refugees and non-governmental organizations assisting refugees. Mr. Meyers has received both bachelor and advanced degrees from Columbia University. He joins us from his office in the Senate Office Building in Washington D.C.

Steve Lipin is a former *Wall Street Journal* reporter who recently joined the Brunswick Group, an international communications firm headquartered in New York. He is U.S. senior partner for financial public relations and investor relations at Brunswick. Steve is one of the nation's best-known writers on corporate America, having written on mergers and acquisition issues for the *Journal* and numerous television business programs. Steve joined the New York bureau of the *Journal* in 1991, covering commercial banking and derivatives; he began covering mergers and acquisitions in 1995 and was named finance editor in October of 2000. Mr. Lipen joins us from his offices at the Brunswick Group in New York.

Thomas J. Frecka is Vincent and Rose Lizzardo Professor of Accountancy in the Mendoza College of Business at the University of Notre Dame. Professor Frecka is a graduate of Ohio University, with an undergraduate degree in journalism and a graduate degree in business. His Ph.D. is from Syracuse University, where he began a career specializing in financial reporting and financial statements analysis.

Professor Frecka is a Certified Public Accountant with an interest in areas such as the ethics of earnings management, and is currently directing a lyceum course at Notre Dame on the issues involved in the collapse of Enron Corporation. Tom has been chair of the Department of Accountancy at Notre Dame and a member of the Mendoza School faculty since 1990.

The plan for today is to have each of our guests offer a few thoughts on the issues affecting the nation and the economy, now that we have some sense of what's happened in the Enron case. After some discussion, we'll turn to the phone lines and take questions from Page Society members.

Let's begin with Mr. Meyers in Washington.

Mike Meyers

Thank you, Jim. Thanks also to Dave Drobis for hosting this and being our President for this series and the good work that Anne McCarthy and Matt have done on this as well. It's an honor to join Steve Lipin and Tom Frecka on this panel.

> "What we're seeing with the Enron situation is that Corporate America has joined the category of institutions that the public now looks askance at."
> *– Myers*

Just a few points from the perspective of Congress on the Enron situation. Over many years, we have been scratching our heads over the growing mistrust in America for our institutions. In a way, even going back perhaps to the Vietnam War, we've seen this as kind of a trend in our society, a mistrust of government, a mistrust of maybe even some of our local institutions, even a skepticism about organized religion. Now what we're seeing with the Enron situation is that Corporate America has joined the category of institutions that the public now looks askance at some of what is going on and questions the integrity of those particular institutions. In a way, with the developments in Enron and what's unfolded very quickly in the weeks since, this is in a way Corporate America's Watergate that we've seen here. From a government perspective, in many respects we're still living with the residue of Watergate, the 1970 Watergate, now 30 years later. These are not things that go away quickly. They can come quickly, they can happen quickly, but they don't necessarily go away quickly.

We have felt shockwaves from the American public following the Enron revelations. Enron got the headlines, but we're also hearing from employees around the country working at various other companies that have experienced distress, who have seen their life savings whither away, who have felt like they were misled by their employers, by the higher-ups in the corporation, and now have a very strong feeling that they can't even trust their own employers. We saw with the Enron situation in which the top executives cashed out their own stock while at the same time advising their own employees to stick with the Enron stock and their 401(k) plans and other investments. That kind of thing, however, we're seeing duplicated in other parts of the country, with other distressed companies. This is something that's out there and out there quite intensely, as we've heard from people around the country and in various meetings and conversations we've had with groups, with other senators and elsewhere.

There is a feeling that employees within these companies were encouraged as a matter of loyalty to the company to buy the company's stock. I know that's an important aspect of making employees feel ownership and investment within the company and increasing productivity. The flip side of that in these situations has been that workers feel like they were misled.

The result is we find a very intense anger among a lot of Americans at what happened at Enron and what is happening elsewhere and the behavior of top executives. People lost everything; they had their retirement invested in these 401(k) plans and other pension arrangements, and they lost almost everything. They want someone to be held accountable for what's happened. There's a perception that there was kind of a highflying culture at the top of these companies and that the management was not really looking out for the little guy.

It's been kind of interesting. Obviously as people working in politics, we do look at opinion polls on these things. Some internal opinion polls that have been done by Democrats and Congress on a range of issues recently included some questions related to pensions. All the answers to those questions polled very, very high, as you would expect. One thing that surprised me about them is, yes, people think that there should be greater efforts to protect pensions. Yes, people believe that there should be sound advice on diversification and so forth. All of those things polled fairly high. What polled higher than anything else in the pension arena was people want to see penalties for employers who knowingly mislead their employees about the financial health of their pension plan and the financial health of the company. That particular issue stood out above everything else with the public. I think that that tells us a lot about what kinds of attitudes we're going to be facing when it comes to issues that affect American business and Corporate America in the coming weeks and months, and who knows for how long into the future.

When it comes to Enron-specific types of issues that flow from these questions that I've just been talking about, Congress is looking at better ways of assuring corporate accountability through the accounting procedures. I know the President has focused on those as well. People want to ensure that there are better ways of providing employees with information about the health of the company, so that they, the employees, can make better decisions about how to invest money and their shares for their retirement. They want to guard against bad advice. There's a desire to see if there can be stiffer consequences for corporate officers who fail to provide the advice or make bad decisions regarding the health of investment plans. We're seeing in the solutions that we're looking at a greater demand for a voice on the part of employees in the issues that concern them, and particularly surrounding their retirement. As we're looking at legislation, and I know as the President's looking at things that can be done within the Executive Branch, these seem to be the issues that we're all focusing on as we're moving ahead.

If I could, just in conclusion, make a few comments about how it appears to me, that at least some of these issues reflect beyond just the pension world or the accountancy world. I think what we're seeing here are some attitudes that will drive not only this issue, but maybe other issues that face the nation and face the American business community. There is, of course, pension accountability, but we're already seeing on issues such as social security and the proposal to have private accounts in the Social Security program, that there is a diminished interest in that, and in fact in some cases a real skepticism. There was more enthusiasm even just a few months ago. It obviously will have an impact on issues like that. It could as well have an impact on issues related to government regulation of industry, and calls for deregulation may be met with greater skepticism than they would have been met six months ago. Regulations that may rely, for example, on good faith employer compliance in order to carry out the goals of the regulation will be met with greater skepticism now within Congress and perhaps elsewhere in the nation. This applies, for example, to some thinking now about environmental regulations, how companies can comply with environmental regulations, how they get enforced, workplace safety, and maybe even a host of other issues.

> "This is, in a way, Corporate America's Watergate."
> – *Myers*

Just in conclusion, this came upon us all very quickly. We see this happening as Enron, for example, tries to reorganize, and what's going to happen with Arthur Andersen. All of this happened very, very quickly. I think it's going to be with us for some time; it's not going to go away overnight.

O'Rourke

Thanks, Mike. Let's turn now to Steve Lipin at the Brunswick Group in New York.

Steve Lipin

Thank you again for the opportunity to speak. I think Mike's comments were very informative and brought up a lot of very topical issues.

I'd like to basically break down my comments into two main areas. From the perspective of a journalist, or now I'll call it ex-journalist, it's what's happening inside the major publications and why it's important for us as communication specialists.

Basically the media, and some of this will seem like truisms, the media is absolutely out to uncover the next Enron, the next Global Crossing, the next scandal. Very brief anecdote. A client about to get hit with a critical story in *The Wall Street Journal* was told by the reporter that it's basically not a story and they know that, but we don't want to get beat, so we're going to run it anyway. That's the climate that we're all facing right now. The media is very willing and able to shoot first and ask questions later. Companies are being tarred with the Enron brush in a very wide swath. That's very troubling, because in some respects it is a unique story.

Having said that, if you look in the paper today, there was a story about Qwest halting employees' ability to sell their stock for a brief period. It turned out it was a brief period, that in fact was planned months earlier, and that the stock had basically not moved but about seven percent, which in this market is not that much. Nevertheless, it was a major story; it was above the fold in the What's New section. The media, without question, is in attack mode. Their view is that there is a general, and I think Mike touched upon this, lack of trust. To say that our accountants have signed off on our figures no longer works. We're in a period now where they don't trust what we say, they don't trust the accountants, they're wary of the law firms, they have basically little respect for the investment banks and the Wall Street analysts. To Mike's point about the corporate Watergate, I think it's so. And I think it's multiplied by the fear and loathing out there among the investing community and among the media about whether companies are being truthful. I have not seen this type of climate, in terms of the business media, certainly since I've been in the business since 1985. We're in an incredible period now where there is almost no faith in what we say and how we operate and in our public filings and our public results.

What does that mean for us? What does it mean for communications specialists and how do we deal with it? In February the SEC came out with broad new disclosure initiatives. I think it's a topic that all of us should get to know intimately. It can't just be left to the lawyers. I think that we have to be way out in front of these disclosure – related issues, because it's not something that we want to be reacting to if somebody calls regarding why aren't you abiding by new SEC disclosures. I think it's something that as communication specialists it is our job to be prepared and to understand the new reforms that the SEC is putting in place in the post-Enron environment.

"There is now a very strong feeling (among employees) that they can't even trust their own employers."
– Myers

I think Joe Nacchio of Qwest was quoted in one of the newspapers calling this period, "Corporate McCarthyism." Similarly, Bernie Ebbers, the CEO of WorldCom, blamed the recent investigation that the SEC has started on his company on a combination of the media continuing to hammer away and Wall Street skepticism. Those comments, I think, are accurate, but this is the climate that we're in. There's no defending it. There's no getting around it. It's more what do we do now? I think that addressing the issues of disclosure, and I know that Tom's going to hopefully talk a little bit about accounting and disclosure, it's an area where we can't convince the media to believe us. What we can do is everything in our powers to make sure at least our communications are forthright and that what we disclose is accurate and we have faith in that.

The climate, I would say is that we can't worry about the day-to-day moves of the stock price. I know it's in some respects naive to say that when all our CEOs are worried about the movements of the stock prices every day and every minute, but I think we can't get too focused on that. The markets will do what the markets will do. I think it's going to be a longer-term process for the markets to, in effect, give companies the credibility that many of them deserve. It's not just about saying that we have 30 percent more pages in our annual report. That's a good sound bite, but what are we actually disclosing that we didn't disclose last year? If we could point to specific examples, whether it's acquisition-related or accounting-related changes that we have made because of the climate. I think that in the last week or so, GE put its annual report out, improved its disclosure, IBM, a lot of companies have now taken good, productive steps. Whether or not the markets buy into it, again, it's something that we will only know in a longer time period than today, tomorrow, the next day. Right now, I think that there is this deep-seated skepticism and disbelief in Corporate America, as Mike talked about. I think part of what we're seeing is the hangover to what I call the Go-Go 90s, the market craze of the mid to late 90s, where we had this stock market culture that was propped up, where everybody wanted to get into the IPOs. When things are riding high, employees did want to own stocks in their companies and participate in the upside. Now we're seeing, obviously, the downside of that move.

I think one of the things that we can do as specialists is be focused on employees. The media will beat us up for a period of time until something else comes along, but our employees, who come into work everyday, who are doing their jobs, how are we communicating with them? How are we getting the messages to employees that we are not crooks, that we're doing the best we can, that our numbers are sound? I think it's something that if you read the chat boards and you look at what employees are leaking, what they're saying about their employers, there is this same skepticism as inside our companies. A big question that I don't have the answer to is what are we doing with our employees, how are we comforting them? How are we convincing them that their board, their management, their bosses are doing the right things? I think it's something that in the near-term we should all be very focused on.

Lastly, I would just say that I think that this period will probably go throughout this year, in that it's not something that's going to be a quick fix. Ultimately, when people realize that our public filings actually can be counted on, accusations of fraud and restatements will be few and far between. Yes, we can improve disclosure, but in fact most of our public companies, I think – maybe I'm naive – are doing the right thing. Eventually, we'll get this off our back. But I think it's going to take a long time. Thank you.

O'Rourke

We turn now to a fellow sitting next to me in Fanning Center Conference Room here at Notre Dame, Tom Frecka, professor of accountancy, and a CPA and Ph.D. in accountancy, who began life with a degree in journalism. Tom, I'm impressed.

Tom Frecka
Thank you, Jim.

O'Rourke
I have about three dozen questions. Let me begin with the most obvious. A lot of accounting questions continue to swirl around firms such as Global Crossing and the telecom giant, WorldCom. A lot of us are beginning to wonder how many more Enrons are out there. The more substantive question is this. Are financial markets at risk because of accounting practices that may have been designed to hide debt, to move partnerships and conflicts of interest off the books, or to cover up bad judgment? Is the issue of Andersen and Enron an aberration, or is it something you think may be far more prevalent?

Frecka
That's a very broad question, Jim. Before answering it, I'd like to thank Mike and Steve for their comments. I certainly learned a great deal from their comments. I think what is behind everything we do in accounting is this issue of trust. Trust is really the bottom-line thing that drives a capitalistic economy. If it's not there, we certainly have problems.

> "In the climate we're all facing right now, the media is very willing and able to shoot first and ask questions later."
> *– Lipin*

I don't know if there are any more Enrons out there. I really hope that there aren't many more. I do know that Enron is certainly a singular event. I can't remember anything as significant as Enron in the 30 or 40 years I've been involved in accounting as both a practitioner and as academician. I think actually, as many of these things turn out, in the end it may be a good event, because it has certainly focused the American public on the importance of the accounting function, on the importance of high-quality information to the smooth running of the economy.

O'Rourke
Never before have accountants been so visible.

Frecka
That's really true. Who would've thought it would take an accountant to get 9/11 out of the headlines, at least for a while? I think that is ultimately the good result.

It's interesting, we seem to need an event like this every 75 years or so to result in progress in accounting. There was an event back in the late 1920s/early 30s. A guy by the name of Ivar Kreuger ran this Swedish firm that was a match conglomerate. Ivar Kreuger really ran a Ponzi scheme, which ultimately collapsed. As a result, Americans and people throughout the world lost millions of dollars by investing in that company. A lot of us believed that as a result of the Kreuger Match Company failure additional controls were established, specifically the Securities Acts of 1933 and 1934.

I think, as others have already mentioned, one of the things we're seeing is evidence of increased voluntary disclosure, as firms like General Electric and IBM try to signal their quality type, try to convince investors that their numbers are relevant and reliable. Ultimately, I think that will be a more viable solution to our problems than too much additional regulation.

O'Rourke
General Electric said on February 20th that it will change the way it makes disclosures in its financial reports, including providing more detail about specific businesses in its GE Capital financial services unit. That makes GE only the latest of a number of companies to change their financial disclosure practices amid all these questions. Jeff Immelt, who is chairman and CEO at General Electric, said last week, "If the annual report or quarterly report has to be the size of a New York City phonebook, that's life." Keith Sherin, who's GE's finance chief, said the company will now provide revenue and operating profit figures for 26 businesses. Previously they had reported on just 12 business segments in their annual report. Tom, what kind of information might a company be inclined to disclose more readily that they wouldn't before?

Frecka
Jim, in terms of GE, the first thing we have to remember is how large their company is. GE's current market value of equity is over $410 billion. Last year I spent a semester in Australia. General Electric's market value is larger than the market value of all Australian companies combined. We just need to think of the company as a huge conglomerate that has all these different business segments. It's really difficult to understand a company like that. The only solution is to provide as much relevant and reliable information as possible.

In terms of the kinds of information, I think the main thing that people are focusing on now is off-balance sheet financing, off-balance sheet debt that people don't know about.

O'Rourke
There's something else that I know concerns me, because I teach writing here. I've been a fan of Arthur Levitt for a long time, but for all the wrong reasons. I'm a fan of his because he's pushed plain English, particularly in prospectuses and disclosure documents. Here's the question at the heart of this, Tom. Accountants hand us all kinds of information. Ordinary people, I think, feel overwhelmed when they're looking at small print and lots of numbers. The question for corporate communicators is how do I translate that into plain English for individual stockholders, employees and for others? What kinds of conversations should corporate communicators be having with the accountants?

Frecka
In general I think there's a movement, in addition to providing all this detailed information, that we provide more summary information, more information in plain English for the average investor to understand. On the other hand, we need to recognize that business can be complex, some of the transactions that we're talking about are extremely complex and difficult to understand. Sometimes what the small investor needs to do is simply rely on an expert financial advisor who is able to understand this information.

O'Rourke
Someone other than the company's auditors?

Frecka
The auditors would be a good source of information. Certainly the audit committee of the corporate board. The primary role of the financial analyst community is to try to understand these financial statements and communicate their understanding to market participants in the form of sell and hold decisions.

O'Rourke
Tom, this has been a bad year for Arthur Andersen. If Andersen does not survive in its present form – and it does not look as though it will, because obviously there was greater profit in the consulting area – trying to go at it as an audit-only firm it probably wouldn't work. If they don't survive in their present form, what does that mean for the accounting profession? Will Andersen's disappearance or absorption into another of the Big Five firms either delay or diminish any chance for reform?

Frecka
Jim, first of all, at Notre Dame we are just devastated by what's happening with Arthur Andersen. We're a school that has over 400 alumni that work for Arthur Andersen. At times Arthur Andersen has hired over 100 students per year from this campus. All of this is impacting us very much on a personal level.

In terms of what will happen if we have one less firm, and in terms of what will happen if auditing firms are not allowed to do consulting work, clearly there's going to be less competition. If auditing firms are not able to do consulting work and are restricted to doing auditing work, that means that this work becomes a lot more risky. They're going to have to price that risk into the audit fees, so I see audit fees rising greatly. I think the main concern is just the lack of competition if we're down to four firms.

> "(Communicators) have to be way out in front on disclosure related issues...We have to make sure our communications are forthright and that what we disclose is accurate."
> *– Lipin*

O'Rourke
Can those remaining four firms handle the work?

Frecka
Sure, they will just hire additional Arthur Andersen employees or whatever it takes. Right now, we all know the economy is not that strong and there are clearly a lot of people out there looking for jobs.

O'Rourke
It's about 20 minutes before the hour. I think we're just about ready to go to the phone lines. We'll do that in just a moment. Tom, let me ask you one more question.

We began with this whole issue of trust, and I'll pose the question to you again. What do you think the accounting profession can do to help re-establish trust in the numbers, trust in the leadership? Right now, as I understand it, the Big Five firms essentially regulate themselves. They are sort of self-monitoring. Are we going to need additional regulation or is the landscape going to change in order to reestablish that trust?

Frecka
I can't imagine anything more significant we could do than to have an Enron happen. It's proven again that the most valuable asset that these accounting firms have is their reputation. It's just amazing to me how a firm like Arthur Andersen that's developed this tremendous reputation over an 80-year period could just lose that reputation overnight. All the firms have controls in place that really focus on high-

risk audit clients, and those controls are going to be given even more attention in the future. I think it just comes down to reputation. These firms simply cannot afford for an Enron-like situation to happen to them. They're going to do everything possible to prevent it, I think.

O'Rourke
Let's go into questions from our listeners.

Teleconference Coordinator
Our first question is from the line of Ward White. Please go ahead.

Ward White
Hi, panel, and thanks all of you for a really wonderful presentation. My question is to Steve Lipin. In your experience, in your knowledge, what is the closest analogy to this, and can we go to school on that analogy and for what lessons in particular?

Lipin
I think the closest analogy is probably the collapse of Drexel Birnham in the late 80s. I can't think of a similar situation where such a prestigious and well-thought-of company collapsed into this morass in such a quick period of time.

In terms of kind of how we learn from this, I almost think it's unprecedented. We've clearly had bankruptcies before. Many of us, I'm sure, have had experiences, because so many well-known companies have ended up using the bankruptcy court. Companies like Texaco, Federated, and others that we think very highly of. It wasn't the bankruptcy of Enron per se, but I think it was the speed at which it happened and how ill-prepared, not just the company itself, but Corporate America was for this backlash.

I know it's not easy to say we're in uncharted territories, but I think it set off an alarm and it set off almost a crusade to say that actually if it could happen to Enron, where else could it happen? In the case of Drexel, I think it fell quickly, but there was a long lag of investigations and insider trading, so that it was not a surprise that Drexel ultimately fell. We can go back into longer history, whether we're talking about the 20s, the 50s and 60s, of periods where well-known companies ended up caught in accounting scandals. Even a few years ago, Cendent and CUC merged and ended up in the situation where one side was allegedly cooking the books. I personally think we're in uncharted territory. I think we can learn a lot from this experience. I think there's very little to look back and say we should know better because XYZ happened 20 years ago.

> "Employees need to be assured that their board, their management, their bosses are doing the right thing."
> *– Lipin*

O'Rourke
Thanks, Steve, and thanks Ward. Do we have anyone else on the line?

Coordinator
There is a question from Elliot Schreiber.

Elliot Schreiber
I'm calling from McMaster University in Hamilton, Ontario. I'm starting to wonder whether the accounting profession is an interesting sideshow or an issue that really masks some key issues about what is allowed to happen within corporate cultures as they start pressing harder and harder for more and more market cap and higher PE ratios. The more I've read about Enron, I've come close to a similar situation at a former employer where the drive for market cap put an enormous amount of killer pressure on the inside of the corporation to do things that might not otherwise be done. As we start looking at the accounting profession, I'm wondering whether we're really looking at the wrong things that corporate communicators and corporate strategy people should be looking at. And that's how we instill a culture in the companies to do the right thing, and the right thing in terms of what we really mean by a corporation in the United States and North America?

O'Rourke
Tom Frecka, should accountants be the conscience of a corporation or does that task belong to someone else?

Frecka
First of all, I don't think there is anything wrong with corporations focusing on growth and adding value. If they're able to do that, then we create wealth in the economy, we add new jobs, and a lot of good things happen. The role of the accountant is hopefully to report on economic reality whether this growth that they're reporting is really true growth or not. It's sort of a difficult task, actually. If you think of a number like net income, conceptually, we could break it down into the economic component, the measure, the results of operations that we're really interested in. We have to recognize that there's always going to be an error component associated with that number. There is going to be a regulatory component in terms of the restrictions of accounting standards on reporting economic reality. There is always this possibility of the manipulation component, where managers try to mislead people in terms of the number that they're reporting. The role of the accountant is to really try to provide useful and accurate information and report on

whether that value is really being added or whether it's fictitious.

O'Rourke
A lot of companies, Tom, now have appointed an officer responsible for ethics and business practices. Do you think they have a role to play here?

Frecka
I think, again, trust is at the heart of everything we do in a capitalistic society ... trust related to ethics and sound business practices.

O'Rourke
While we're waiting for someone to call in, I have a question for Mike Meyers. It really concerns campaign finance reform. Mike, I saw in the paper where Lord John Brown, British Petroleum's Chief Executive, had said a couple of weeks ago that his company would end all political contributions from its corporate coffers anywhere in the world. In a speech in London, Lord Brown said that the decision reflected a belief that corporations must be particularly careful about the political process, not because it's unimportant, quite the reverse, but because the legitimacy of the process is crucial for both society and for us as a company working in this society. BP donated something in the neighborhood of about $3 million to Democrats and Republicans alike in the country. I don't know if it was evenly distributed. What does his decision at British Petroleum mean for the future of corporate political contributions? What does it mean for the future of campaign finance reform?

Meyers
I think, Jim, that that's a good question. Both sides of that equation are being far more cautious these days, the contributor and the receiver of the campaign financing. I know I've heard of a number of corporations that are being far more careful about that than they were in the past and really thinking through more strategically how they're going to contribute to the political process. Also, a lot of politicians are looking as well at, should we be putting in further safeguards in our own internal system about which donations we accept and which we turn away? I think there will always be, in American life, a strong relationship between government and between business. That's so much a part of America. There may be some healthy skepticism that's put into the equation now when it comes to the campaign finance world.

O'Rourke
Mike, can the American political system function without corporate money?

Meyers
It's a good question. I guess at times in our more distant history we have, but there is no doubt that there is a strong relationship. I expect that relationship to continue, except as I indicated, I think both sides are going to be a bit more careful now about how they involve themselves in the campaign financing part of the process.

> "What is behind everything we do in accounting is the issue of trust. Trust is really the bottom line that drives our economy."
>
> *– Frecka*

Lipin
You mean that the congressmen and senators didn't like the fact that when they were having hearings CNBC put up how much each congressman and senator had received from Enron or from Andersen as they were criticizing those companies?

Meyers
I think things like that definitely make people aware of at least the perception of a conflict and wanting to avoid that perception by being far more cautious about the contributions they accept.

O'Rourke
It is an election year and reform is almost never possible in the election years. As we say, those of us who are Chicago Cub fans, "Maybe next year." Have we anyone in the queue?

Coordinator
Yes, we have Ward White.

O'Rourke
Ward, you've got a second question?

White
It's a follow-up to Elliot's actually. I'd be interested in the views of either of the other panelists. I think Elliot had a central point. Is this principally an accounting problem, or is this principally a corporate behavior problem, of which accounting was an element, but not the driving element? I'd put it in the context of, I think, Steve Lipin's comment about the market frenzy that preceded Enron. I would say the vested interests of several parties that have coinciding interests, the analysts, media who need news, hot stuff and edgy companies and new business models, you can get a lot of stories out of that, and companies that can profit by riding that roller coaster. I'm inviting comments from the other panelists to broaden this from the accounting aspects of it to, is there a corporate culture aspect of this?

Lipin
I think that's a very interesting point, because come the earnings quarter, or come the last month of the quarter, what CFO and treasurer doesn't do what they could, within bounds, to make their numbers? There is clearly pressure, because what happens on Wall Street if you miss your quarterly results by a penny or by two pennies? In the view of Wall Street, if you miss by a penny, you've missed by $0.10 or $0.15. Your stock gets hurt, and the media picks up on it. There is absolutely the pressure to hit those numbers. You can't help but think in reading about what happened with Enron that there was such a need to make the numbers that somebody decided that they were going to be overly aggressive in finding ways to either hide debt or boost returns.

Miss a number and your stock gets hurt, as do employee stock options and management stock options. Inside our companies, there is a risk in worrying about missing by a penny, and there is that risk that perhaps people are being too aggressive on managing earnings. A couple of years ago, Mr. Levitt had a major campaign against managing earnings. Ten years ago and five years ago, managing earnings wasn't a crime, but yet there is intense pressure to make sure you meet your numbers. I think that's contributed to some of the problems we have, that if you miss your quarter, you miss your quarter. Of course nobody wants to see their stock drop, especially when employees and upper management hold options and hold shares. There is clearly a risk to worrying so much about each quarter that we kind of lose sight of the big picture.

White
Jim, I think another part of it is the point, getting beyond the aspect of it, is the desire on the part of the public to see their employers focus on their own needs as employees. Steve Lipin, I thought, was quite eloquent on that point in his presentation, the need to focus on employees. I do think that's an important part of the story as well that shouldn't get lost.

O'Rourke
In the corporate communication world, you frequently see that people who are involved in internal communication or employee communication are really paid the least and they get the least amount of attention. It's the folks in IR and media relations and perhaps the lobbying efforts who are a little higher profile. If the Enron events really have a positive effect on corporate communication, it might be to get us to pay more attention to employee communication. I know a number of Page members, in fact, specialize in that area. I know a number of us are big believers that employees in some way ought to get some special treatment among the stakeholders.

> "In addition to providing all this detailed information, we have to provide more summary information...in plain English for the average investor to understand."
> *– Frecka*

Lipin
I think that's true in terms of internal communications, but I also was talking about projecting the image of the company externally, as well, as taking care of its people.

O'Rourke
Right. We are just about at the top of the hour. Anyone with a call for us?

Coordinator
Yes, we have two lines in queue. The first one is Edward Block.

Edward Block
Good afternoon from the oldest pensioner in the Page Society from Key West, Florida. I wanted to follow up on the last comments. Am I the only one who thinks that this wreckage that we're looking at now, and more fallout to come in terms of regulations and accounting rules, etc., is a great opportunity for public relations executives and counselors, in the sense that I believe the CEOs are going to have to pull back from managing earnings, from excessive attention to analysts on Wall Street, and start watching the store again. And I think we'll have their attention because we're best able to help? Anybody want to comment on that?

O'Rourke
Mike, any thoughts on how the ideal executive should behave these days from the halls of Congress?

Meyers
That's a tall order. I think they want to see people who are accountable in some way, not only for the health of the company, but for their employees. That seems to be a big trend now in a number of arenas here in Congress, whether it's legislation to work on accounting standards or legislation to protect pensions.

O'Rourke
It's obviously a big deal now. The question I suppose a lot of people have is simply this, is the Congress going to get involved in regulating company-managed pensions, as opposed to individual 401(k)s, a little more closely? Are

companies going to be able to stock up those pension funds with company stock or will there be more limits?

Meyers
Most of the focus is on 401(k)s and to some extent, ESOPs, and far less on companies that have defined benefit plans.

O'Rourke
Is there any chance that that will get out of committee and onto the floor of the Senate?

Meyers
Yes, there's a very good chance of that. I know in our own committee we have pension legislation that is pending, it's addressing the 401(k) world, and we expect to be considering that a week from today. I don't know when the full Senate will take it up.

> "The most valuable asset an accounting firm has is their reputation...It's amazing to me how a firm like Arthur Andersen...could lose that reputation overnight."
>
> *– Frecka*

Frecka
Mike, I was wondering, could you share some of the details of that legislation with us?

Meyers
It was introduced a week ago, so the people can look that up online, S1992. In general, it lays out ways in which employees would promote diversification within the 401(k) plans. It allows for greater employee voice on some of the pension boards, and then makes officers within the company responsible fiduciaries for the plans in new and different ways. Those are the key thrusts of the legislation, all within the scope of the existing ARISA law.

O'Rourke
Is there another caller in the queue?

Coordinator
Next question is from Rick White.

Rick White
Thank you very much. I'm down the street from Ward White in Milwaukee. The question I have is we talked about lack of trust, and Steve talked about the fact that no one trusts anyone now. Isn't it human nature though that we want to reach out for that lifeline and find someone to trust? I guess my question is, in the next six months, who do we see emerging as that figure, that entity, that authority that the public is going to start trusting?

Lipin
That is a tough one. In the corporate world, look what has happened to SEC Commission Chairman Harvey Pitt, where he has been criticized. You would think somebody like that would be the kind of person that we could look to, but the media and the press has criticized him for his ties to the accounting industry. In the corporate world, I hate to look back to the Oracle of Omaha, but you see somebody like Warren Buffet, who always has had a very plain-spoken annual report that everybody chases every time it's filed, who I think generally has a deep respect among all the constituencies we've really been talking about. Nobody would ever accuse them of managing earnings. They recently reported results were down. There are very few people like him in Corporate America – I assume you meant in our corporate world – people whom we could trust. SEC has been criticized. California CalPERS has been criticized. They're normally viewed as one of the leaders in public pension and corporate governance. They were criticized because of their investment in some of the off-balance sheet partnerships. All the people and all the entities we would normally look to have somehow been tainted. There are really very few, other than the whistle blowers and the analysts who stood up and said something is wrong here.

O'Rourke
In closing, I'm looking at a copy of *The New York Times* from a couple of weeks ago. The Nasdaq ran a full-page ad that said, among other things, "We believe that the markets will reward companies that best explain their past and anticipated performance. Surprise is anathema. We need to assure the investor that financial statements accurately depict past performance, matching revenues and expenses in each reporting period. Additionally, we need to consider providing investors with information on important non-financial value drivers and the intangible assets that are the basis of future financial performance." I think the challenge for corporate communicators is to be as scrupulous and honest as we can about how we portray the company, particularly to investors and to employees and to others, because as Tom Frecka mentioned, the basis of the entire capitalist system is this issue of trust.

For those who have called in, thanks very much. It's been a pleasure to have you here.

BRIEFING ON CORPORATE GOVERNANCE AND DISCLOSURE PRACTICES June 11, 2002

RAISING THE BAR ON CORPORATE ACCOUNTABILITY ESTABLISHES A NEW ROLE AND INCREASED RESPONSIBILITY FOR COMMUNICATORS.

PAGE ONE Panel

Martin Lipton
Wachtell, Lipton, Rosen & Katz

Peter Larson
Brunswick Corporation

Kurt Stocker
Northwestern University
Moderator

Dave Drobis

Good morning, everybody. Thank you for joining us for our second PAGE ONE teleconference. As you know, this is a series of teleconferences that we're doing on topical subjects of interest to our members. I think we've got a great session planned this morning. We are planning, I will tell you, to do a couple more of these before the end of the year, so if any of you have any suggestions on topics that we should cover, please let me know.

I want to open this conference by first of all thanking AT&T for their donation, which is sponsoring the series that we're doing this year. I'm going to turn it over to Kurt Stocker and thank him very much for putting this conference together. Kurt is going to be our moderator for the next hour as we go through this, and we will do Q&A toward the end of the teleconference. Thank you very much, Kurt. It's all yours.

Kurt Stocker

Thank you, Dave.

Last Thursday the New York Stock Exchange released its recommendations of the Corporate Accountability and Listings Standards Committee, which was formed at the request of SEC Chairman Harvey Pitt, in the wake of Enron and now, too many other examples of failed corporate governance. If, as communicators and public relations professionals, we believe that our corporate reputation is our business and is a driver of market success and stock price, then we must be on this team in returning credibility to our companies and markets.

In some proprietary research that was done exclusively for our committee, our publics confirmed what they think of our corporate self-interest and their lack of information and voice. The research, unlike most that merely confirms, spoke harshly about how investors get information and who they get it from. Most of our regular communications with our individual investors and publics go through translators, the media and the analysts. Yet the research puts these two groups at the bottom of the list. The public believes they are biased and, in the case of the media, incompetent to evaluate and report.

What does this do to our strategies? Does this open interesting questions and new approaches? I think it does. I'd like to start with our two guests. As you know, on our Web site is the complete text of these recommendations and the bios of our two guests this morning. Let me start by saying this committee has sat through over about 40 hours of testimony and discussion from groups and individuals as diverse as Frank Rains for the Business Roundtable and Newt Minow of the Corporate Library. Two quick observations. Everyone on the committee agreed and everyone who testified in front of the committee agreed on the issues that needed attention and in large part on the fixes that were needed. The second observation is this committee, made up of some very serious people, chaired by Gerry Levin and Leon Panetta and Carl McCall, never wavered. There was never any doubt that something was needed to regain credibility and to put some new latches on the door. One of our chairs began the first session by stating this is our Watergate.

Our first guest is Marty Lipton of Wachtell, Lipton, Rosen & Katz, possibly one of the best-known and trusted attorneys, especially in the field of corporate governance, securities and merger laws. I don't know about you, but I have had nightmares about this man in the middle of mergers. Marty was a member of the committee and also active as general counsel to the committee.

Marty, keeping our audience in mind, would you sort of briefly go over what these recommendations are and what you think the ramifications are to our companies?

Marty Lipton

Yes. I'll try, Kurt. Let me divide it into some main topics. Obviously, the thing that the committee focused on first was the role of the Board of Directors. In assessing the role, the committee felt that the only way one could empower a board to take the steps that are necessary when there are the kinds of failures that existed at Enron is to require that a clear majority of the board be independent directors.

Then, of course, the issue arises as to what do you mean by independent directors? Here the committee decided that rather than follow one of the existing formulas where a certain amount of money per year of business between a company and an officer of that company and the company of which that officer is a director would disqualify it, the Exchange instead would say that each company should decide for itself. The directors should assess the relationship between a prospective director and the company to decide if that director is independent. Here's where a very important communications issue comes in.

> "In addition to requiring that a majority of the Board be independent, the new rules require that all members of the (Audit, Nominating/Corporate Governance and Compensation Committees) be independent directors."
>
> *– Lipton*

In order to police the self-determination with respect to independence, the committee is requiring that the company disclose in its proxy statement the basis for the determination of independence. I think this is going to be a very important communications aspect as to how that is presented, particularly when there is a significant business relationship (e.g., a million dollars or more a year of purchases or sales between the listed company and the company that the director is an officer of) as to how that is described in the proxy statement. In other words, there will be an opportunity to make it clear that the amount of business is not material, is not significant and therefore, should not affect the ability of the director to exercise independent judgment.

In addition to requiring that a majority of the board be independent, the new rules will require that all of the members of three committees, the Audit Committee, the Nominating/Corporate Governance Committee and the Compensation Committee, be independent directors and that each of those committees have a separate charter and that charter will have to be made publicly available. In addition to the three charters, the Audit Committee Charter, the Nominating/Corporate Governance Committee Charter and the Compensation Committee Charter, the new rules will require that the Board of Directors itself have corporate governance guidelines and that those guidelines be published and that each company have a code of ethics and that code of ethics be publicly available and published.

We're going to have five, what I'll call, corporate governance documents that will be required to be publicly available and which will need to be described either in proxy statements, in annual reports or in communications to employees. Here I think we have another area where it's going to require careful consideration as to how to communicate these documents, to describe them so that they are understandable and meaningful to shareholders. Obviously, the institutional shareholders and corporate governance activists will be very interested in these documents. They will be examining them closely to see how they match the standards that the various organizations, like the Council of Institutional Investors, CalPERS and Kraft and so on, have promulgated and the communication of the contents of those documents will be a very important factor in how a company's compliance with good practices is received in the institutional investor community.

The next point that I think is of great significance to companies and to the issue of how one communicates what is being done is a new requirement that the listed company's CEO has to certify to the New York Stock Exchange on an annual basis that the company has established and complied with procedures for verifying the completeness and accuracy of information provided to investors. Here you have a requirement that the CEO has to be able to evaluate how information has been communicated to investors and then to certify its accuracy and completeness to the New York Stock Exchange, which means that careful attention has to be paid throughout the year as to how financial information is communicated, and what kind of guidance is given to analysts and investors. In other words, the whole issue of communication with shareholders of information about the company is going to be raised to a standard that requires the CEO to certify as to its accuracy and completeness. The committee thought this was a very, very significant point, that too many companies have not paid enough attention to the kind of information they communicate to shareholders and that this requirement would result in a better focus on the issue of communication of information to the shareholders.

The last point I'll make is a more general point. The whole purpose of the new rules is, as Kurt indicated in his introduction, to restore credibility to corporate governance and corporate disclosure of information that is important to investors. I think that as these rules are formally adopted by the Exchange, and that process has really just begun with the June 6th promulgation, it is expected that the final promulgation of the rules by the Exchange will take place on August 1st. Then those rules cannot go into effect until the SEC reviews them and approves them. It is our guess that the final, definitive rules will be in place by the end of the year. However, as this process goes forward, I think it's very important to keep in mind that the purpose of the new rules is to reinforce the concept that corporate governance and transparency are important to the markets, that these rules will improve corporate governance, improve transparency and are designed to restore the confidence that has been lost.

I think it's important that in assessing these rules, and as companies have the opportunity to comment on the rules, that this be kept in mind. There are various people who will have criticisms of some of the rules, some parts of a rule and so on. That's natural. That's expected in this process; but I think it's very important that companies recognize that what the Exchange is doing is trying to help each of its listed companies to restore confidence and that the listed companies have a significant role to play in making sure that the new rules are received in that manner by the investing public.

> "Careful attention has to be paid throughout the year as to how financial information is communicated and what kind of guidance is given to analysts and investors."
>
> *– Lipton*

I think on that note, I'll stop and turn it over to Peter and then he and I will both be pleased to entertain any questions that you may have.

Stocker

Marty, one question before Peter starts. My take is that the test for communications is moving from technical accuracy to understanding. The test is that somebody understands what we say, that it's not just technically accurate.

Lipton

That's exactly right. That's the underlying purpose of this.

Stocker

I've been on two committees now with Peter Larsen and have gained enormous respect for his straight talking and clear thinking. As the retired CEO of Brunswick Corporation and a long and titled career with J&J, he has a very good perspective from the top job and how these changes will impact our bosses, their boards and our communications.

Peter, the thing I've been hearing, just to sort of tag onto what Marty said, is that this lack of confidence and skepticism is probably causing a discount to most of our stock prices and that there's a real benefit to doing these changes.

Peter Larson

Kurt, I don't believe I could have put it more eloquently. As a practical matter, the committee was convinced that governance is now the key issue that is limiting investor confidence and their willingness to invest in our stocks; and clearly, that is going to have a depressing effect on the market in general and on stocks, particularly those who are seen to have weak governance systems.

I'd make a couple of other points just to frame my comments. I think that you should be aware that nine of the 13 committee members were either corporate CEOs or are directors of major companies. The tenth person is Marty, who is clearly a lawyer on the side of the corporate perspective and so you could say that 75 percent of the people who were there understood the corporate point of view. That really ties into Marty's comment that what we did in this committee and the recommendations we made should strengthen corporate governance in a way that is going to have a positive effect on the market.

The third thing that I'd observe is that we had a range of options. If you think of it as having the AFL-CIO testifying on one side of the political spectrum and the Business Roundtable on the other and a collection of representatives with views in between before us, we really had a collection of options. Just to frame that issue a little better, I'd point out, for example, there clearly were some trade-offs on board independence versus, as some people recommended to us, splitting the CEO and the chairmanship job as alternatives.

We also had a range of choices on the question of whether option programs, used as compensation, had to go before shareholders, ranging from doing nothing, which would likely spark Congressional action, to doing a percentage of total options or saying that all option programs had to go forward to the shareholders. You could reasonably conclude that what we initially decided was that doing a percentage (because clearly, doing nothing would have been an invitation for Congressional action) just simply was not going to have the impact with shareholders. Therefore, we concluded that all programs had to be approved by the shareholders.

That sets up what is my final framing comment, which is that, clearly, we had alternatives between doing nothing and having Congressional action come into the picture. It's not that we are opposed to Congressional action, but if you think of it from a practical view, it is much easier to change listing rules or change SEC actions than it is to have to deal in a legislative process with changing a statute that is already on the books. So we are feeling very good about the fact that we are in front of action by the SEC or by Congress in a way which we think will allow us to have a leadership position that more fully reflects the views of the corporate community.

> "The whole purpose of the new rules is to restore credibility to corporate governance and corporate disclosure of information that is important to investors."
>
> *– Lipton*

I want to then segue into the changes that we recommended and talk specifically to two of them that we think are likely to draw the most concern and comment. First, the question of designating publicly a lead director and having independent meetings of the directors who are non-management people. I think for those of you who haven't lived in a lead director system that it has some very positive benefits, particularly in bringing the board together into a single perspective and causing a higher level of board engagement. There are always concerns about it at the outset, but I will tell you that in practice, my experience and those who came in to testify in that mode would suggest that it really was a major improvement once you got used to it in practice.

The second issue is around stock options. As most of you are aware, the Business Roundtable is taking a position that not all stock option compensation programs have to go to the shareholders. We think, as I said earlier, that it really is important to send a clear message and the only way to send a clear message in that realm is to state absolutely that all option programs have to be approved by the shareholders. I will observe, that in combination with the rule in which brokers can only vote stocks that they have in investor portfolios where they have instructions, that there might be some concern as to whether new option programs will pass. I want to assure you that we have had lengthy discussions with the leaders on the institutional side of the marketplace and they recognize that it will be very important to produce a balanced response here and that option programs, which are well founded, get their support by a positive vote affirming the right of the corporation to give out those options. So I believe this is a case where we have real alignment between the institutions and the corporations in a way that is not going to alter the level of affirmative votes on option programs and, in fact, may improve it.

Thinking about it from your perspective, as the advisor to your CEO, I have a few recommendations for you, looked at from the perspective of the person sitting in the CEO chair. First, it is important to comment if you have disagreements; as Marty said, there is a period of time now where we are not only interested, but anxious to hear your comments in terms of whether there are better ways. We obviously think that we've done a good job, but that's not to say that we've done everything absolutely perfectly. We would really encourage comment.

On the other hand, when we get to the point on the first of August, where we have a set of final recommendations, my suggestion to you would be to encourage your CEO to aggressively implement the final recommendations. It is very clear in terms of the market dynamics that the leaders in this cause will be the winners.

Third, being pragmatic about it, we all know that the level of readership on annual reports and documents that have this kind of awesome nature is not high. I would encourage you, in any place that you can, to communicate board independence and your board's effectiveness as the independent representatives of the shareholders in clear terms. Tying back to the comment that Kurt made about the research that we have done with investors, there is certainly a lack of clarity in most investors' minds as to how independent the board is. It's a lack of understanding; it's not a level of disbelief. I think any opportunity that you have here to communicate more clearly and understandably I'd surely take advantage of.

Fourth, I would work towards transparency and clarity recognizing that a large number of your shareholders are unsophisticated, as our research confirmed, and that they're also voters who can encourage Congress to step in and take action. My suggestion to you would be to think of it as an educational program in which we really are setting out to bring a higher level of understanding on the effectiveness of our corporate governance programs.

Fifth, what should the CEO expect from the set of programs that we've laid out here? I believe he should expect better board relationships and a more consistent, single perspective from the board. It will be a little more difficult to get Audit Committee members, but I think there is a way to sell that proposition, which is to say that if you feel there is greater responsibility in the Audit Committee, you're better off being there than you are being out of the Audit Committee and not having the opportunity to ask the kind of questions that you want.

The sixth point that I would make is that the American public has not clearly distinguished between the 99 percent of the companies that are doing things right and the one percent that aren't and who are besmirching the rest of us. Our conclusion is that it is really appropriate here to be externally angry with the people who have abused the public trust, and are embarrassing those of us who continue to do it right.

With that you should think about this as another opportunity, as Kurt described it at the outset, to upgrade the quality of corporate communications, to move to a more plain language version of honest and straightforward communication. If you do that and we are able to bring that about broadly, between the actions of the NYSE on its listing standards and the SEC, we not only will avoid Congressional action in areas where their expertise is not high, we will have a really strong potential for increasing investor confidence.

Kurt, that's my comments.

Stocker

Peter, just one footnote and then one question. One of the other trade-offs that I think that Peter didn't mention when talking about the stock options is that there is a push in some quarters for expensing of options, which many feel would be much harsher than the proposals of voting for all options.

The question, Peter – I know the answer, but I thought it would be interesting coming from you – is that the Exchange, beyond its own recommendations, is recommending certain things to the SEC. If you wouldn't mind telling what is the recommended penalty for CEOs and boards that we're recommending.

Larson

Kurt, let me take those in the reverse. We are recommending that the SEC be granted power to deny an individual the right to be a director or an officer of a company if they are found to have not served the public trust in a former position.

Stocker

For life?

Larson

For life. That's going to take some rule-making and some definitive action and I'd make a point that we're at the stage now where we have only a plain language version. We're just now starting to draft the specific rules. We did this with a malice of forethought so that there was a plain language version that everybody could understand and not confuse the issue with the technical drafting of the rules.

I think that on the option situation, you have framed it properly. We viewed one of the alternatives that was the worst-case alternative as that options would be expensed and passed through the P&L under Black Scholes mathematics, which I think all of us understand are a long ways from perfect. There are two reasons that we are adamantly against expensing.

> "Governance is the key issue that is limiting investor confidence and the willingness to invest in stocks."
>
> *– Larson*

The first is that Black Scholes really doesn't provide a very effective measure of subsequent value. If you think about it this way, that if in 1999 the Internet startups had started to expense the options on a Black Scholes basis, in 2001 when their business and stock prices had diminished sharply, they still would have been expensing at the same rate and it would have had no relationship to the current value of the options.

The second is that we are convinced by testimony that we've heard, both from the committee and from people who testified before us, that it would be a significant blow to the technology community, particularly out in Silicon Valley, who have built a system of compensation that involves stock options all the way down to the factory floor; in doing that, we would diminish their effectiveness and therein limit the capability of these technical startups to achieve the kind and level of innovation and growth that has been the hallmark of the U.S. market.

Stocker
Peter, thank you.

Do we have some questions?

Teleconference Coordinator
We have a question from Jerry Vennemann.

Jerry Vennemann
Good afternoon. I wanted to thank the sponsors for hosting this informative teleconference and also for those who worked on this committee to prepare some proposals that I think are very straightforward. They're a step in the right direction to try to bolster investor confidence.

As we look through the proposals, many of these I think are very supportable. As we look through others, we're still trying to understand what the intent is and the reach. There was one item mentioned earlier that caused me to harken back to the press release that the NYSE listed. One of the bullet points summarizing the proposal about CEO certification said it would require the CEO to attest to the accuracy, completeness and understandability of the information. It was the last part, I guess, I am unclear as to what is envisioned. Given the wide range of financial sophistication and knowledge of the investing public, what standard do you anticipate will be employed to determine whether the financial information is, in fact, understandable? Are we talking about a simple extension of the SEC's plain English directive or is it more?

> "We had a range of choices on the question of (how to handle) option programs...We concluded that all programs had to be approved by the shareholders."
> *– Larson*

Larson
Jerry, if I can take that question, it is intended to parallel with the SEC's announced posture. It is also a protection against what has become known as the Sergeant Schultz defense where the CEO said he just didn't know what was going on, i.e., "I know nothing."

The way to think about it is to think of it as clarity. The bottom line here is what would a reasonable investor want to know before making an investment decision. If you feel that you have satisfied that in a clear and accurate fashion, then I think you've met the standard.

Stocker
Marty, do you have anything to add to that?

Lipton
No. I think that sums it up. Keep in mind that many companies have issued press releases that are virtually impossible to understand with respect to what they are earning. One of the committee's recommendations to the SEC is that the SEC adopt a rule that will provide some uniformity and understandability with respect to the use of *pro forma* earnings. What the Stock Exchange is driving at is to try and eliminate these very complicated disclosures that are virtually impossible to understand. If a company has very complicated financial statements, obviously, the disclosures will be complicated; but then the company has an obligation to go forward and include the kind of information that the SEC is seeking in the management discussion and analysis so that it is clear to readers just what it is that the financial statements are purporting to show.

Stocker
Do we have another question?

Coordinator
Yes. We'll go to the line of Elliot Schreiber.

Elliot Schreiber
I may have missed this about the issue of compensation of the board. Many companies went toward compensating their boards with stocks to put them in harmony with shareholders. At the same time that has often led to the same greed that drove a lot of the behaviors. Where has the committee come out on compensation of the board with regard to stock versus cash?

Larson
The committee did not make a decision with respect to the form of compensation. In other words, the committee recognized that compensation may be in cash, may be stock or a combination, but the committee has taken the position that if the total compensation to directors is beyond what's customary for the industry and the peer companies in the group, that may raise a question as to the independence of the directors. There is no specific rule with respect to the mix of the compensation the directors receive.

Stocker
Marty, didn't we also say, and please correct me, but there is a comment in the recommendations that a director should not be dependent upon that income that could affect his or her independence. The income and how it relates to that director is, I think, addressed, isn't it, Marty?

Lipton
Yes, but that does not relate to the mix.

Stocker
No. Not the mix, but the amount.

Lipton
Right.

Larson
The theme here that we tried to project, and I think we were reasonably successful, was the ability of the board to make determinations about the independence of their members. The way to judge this is to look at the compensation that some directors of Enron were receiving as consultants, which at the end of the day was substantially more than they were receiving as directors. One would logically conclude that it was pretty hard to maintain independence in that circumstance. That was the major issue that we were seeking to work through here.

> "We are feeling very good about the fact that we are in front of action by the SEC or Congress in a way that will allow us to have a leadership position that reflects the views of the corporate community."
> *– Larson*

Stocker
Do we have another question?

Coordinator
Thank you. We do have a question from Gene Stevenson. Please go ahead.

Gene Stevenson
Good morning. I've got a question on the provision applying to foreign private issuers. The provision says that they have to disclose significant ways in which their corporate governance practices differ from U.S. NYSE-listed companies. I applaud that by the way, long overdue. Two questions. Was there any discussion in the committee deliberations of how the non-U.S. companies are going to disclose those differences? Was there any discussion in the committee deliberations about moving the foreign private issuers closer to U.S. standards of disclosure and transparency? In other words, the same standards that apply to the U.S. companies that are listed on the Big Board.

Larson
I'll try. Let me start with the second part of your question. We discussed rather extensively the issue of moving foreign issuers to U.S. standards and determined that that just isn't feasible. The governance standards and practices in the different countries around the world are such that it would not be possible to come up with a single set of requirements that the majority of these companies could meet. With respect to the disclosure, it's going to be made clear in the rules that we're not looking for a laundry list of differences; we will look to the foreign listed companies to basically describe the kinds of requirements that they are subject to in their own country and the requirements of the domestic stock exchange on which they are listed and to highlight any major differences with the U.S. The best example of that are German companies and Dutch companies and some others that have supervisory boards. Obviously, their system is different. There are those who would argue that you have more effective shareholder oversight and governance with the supervisory board, and those who would argue that you have less. All we would be interested in is reporting how the system works and how it differs from the U.S.

Coordinator
We have one other person who has queued up for a question. We'll go to Maril MacDonald.

Maril MacDonald
I have a question for Marty and Peter regarding the fact that different companies have varying points of view regarding where the responsibility for communicating with investors lies in terms of whether that is a finance function or a communication function. Not getting into the petty turf battles or whatever, but I'm just curious to hear your thoughts on how that may change going forward relative to what you've been discussing.

Lipton
I would say that it's a four-part determination. Number one, I think what we really expect is that the CEO of listed companies will pay a lot of attention and have the overall final word. The nature of these disclosures is really something that there are communications, public relations and investor relations aspects of it. There is the finance aspect of it. There is the legal compliance aspect. You might look at it as a situation where, under the overall direction of the CEO, it's communications, finance and legal compliance.

Stocker
Peter, do you have a thought?

Larson
Yes, I do. What we are looking for here is balance. There are those who would argue, although the committee didn't deal with this specifically, that sometimes the more conservative

of those groups who want to make a narrower disclosure do so at a cost to clear communications to shareholders/investors. I think if you read this not as a set of specific recommendations *per se*, but you look for the broader perspective, it says that shareholders should be able to understand the communications that we make. In that sense, Marty is absolutely right. There are four constituencies that have a real interest, but at the end of the day all four of them should stand behind the shareholder and look at it through the shareholder's eyes and say, "Is this really something that is understandable and will help me to make an intelligent investment decision?" If the answer to that is yes, then I think you've done your job.

To say that any one of those parties, all by themselves, can reach that end, is, at least from my experience, a fairly low probability and so I think the benefits that the public relations function has here is that you better understand the public. I would trust that you would act as the guardians at the gate to make sure that what is communicated truly is understandable and is not just a technically correct description.

Stocker
Peter, thank you.

I'd like to ask one last question of both of you because I think it's the question of the day. The press has been very positive about all of these recommendations so far. As Marty mentioned earlier, the Business Roundtable has taken some exception. I guess the question is what are your expectations for push-back and as of August 1st will this end up looking a lot like it looks now or will it change dramatically?

Larson
Let me take the first shot and give Marty a minute to collect his thoughts. I think we have to be pragmatic in looking at the fact that there are almost 3,000 companies listed on the New York Stock Exchange. The members of the Page Society and the members of the Business Roundtable represent in the main a group of people who are at the top of the ladder. From that perspective there are some things that they're going to advocate in which we're going to have differences. As you step back and get the broader view of the listed companies on the NYSE, these are responsive to their needs in ways which are going to prove to be very constructive and for which we're going to get a lot of support for the recommendations that we made. I think likely, while there is probably going to be some modifications in wording, that what has been done here will go forward in a fashion pretty similar to the way it is now, that the SEC will approve it and that the level of Congressional action outside of 401(k)s and areas where clearly it is their venue, will go forward pretty much as it's been laid out here.

Lipton
I would agree completely with what Peter just said. I have no different opinion.

Stocker
If you have CEOs and lawyers agreeing early in the morning, it's a good thing.

> "The American public has not clearly distinguished between the 99 percent of the companies that are doing things right and the one percent that aren't and who are besmirching the rest of us. Our conclusion is that it is appropriate to be angry with the people who have abused the public trust."
>
> *– Larson*

I want to thank you all for joining us today. Those of you who are on the phone line, I hope this has been constructive and helpful. I want to thank you, Marty Lipton and you, Peter Larson, for taking time out of what I know is a very busy schedule.

The last comment I have to make is just sort of something that we should think about in the Arthur Page Society because I think companies in general are going to be thinking about it and that we're going to need all of these new things. As Marty had indicated before, we're going to need charters for three committees; we're going to need a corporate governance statement, an ethics statement. Many of us already have them. Many of them will be looked at again. It probably would be wise to find some way to do some sharing of those models that are out there and seem to be working well. That might be something that the Arthur Page Society could be helpful in.

With that note I thank you all. I wish you all a good morning. Since I'm standing in Colorado, please, no open fires or smoking in public. This conference is closed.

RECONNECTING MAIN STREET TO WALL STREET: HOW BUSINESS REGAINS CREDIBILITY

AUGUST 13, 2002

AS THE STORM CLOUDS OVER CORPORATE AMERICA DARKEN, WHAT CAN BE DONE TO RESTORE CONFIDENCE AMIDST THE CLIMATE OF MISTRUST?

PAGE ONE Panel

Joanne B. Ciulla
University of Richmond

Gale Andrews
The Boeing Company

Tom Mattia
EDS

Ken Makovsky
Makovsky & Co.
Moderator

David Drobis

Welcome to our PAGE ONE series of teleconferences on issues that are relevant to our business today. I really appreciate all of you joining us. We have a terrific group of people on the call today and an excellent group of panelists. Before I turn it over to Ken Makovsky, who is our chairman for today's conference and our moderator, I want to thank him very much for putting this together, and thank our panelists. I also want to thank Dick Martin and AT&T for sponsoring today's teleconference.

Ken, I'm going to turn it over to you.

Ken Makovsky

I wanted to also thank everybody who is attending this conference call. We've had a great experience putting it together and we have a wonderful panel today for us to interact with. Since our last teleconference in early June, we've seen the stock markets hit new lows. President Bush has, of course, lambasted corporate ethics. Alan Greenspan has testified about infectious greed and Congress has moved with rare alacrity to pass tough new measures against CEO malfeasance. In short, I think we all recognize that there is a widely shared view that the man on the street is losing confidence in American business leadership and, of course, this is bad news for the fledgling economic recovery.

What we want to discuss today is the implication of this crisis of confidence, what business leadership needs to do to restore confidence, and the role that public relations can play.

Let me introduce the panel that will address these issues. We are privileged to have with us Professor Joanne Ciulla, who is the Costin Family Chair in Leadership and Ethics at the University of Richmond. Joanne is one of the nation's leading experts on corporate ethics and has written numerous articles, as well as three books on the subject.

We also have with us Gale Andrews, who is vice president of ethics and business conduct for the Boeing Company. Also we welcome Tom Mattia, one of our Page members who is vice president of global communications at EDS.

We've asked each panelist to speak for 10 minutes and then we will have 30 minutes for Q&A. Unfortunately our fourth panelist, Scott Smith, who is vice president and chief risk officer at American Electric Power, had to drop out because of an unexpected development at the last minute. But we have a fine panel to talk with you today. I just wanted to mention that following this, we will ask you if you have questions to get in the queue to ask them. We'll alert you when we're ready for this.

I would like to now start with our first panelist, Professor Joanne Ciulla. Joanne, I recognize you have a broad understanding of the ethical dynamics of organizations today. So perhaps you can begin your presentation by addressing what we have learned about power and accountability from past cases of corporate misconduct and how can we truly fix ethical problems?

Joanne Ciulla

First of all, I want to say that it's a pleasure to be here. You've asked me a somewhat easy question and an incredibly difficult question. How to fix it. I'm not sure I'm going to give you quick answers, but let me try to give a little perspective to where we are right now. We think about the Enrons and the WorldComs and the recent scandals that have been hitting the newspaper. There are two kinds of reactions we have to them.

One is the greedy-people-in-business kind of reaction. Bad guys out there, a few bad apples ruining it for everyone. The other is a kind of surprise over the fact that large corporations like Enron can fool so many people for so long.

Those two issues, of course, shake the trust that people have in business.

I'm going to take you back a bit, since I'm a philosopher by training, to a story that this really reminds me of, a story that Plato wrote about. It had to do with the power and accountability of people. It's called the *Ring of Gyges.*

"There's a kind of virus that can run through industries, having to do with actions that are borderline unethical, and they go from being borderline to unethical."
– Ciulla

In the *Ring of Gyges,* Plato challenges the readers to put themselves in this situation. He tells a story of a shepherd boy who finds a ring that makes him invisible. So the shepherd boy goes off and seduces the king's wife and gets all the money, and does everything partly because he's invisible. The question raised by the story is the kind of issue we face today and that is what happens when people have power without accountability, if we can't see them. We all know that transparency is a key element of trust.

Looking at other cases over the years, one of them came to mind when I was thinking about both Enron and WorldCom. And that was the case of E.F. Hutton. I wrote that case study many years ago and if you remember E.F. Hutton got charged with check kiting. They were not only using the float in the banking system, but also basically writing checks on money they didn't have in the banking system.

What was fascinating about that case, first of all, was that Arthur Andersen was their accountant. But secondly, it was an interesting case because, having read the internal documents of the organization, you begin to see the anatomy inside an organization that leads to these problems.

You start with a clever business idea. In Hutton's case, it was how to manage your money so you could maximize interest earnings. You start using it and then there's this kind of slippage that occurs. People start discovering that not only managing your money well works, but sometimes just simply overestimating how much you're depositing in the bank also works, because no one catches you.

"A lot of the ethical problems we've seen in the news are covered by regulations, accounting principal standards and things like that, so the law doesn't necessarily stop them."
– Ciulla

People in the industry all talk to each other. They all say, "Hey, here are some interesting ways to maximize your interest earnings," and they all begin to do it. So there's a kind of virus that can run through industries, having to do with actions that are borderline unethical, and they go from being borderline to being unethical. These kinds of dynamics are interesting and when you study business ethic scandals you see them again and again. That's part of what we're seeing when we see all these companies talking about their accounting problems.

We learned from cases like Hutton that there are a lot of organizational issues going on. There are a lot of questions about accountability. There are a lot of questions about who's drawing the line. Is there someone there drawing the line on what's acceptable and what isn't acceptable?

It also leads us to think about why regulation doesn't necessarily fix ethical problems. A lot of the ethical problems we've seen in the news are covered by regulations, accounting principal standards, and things like that, so the law doesn't necessarily stop them. And also regulations – if we started to try to regulate every unethical thing people did in organizations, it would simply be untenable. There'd be so many rules and regulations that we couldn't deal with them and, of course, that's what the challenge is now, figuring out the right amount of regulation.

The challenges of power and accountability. That's the part of the story that most people find fascinating. People want to think about the amount of money that someone like Ken Lay made, that kind of arrogance. These are old, old stories. We've seen them again and again throughout history of arrogant leaders. Those issues get to the issues of corporate governance, which some of my colleagues on the panel will talk about, but who is watching the leaders?

A good leader knows that he or she needs to have people around them who can say, "no"; needs to have people around them to say, "aren't we slipping over the line?" This is different than a whistle blower. This is someone who keeps things in line. We have always hoped that boards of directors did this, but we see that they don't always do it and that there are problems with the way boards are made up. We'll have to look at that a lot closer.

My colleagues on the panel will talk more in detail about these things, but let me just capture some of the themes. One of the questions is certainly the dynamics inside the organization, the question of how well the organization is governed, the question of leadership within the organization. Leaders can be generally good people, who start doing some pretty bad things, in part because they're not held accountable by the people with whom they work. So followers in an organization are extremely important and to think about leadership without thinking about all the other people who work with people in leadership roles is incomplete. We need organizations where everybody is thinking ethically.

Then the last part that I wanted to address is the role of business educators and business schools. Over the years that I've been in business ethics, we've seen the growth of courses in business schools, but I don't think those courses would have been there if the business community didn't emphasize and often donate endowed chairs to business schools to have it. Universities are like medieval colonies. They're old-fashioned. They put up all sorts of guards and fences around their disciplines. I hope that the business community will keep encouraging business schools to teach courses in business ethics.

> "Leaders can be generally good people, who start doing some pretty bad things, in part because they're not held accountable by the people with whom they work."
>
> *– Ciulla*

Business ethics and its use in the preparation of MBAs and undergraduate business students is very splotchy. Some universities do an excellent job of it. Some universities give it lip service. Some universities have really done their best to avoid teaching this subject at all. From an academic point of view, the view I know best, I'd say that's something else we need to think about, because what business ethics is really about is not a side course. Here's all this you learn about business and, oh, yes, be nice. What business ethics is about is how you think about doing business. It's the big picture and it's a fundamental part of what we want to see developed in our leaders.

With that, I'll stop and turn it over to my colleagues on the panel.

Makovsky

Joanne, thanks very much for your presentation. It was excellent and presented a lot of interesting thoughts. Now we turn to Gale Andrews, who is vice president of ethics and business conduct for the Boeing Company. Gale, how have the ethics programs you've implemented at Boeing changed the corporation's values and what do you believe ethics programs can and cannot do for a company?

Gale Andrews

To answer the second part of your question first, there are a lot of things that ethics programs can and should do, and should be constructed to do. Ethics programs are really a valuable tool for defining norms and setting expectations, but those norms and expectations have to be integrated into the business model. They have to be the real norms and real expectations and not something that sounds good or feels good. They have to set the standards for behavior and they have to also set the expectations or consequences for misbehavior. Clearly they have to be led from the top.

The ethics officer has to be visible, but the CEO has to be highly visible as well. Independence of your ethics program is paramount. The ethics officer needs to have access to the CEO to be forthright, to discuss tough issues, and to provide valuable counsel. One of the most important things to remember is that window-dressing programs won't work. They have no real value. They'll generate a certain level of cynicism and even from the outside in, can cause issues and concerns and be detrimental to your reputation.

We've had a lot of conversation lately about Enron and Enron's circumstance. I happen to have a copy of Enron's code of conduct, the letter that was sent out by their CEO, and the return letter that employees were supposed to have signed and returned, saying they'd read the code of conduct and were going to be compliant. Their code of conduct was as well-written as any I've seen in the industry. It was clearly concise and focused on their business. It set very clear expectations. And yet, as we all know, it was window-dressing. It wasn't followed. It wasn't followed up on. As it turned out it was a greater problem than an answer. We all need to be aware that that approach won't work.

Responding to your question about values and how we've changed values or what changes values bring about, I think you have to go back in history a bit. Many ethics programs came about from the need for a compliance-based view of the world and having a problem that dealt with rules and regulation in ensuring that people were following those. Over time we've understood and grown to understand that really what you need is a values-based component in your program. Compliance is still important; you need to have a compliance component. But the fact of the matter is, we can't write enough rules and regulations to cover every eventuality that our employees will come across.

But with values and a clear statement of values and follow-through on the values that we hold dear to our business, we can provide the guidance for the employees to make good decisions. Our focus on values has been to help our employees understand what's expected of them, what they should be considering as they go through the daily process of making decisions about our business, and really paying attention to what's important at our core, at our value core.

Having this value-based component becomes critical to helping our employees understand what they should be doing in concert with this compliance piece. That means there has to be a fair amount of training involved, both formal training that's subject-matter expert training in a particular area, plus general overall ethics training or values-based training for all employees.

Then there also needs to be some advisory component in your ethics program to make sure that when values need to be interpreted, the advisors are able to provide consistent interpretation. Nothing is more detrimental to any program than to have multiple interpretations coming out about what you believe in or what you think you're supposed to be doing. So we work very hard on our program to ensure we have consistency.

For ourselves, we've done this by going to primarily Web-based training and having a network of some 65 ethics advisors to help keep our program on course.

With that, I'll turn it back over to you, Ken.

Makovsky

Gale, thanks very much for your perspectives. I'm sure they're going to be integrated, as we think about all of the other points that the panelists are making, because these are critical, critical issues. With that, we're going to turn to Tom Mattia, who is vice president of global communications at EDS. Tom, I'll start out by asking you how you've navigated the company's challenges relating to corporate governance, short-sellers, and clients.

Tom Mattia

If you followed EDS at all over the last six months or so, you know that we've had the opportunity to test the waters in some of the issues that we're discussing today, maybe in advance of the rest of the business community. One fact that's really struck me as we've worked through all of this is that PR really remains the conscience of the enterprise. It's something we lost a little track of between bimbo party planners in the dot-com bubble and spin-doctors, who are bathing in the spotlight of the moment rather than being in a supportive role. But it's a role that we critically need to play whether it's given to us or we assume it, as long as we prove our worth.

And if we're going to really truly reconnect our businesses back to Main Street in a believable way, we have to come back to basics. We have to be trusted counselors. We have to be simple, truthful, and honest, and drive our businesses to be the same and to communicate the same way. We certainly want the best positioning for our enterprise possible, but that certainly has to be done within the constricts of a code of ethics.

In order to do that, at least what we've done here is really upgrade our peer-to-peer collaboration with our counterparts in legal and IR and HR so that we really spend a lot of time double-checking each other to make sure that what we're saying is completely truthful, completely honest, completely factual, and very timely.

> "Ethics programs are really a valuable tool for defining norms and setting expectations, but those norms and expectations have to be integrated into the business model."
>
> *– Andrews*

We strive to be as quick as possible. In fact yesterday morning, almost in concert with the opening of markets in New York, we had an announcement out the door outlining our exposure to U.S. Airways and its bankruptcy. I'll get into that in a little bit, but that was critical. Our stock opened down almost $1.50. That announcement came out. We stabilized and lost a dollar and we're up today.

I would argue that a lot of it has to do with the fact that because we just laid it out there so people could see what the exposure was, we eliminated a lot of rumor and speculation. And we get some credit for being above-board and quick, so we've really striven to take that approach.

What I wanted to spend my few minutes with you all on was really just looking at three quick case studies. Dealing with a media that's driven by short-sellers is one. Positioning on corporate governance is the second. Managing the impact of faltering clients is the third. I want to take a look at how we handle these issues as part of a continuum, because we've been working through them all pretty much together as we've gone along. Ensuring that no corners are cut when you're not sure where all the corners are can be a challenge, but if you've established that collaboration, it helps a lot. We've also been very strong on keeping our senior executives in play. Our CFO, in particular, has been very visible throughout all of this.

To begin with the shorts, this is what I call the Adam-Frish-begets-Herb-Greenberg-begets-Ken-Brown-and-you're-off-to-the-races syndrome. Adam, as you may well know, is an analyst, who was a bit of a short-seller at UBS Warburg. He and Herb Greenberg, who writes for TheStreet.com really started coming after our accounting practices late last year. Because we're in the services industry, our accounting is not the type of normal accounting you'd see in a manufacturing business. It is a bit more complex than others. But we've been very conservative in recognizing revenue and things of that ilk and we've tried to be very transparent in communicating it.

But Adam talked to Herb. Our stock was trading in the $70s. We're fairly lightly traded. We ended up being a pretty good target for the shorts early on. Herb got some people interested. Ken Brown from *The Wall Street Journal* did a "Heard on the Street" column. That was followed by *Business Week*. That was followed by *Time*. Our approach was to be very aggressive in responding to them. We went back to Peter Kann at Dow Jones and Larry Ingrassia at *The Wall Street Journal*. We had a lot of discussions. We explained our position. We either got corrections or very good play for our letters of explanation, and we noticed that they didn't keep coming back to us, which was something we wanted to try to prevent happening.

We worked very closely with IR. As accounting continued to be discussed, we convinced our CFO to do a special analyst and media call, going through accounting practices. We did it the week before we announced second quarter earnings so that we could get the last of that handled and addressed. We went for an hour and a half, as long as people had questions. When we got to earnings the following week accounting was not an issue at all.

We've worked very hard with our CFO to make our pronouncements understandable, very simple. We've simplified communications. We've restructured the way we handle our earnings press releases now. We go very, very crisply down the board. We use as-reported numbers. We take our revenues and try to explain them very cleanly. I've looked at a couple of other companies as we've gone through this and noticed that you can get very fairly convoluted if you want to, but if you make it simple it's much easier to understand and you get a lot more credibility in the market. There's less interpretation. The people will report more of what you're saying and try to interpret it less, which is really a goal.

> "Enron's code of conduct was as well-written as any I've seen in the industry. It was clearly concise and focused on their business. It set very clear expectations. And yet, as we all know, it was window dressing."
>
> *– Andrews*

Governance, for us, flowed right into our issues around accounting and how we go to market. We fortunately had established a set of governance regulations when we split off from GM in 1996 and most of the steps we adopted are what the SEC and others are asking for today. Seven of our eight Board members are outside Board members. We have all three of the committees that the SEC is asking for. Our audit committee is completely made up of outside directors. We've been very, very good about having that in place. We decided, when we announced quarterly earnings, that we would note that. We also noted that both our CEO and CFO would certify our financial statements the very next day.

We posted that to the Web site. We posted a statement about that to the Web site so that we would get some visibility around the fact that we were taking those actions, but we intentionally decided not to do any interviews around it or to overly promote it. So I think that we got good credit for being out there without sounding like we were trying to beat our breast too much. Our statement on corporate governance is posted to the Web site. We've used the Web pretty extensively and we use our governance points now an awful lot with the media.

The final area, and I'll be quick, is dealing with faltering clients. We have both WorldCom and U.S. Air as major clients of ours. We did press releases on both of those relationships as the bankruptcies were filed. I think the one we did on U.S. Air yesterday was actually better than the one we did for WorldCom. We're getting better at doing it, unfortunately, but it was cleaner and crisper. We posted them to the Web, but we've gotten out in front of it again with WorldCom, because it had a number of issues. We had the CFO do an analyst meeting, a briefing, that went through the WorldCom exposure so people could understand it. The numbers are fairly significant, but the fact that we made it clear and understandable has really reduced the fallout from both of those.

Again, we triangulate between the account itself and our folks in Treasury and Legal to ensure the accuracy of the data as we release it. We've been pretty good about that. We've been right on. We try to present that data in simple straightforward layman's terms. That's critical to get Main Street to buy back into the fact that you're talking to them at a level that's understandable and more believable and I think that it ensures that business ethics does not become an oxymoron, where we are proving our ethics as we go through the process, even if it's sometimes painful. That's our quick three case studies.

Makovsky

Tom, thanks very much. You've really demonstrated how public relations can play a leadership role in ethics. With that, our panel presentations are at a close, but now we can open it up to questions. While people are attempting to ask their questions and get in queue, let me ask a question to Gale, who spoke about the role of ethics officers. I'm wondering, Gale, are ethics officers – you can speak specifically about Boeing – how do ethics officers become part of the inner workings of a company so that they are aware of the really important matters that are going on?

> "With a clear statement of values and follow-through on the values...we can provide the guidance for employees to make good decisions."
> – *Andrews*

Andrews

Ken, that's a good question. It actually has two components, a mechanical component and then a social component. Mechanically, as I've talked about in my presentation, the ethics officer needs to be positioned in the organization to have that kind of access. In my case, reporting to the office of the Chairman provides me with a good avenue for information, a good opportunity to understand what's going on. Also my relationship with our general counsel provides similar opportunities. It's being positioned properly to be in the know, if you will, that is paramount.

But on the other side of that, on the social piece, the ethics officer has to bring some value. And that is that it's not enough to just know what's going on; you have to engage. You have to be knowledgeable yourself. You have to make sure you're fully aware of the company, what it is expecting to accomplish, its business plan, its strengths and its weaknesses. So it's being fully involved and being fully committed to the team to help provide that level of information.

There's no magic pill for this, by the way. Companies need to select ethics officers carefully. Bringing someone in who is an expert on ethics and perhaps not knowledgeable of the business itself probably won't satisfy this; nor will bringing in someone who knows the business, but has no understanding of the ethics programs. You need to find people who have some business acumen and some understanding of the principles of an ethics program.

Makovsky

Do we have any callers in queue at this point?

Teleconference Coordinator

We do have a question from the line of Ward White. Please go ahead.

Ward White

This is a most worthy topic and those were terrific presentations, and very useful to us practitioners out in the field. This is a question addressed to Tom. The first of your case studies you addressed was on short-sellers. I have a question and a context for it. The question, first, is I detected that maybe you think that you're not the only company who has been targeted by short-sellers and to what degree do you think that the current concerns are fanned by vested interests, so to speak?

My context is that I have been around American business for getting on to four decades now and it's my personal conviction that in general, large American companies are one of the greatest forces for good in society. I don't believe that everyone has suddenly turned evildoer. That doesn't mean that there aren't clear abuses and that we can't profit by cleaning those up and putting systematic protections in place. I put that context of my belief that American business is not inherently evil, but quite the contrary and then ask for your comment on how much do you think the flames are fanned?

Mattia

Ward, I, by no means, think that we're the only ones who have been attacked by shorts in the last six months. Again, I think that in some ways we might have been a little bit ahead of the curve, because there was some air in our stock and that gave them something to play with. I don't think it's an issue of business becoming bad, although there is some element of that in the last couple of months, but I think that really it is looking at how do you make money in the market. I think we've moved from a pump-and-dump scenario, where people who traded heavily made money by running up the value of stocks, to a short-and-distort scenario, where the way to make money is to go short and the only way to make sure that you make money is to distort what's happening to its absolute negative.

So it really makes for a challenge for many of us, especially those of us who are in Fortune 100 companies that would not necessarily have gotten too caught up in the pump-and-dump scenario, but certainly are involved in what the shorts are doing now. All I can say is that we have been continually aggressive. We have been very, very aggressive. Whether you want to consider us at $36 a share a floor, I mean, I sort of do. I think we were hurt; we drifted down; we got back up and we put a floor in ourselves in the mid $30's. We've managed to stay there and slowly inch our way back up, but a lot of it is not allowing salacious comments to be carried by the media without responding to them.

> "One fact that really struck me as we've worked through all of this is that PR really remains the conscience of the enterprise."
> *– Mattia*

Coordinator

We have a question from the line of Louanne Nabhan. Please go ahead.

Marshall Martin

This is Marshall Martin. I'm with Mrs. Nabhan. Picking up on that very last point about salacious comments, it seems to us we're hearing different things from our institutional investors than we're reading in the press. I'm wondering if we don't need to exercise some educative efforts towards the press. I wondered if you all are doing anything in that regard.

> "If you make (your communication) simple, it's much easier to understand and you get a lot more credibility in the market. There's less interpretation. The (press) will report more of what you're saying and try to interpret it less."
> *– Mattia*

Mattia

We are. We're working both sides of the street. Our Chairman and CEO are just completing a road trip where they've met with institutional investors in about, I want to say, seven or eight cities, interspersed over the last two weeks. We're finding great response to the meetings, a lot of interest, so that's getting our message out to that group. That certainly helped get the stock to respond.

We've created a section on our external Web site that is geared towards investors that has a set of Q&As around issues that have been in play for us for some time. We have used our CFO, again, to speak with the media. We have increased the opportunities for them to sit down and talk to each other.

Not too long ago, *The Wall Street Journal* was going to do a story, and I honestly don't remember what it was about. A number of companies were being investigated by the SEC, and they called us and said they were going to include us in the story. We checked and we could find absolutely no validity to it. We called the reporter back who said, "I got a source." So I called Ingrassia. I said you're on deadline. You're fixing to run a story tomorrow that includes us as company under investigation and I'm telling you right now I can find absolutely no evidence that that's the case.

He said, "I'll go back and talk to the reporter." He called me back in five minutes and said, "Well, okay, she has a source, but we don't have as much background on you as we do on the other companies (one of which was Adelphia by the way). So we're going to drop you from the story."

Had I waited until the next day to complain about the fact that they stuck us in, we would have been in there with everybody else. It was Adelphia and a couple of others. It would have been Qwest and a couple of others, people who really were under SEC investigation. You have to be aggressive sometimes.

Coordinator

We do have one more caller and it comes from the line of Dennis Signorovitch.

Dennis Signorovitch

This is a question for Gale Andrews from the Boeing Company and it's really a three-parter. First of all, can you describe, in broad terms, how your job has been changed in this post-Enron environment that we're living in now. Secondly, how do you find yourself relating to corporate communications at Boeing? Then finally, you had mentioned that you have to pick ethics officers that have the right kind of background. If you don't mind, could you just give us a sense of what your background is?

Andrews

Job change is kind of an interesting conversation, because, as you probably don't know, the Boeing company has had an ethics officer position, officially, for about 16 or 17 years now. Although the job has been evolving over time, as I spoke about moving to a more values-based program and being more concerned about broader issues and less just focusing on compliance, the recent changes, the post-Enron changes, really haven't caused a huge change for me or for my job. If it's done anything, it's highlighted it, probably, or given me more opportunity to speak about ethics and values in the Boeing Company, which takes me to the second part of your question.

The corporate communications group and I spend far more time together now than we used to, only because there seems to be more demand for me to speak about Boeing's program, which is known as a successful program. I talk to different groups that are interested in finding out how we do it, what we do, etc., and also, as Tom was indicating, to be a little more aggressive about making sure people understand we do have a program. That partnership has become probably more valuable than ever, because as all companies go through this sea of trouble we're facing, making sure people understand where we come down on this topic becomes very important.

As for my own background, my undergraduate work was in political science and I have an MBA. I spent quite a bit of time in the Boeing Company in the audit department and was the general auditor of the corporation, which is where I got my strong compliance focus for the company. In my undergraduate work I did a lot of work in the area of philosophy and had a keen interest in philosophy and have continued to, in fact, pursue that over time. I have a lot of tenure in the company. I have a lot of knowledge of the company. I have a lot of understanding of our business and I have an unabiding passion for the topic of ethics and values.

Makovsky

Do our panelists have any questions? If not, I have a question that I'd like to ask to Professor Joanne Ciulla. Joanne, two questions really. One is what should happen to top performers who don't live by the values that have been set forth by the corporation? Gale, you may have a comment on that as well, since you addressed values. Secondly, in *The Holmes Report* they did, on August 12th, a long feature editorial on this topic and there is a paragraph that says, and I quote, "Lawyers are trained to ask is it legal, but public relations people are trained to ask a more complex question; how will this be regarded by our stakeholders." I wondered if you, Joanne, believe this is a valid test of good ethics.

Ciulla

If you ask the question, how will this be regarded by our stakeholders, you're assuming that what the majority says is the right thing. Unfortunately the majority isn't always right so the bigger question should not be "Is it legal?" but the bigger question should be "Is it right?" Then the question is "right" according to what set of standards? Here, the majority, or the stakeholders, may have standards that are quite different than perhaps the standards that we get from the broader culture on what's right and wrong. We all know what those basics are, being truthful, being fair, etc.

So from a public relations point of view, asking the question "Is it right?" is probably a much safer question to start with before you get to the stakeholders, because I think that then the issue is how you present it to the stakeholders. So I think that one always has to look at ethics from a very, very broad perspective, and usually you won't lose out on it in the long run. The deal in business ethics is that often the answer to questions in the short run is very different than the answer in the long run. Ethics tends to be about the long run.

> "It's critical to get Main Street to buy back into the fact that you're talking to them at a level that's understandable and more believable. That ensures that business ethics does not become an oxymoron."
>
> *– Mattia*

The high performers. It's very interesting that the top performers in organizations, and again, there's a long history of them getting into trouble, are the ones that often don't get held accountable, as much, along the way. This was certainly true with the Wall Street scandals back in the mid-'80s. We tend to let them go, which can lead to problems. I think companies have to pay even more attention to ethics when they're doing well than when they're doing poorly, because that's the time when, because things are going good, people aren't as vigilant about what they're doing.

Makovsky

Gale, do you have any comments on that point about what happens to top performers who don't live by the values that you spoke at length about?

Andrews

Actually I have a couple of points I'd like to make, Ken. First, on the issue of what do you do relative to your value systems and the company itself having short-term or long-term view of ethics? It's pretty clear. We found pretty clear information that says the business ethics have to be the sustainer. The long-term view is all that you have and your reputation is what sustains you forward with your brand. So to then allow a high performer to come in and break those rules and somewhat with impunity get by because they've somehow earned better or whatever, without looking at the longer-term ramifications, I think is very risky and in fact, probably can be lethal for a company. We get very concerned. You ask any ethics officer; you're always concerned about are we being consistent in how we apply these values?

A company's values are its core and individual actions that go on around that core are the demonstration of your value core going forward. The thing that you need to look at as you try to link that in core values and the individual action is what was the intent? I think that becomes a very important part of the equation when you evaluate how your performers are doing. Decisions that are poor decisions but made with the best of intent carry a different flavor to them than decisions that are poor decisions with bad intent, intentionally violating the value system that you have.

People who decide to violate your values are not doing your company a service; in fact, they're putting your company at risk and they need to be dealt with accordingly. Whether it's repeat offenses or single offenses, they all factor into what you do. You can't allow people to discard your values, whether it's good times or bad, without doing grave damage.

Mattia
Ken, if I could add one note to that, when we have ethics violations we do not take action in private. If someone, especially if it's egregious, steps out of bounds, we're public in noting it and noting the steps taken.

Makovsky
That's a really great point, Tom. Do any of our panelists have any questions? If not, I have another question that I would like to ask to actually all of the panelists. How strong a role should a corporation's board of directors play in enforcing corporate ethics standards and how should that be carried out? Tom, do you want to go first?

Mattia
They obviously have to be active. It's one of the reasons you seek to have a preponderance of outside directors. When I look at companies today I really do take a look at their boards, the strength of their boards, and the balance of their boards. Ours is very active and it's one of the things it looks at on a quarterly basis, so I think that there is a very active role for the board to play. We certainly provide them with enough information around the metrics.

Ciulla
I think the biggest question about boards, aside from how active and responsible the individuals are, is who is on the board? Often what's considered a strong board is a pretty homogenous board. This isn't an issue of political correctness, but the wider variety you have on the board, the more perspectives you get on your business and what you're doing. If everyone is from the same club, they often engage in group thinking and they often end up not raising the kinds of questions they should be raising.

Andrews
To add onto that, I think the board needs to have confidence in the program itself and in the mechanics of the program. You can't expect the board to go through the tremendous amount of data or activity that goes on relative to an ethics program. The board needs to assure itself that the system that's in play that governs that program is real and is operational and that they can have confidence in it. I think it's not a matter of having your board go through daily management of your program, but they need to have full understanding and full commitment to that program.

Mattia
The former chairman of Ernst and Young heads our audit committee and not too long ago we had both Jim Baker and Bill Daley on the same board so we strive for different points of view.

Makovsky
Are there other perspectives that anybody has to offer on the board of directors question? If not, I have one question. What are ways that a company can set itself apart, from an ethics standpoint, and distinguish itself and become known as a company with strong ethics? I ask that to all of the panelists.

> "One always has to look at ethics from a very, very broad perspective...and in the long run. The deal in business ethics is that often the answer to questions in the short run is very different than the answer in the long run. Ethics tends to be about the long run."
>
> *– Ciulla*

Ciulla
One thing I know from companies that have done it is they have to take industry leadership and be ahead of the curve, ahead of the regulations, and basically help make the ethical rules as opposed to waiting to be regulated. One of the most famous business ethics cases in that regard was Cummings Engine, which put into place pollution standards that were far stronger than the ones the government had anticipated. A lot of companies, if they look ahead, they look at problems, they look at the public mistrust of them, and start thinking about what can we do that nobody else is doing that will make people trust us more?

Some people say, "Oh, we can't do that. It'll hurt our competitive advantage or our competitors won't do it and we'll get creamed." Eventually what happens is it's not true. We've seen that in lots of cases. Anticipating the problems is part of good leadership and I think it's part of industry leadership as well.

Makovsky
What are things that you think they can do?

Ciulla
I thought it was real interesting that Coke came out right away with reporting their stock options, for example; looking at it and saying, "Let's do things before we're asked to do them."

Mattia
Stock options is really an interesting piece of work over the last couple of weeks, because there have been a number of companies that have said, "Alright, we're going to report them." But the steps they've taken to report are all different. Some are going to recognize it over seven years. Some are going to recognize it over ten years. Everyone's looking at doing it next year. The position we've taken is we'd like industry to come to some kind of agreement on how we're going to recognize options and then we all do it the same way, because my fear is, or our fear is, that yes, you can get a headline today by saying, "We're going to do it," but if we're not all coordinated it's going to be even more complex when we get to next year than it is this year.

> "Decisions that are poor decisions but made with the best of intent carry a different flavor to them than decisions that are poor decisions with bad intent, intentionally violating the value system...You can't allow people to discard your values, whether it's good times or bad."
>
> *– Andrews*

Andrews
On the other side of that, Tom, Boeing took the position of changing our treatment of options about three years ago, deciding that it was more open, more transparent to do it that way. I really think if we're on the topic of how can companies demonstrate their commitment, to try to come up with a single standard would take longer, probably, than just having companies step out and begin to make these changes and drive that confidence level back up that, yes, we are all interested in making this as transparent as possible and as trustworthy as possible.

I would think the other thing that we can do and should be doing, and I know several companies that I work with that are involved in this, is really participating in the different ethics associations, such as the Ethics Officer Association.

There are several other opportunities to provide that industry leadership, to do benchmarking, to provide the experiences of many companies who have long-term ethics programs to companies who are trying to get started or need to make a change, and demonstrate that these programs do work, can be successful, and do generate the right kind of atmosphere in which a company can operate with the highest standards of integrity. So I think it's a matter of being present in this and demonstrating, both by word and by action, that we are interested in improving the overall level of business ethics.

Mattia
I agree. We're very active in Business Roundtable. We're active in a number of organizations. I think what we're saying is if you really want transparency and if you really want clarity, you have to have consistency. You have to have a level playing field, because the reason people are asking for it is to understand the overhang on your business. That's fine. That's fair. We should give investors that, but we should be giving it in a way that's apples to apples, company to company, so that investors do have a clear understanding of what the overhang is.

Makovsky
I want to thank the panel. Everybody really did a marvelous job. I want to thank everybody for tuning in. I'll just make a brief attempt to summarize some of the key points that were made.

The leadership of the company, the CEO, the Chairman, the CFO must be visible, must be transparent in leading ethical behavior.

- Ethics must be compliance-based and integrated into a corporate value system and into a corporate culture.
- Ethics must be trained. We need to be proactive in transparent communications.
- Ethics is based on what is right.
- People who violate ethics must be managed both in good times and bad times, because consistency is key.

With that, I hope that everybody has gotten something valuable out of this and something that they can apply in their own situations. Once again, I want to thank AT&T. Gale, Joanne, Tom, your contributions today have been deeply appreciated by the Page Society and everybody tuning in. I hope that everybody tuning in has found this to be a valuable hour. Have a good afternoon. Thank you.

CORPORATE OPINION: FREE OR COMMERCIAL SPEECH? GLOBAL IMPLICATIONS OF THE KASKY V. NIKE DECISION

NOVEMBER 11, 2002

AN UNPRECEDENTED CALIFORNIA COURT RULING THREATENS FIRST AMENDMENT PROTECTION FOR ALL BUSINESSES.

PAGE ONE Panel

Kirk Stewart
NIKE, Inc.

Tom Goldstein
Goldstein & Howe

Peter Clarke
SRiMedia PLC

Paul Holmes
The Holmes Group
Moderator

Paul Basista

Welcome to all of you for joining the fourth PAGE ONE audio conference for this year. We're calling this one "Corporate Opinion: Free or Commercial Speech? Global Implications of the Kasky v. Nike Decision." As they have in the past, these proceedings will be transcribed. Once they are edited, they will be posted on the Web site. Questions are certainly encouraged from all of you and, during the question and answer session, you may pose your question by pressing the number one on your phone or you may send an e-mail directly to our moderator, Paul Holmes. His e-mail address is PHolmes@holmesreport.com.

Joining us today are these panelists.

Kirk Stewart is vice president of corporate communications at Nike. He is responsible for global crisis and issues management, internal communications, community affairs, sustainable development, and corporate responsibility communications. He joined Nike five years ago after spending 16 years at Manning Selvage & Lee where he was chairman and CEO.

Tom Goldstein is recognized as one of the nation's leading Supreme Court litigators. Since founding the firm of Goldstein and Howe in 1999, he has argued six cases at the court spanning the gamut of federal law issues, including the first amendment, ERISA, federal preemption, and civil procedure. *The American Lawyer* recently included Tom in its profile of the nation's half-dozen leading Supreme Court advocates, together with Harvard Law Professor Lawrence Tribe, Ted Olson, and John Roberts of Hogan and Hartson. He recently was named as one of the top 40 lawyers under the age of 40, as well as one of the half-dozen attorneys to watch in the 21st century in Washington DC.

Peter Clarke is director at SRiMedia TLC, a publishing company headquartered in London. The company publishes a Web site and reports devoted to the topics of corporate governance, corporate social responsibility, and sustainable and responsible investments. Mr. Clarke's prior background was 15 years in the investment banking profession, primarily involved in international IPOs, mergers and acquisitions, and public securitization finance.

Moderating the panel today will be Paul Holmes, who has been editing public relations publications for more than 15 years on both sides of the Atlantic. He's written for *PR Week, Ad Week's Marketing Week, Inside PR* and *Reputation Management Magazine,* and currently edits *The Holmes Report.* He's a frequent speaker at industry events, and has consulted with both agencies and corporate public relations departments. I'm now turning the call over to Paul.

Paul Holmes

Good morning, everybody. I first wrote about this case a year and a half ago, and I've been following it fairly closely ever since, which I suppose is one of the reasons I was invited to moderate this discussion. I have my own opinions about how serious this matter is, as evidenced by the amount of writing I've done about it. I think it's one of the key issues facing our profession today, and one that went unnoticed for too long. I hope we can do it justice in the format we have here.

We're going to spend about the first 20 minutes or so of the conference hearing from the participants before we get fully interactive. We're going to start with Kirk Stewart at Nike, who can give us a quick chronology of how this issue arose and what the milestones have been along the way. Kirk, why don't you start by telling us what happened here and when?

Kirk Stewart

Thanks, Paul. As a general overall comment I would say that, at least from our perspective, the thing that makes this case so important for those of you who aren't all that familiar with it, is that it does center around the fundamental right of free speech as protected by the First Amendment and a company's ability to participate in a free and open debate about public issues related to its business.

The first question people normally have is who is Marc Kasky? What does he have to do with Nike and, more importantly, what does he have to do with the first amendment? Marc Kasky is a resident of California who brought a lawsuit against us in April of 1998 under a California business and professional code statute regulating false or misleading advertising. In his lawsuit, he claims that statements that we made about our overseas labor practices were false or misleading. We'll talk, I'm sure, in some detail about the nature of those statements in a couple of minutes. There are just a couple of real quick unusual aspects of this case that I would like to talk about before getting into the chronology.

> "What makes this case so important...is that it centers around the fundamental right of free speech as protected by the First Amendment and a company's ability to participate in a free and open debate about public issues."
>
> – *Stewart*

The first one is around what he doesn't claim in his lawsuit. Importantly, he doesn't claim that he was personally harmed or injured, that he was induced to purchase the product, that he had any knowledge of the facts or that he even read the statements that are in question. I'm sure Tom's going to cover this in more detail, but essentially this statute allows Kasky, as well as 34 million other California residents, to essentially appoint themselves as private attorneys general.

The other aspect of this case that's been a bit confusing centers on the nature of the statements themselves. I can say that the statements were not statements that were made in any print, television or radio ads that we aired, but in fact were a series of statements that we made in things like news releases, letters to the editor, op ed articles, letters to our college partners, and an advertorial. None of those statements discussed particular products or addressed the price or quality of any of our products. Again, they were simply statements that we had made in response to criticism of the alleged workplace conditions in our contract manufacturing operations which, as I'm sure you all know, were a subject of great public debate.

The final thing I'd touch on would be the fact that the statements need not originate in the state of California. One of the statements in question, in fact, is a statement that was contained in a letter to the editor at *The New York Times* and, as you all know, *The New York Times* is distributed and circulated in the state of California.

So, again, it's important to keep in mind that the statements that are the subject of this lawsuit or this statute do not need to be made in the state of California, but only read, seen or heard by a Californian. I think Tom will probably talk a little bit more about the remedies that are available under this statute because they are quite severe, and I'm sure he'll talk about the strict liability standard in a couple of minutes.

Let me just conclude with a quick overview of the history, since April of '98. The Superior Court in California dismissed this case on First Amendment grounds in February of '99. In March of 2000, the Court of Appeals unanimously affirmed that dismissal, and then in May of this year the California Supreme Court reversed it in a four to three decision. Again, Tom's going to talk about that decision in just a minute.

We filed our writ with the Supreme Court on October 14th. Barring any extension that the plaintiff may seek in this case, their brief as well as the *amicus* briefs, are due this Friday. Then we should, probably in the middle of next month, receive word from the Supreme Court on whether they're going to hear this case or not. If they take the case, oral arguments will be made during the spring and summer of next year with a decision sometime in the summer of 2003. If the writ is denied or we lose at the Supreme Court, the case will go back to a trial court in the state of California.

Holmes

Thanks, Kirk. Tom, I'd like you to just address what the state of the law is on this case right now, and particularly how it has changed our understanding of what kinds of corporate speech are and are not covered by the first amendment.

Tom Goldstein

Excellent. I want to talk about what we know as a constitutional matter, what we know about California law that we didn't know before, and the kinds of similar circumstances that could arise that could be of concern to the clients of the people that we have on the call. I think that the easiest way of doing that is to set out for you 10 specific things that we know about the state of the law, and within the context of those 10 things talk about how the law has changed.

The first is that the Kasky decision applies to speech on any subject about a corporation's practices that could influence consumers. Here we have speech about labor practices in

Southeast Asia, but the decision would apply just as clearly to statements about a corporation's environmental practices or its community affairs. Anything that a corporation might say that could cause a consumer to say, "I think that corporation is a good corporate citizen, and therefore I'm more likely to buy its product."

Second, the decision applies in whatever forum the speech occurs. The big change in the law here is that these were not statements made in advertisements of any specific Nike product. This was not Nike saying, "Our Nike apparel will pull off sweat better," or anything like that – that it has better performance or anything like that. These were statements, as Kirk mentioned, in the editorial pages of *The New York Times,* for example, and they didn't talk about a particular Nike shoe or a class of Nike products at all. It was just about the corporation.

> "The statements (in question) had been made in response to criticism of the alleged workplace conditions in our contract manufacturing operations which...were a subject of great public debate."
>
> *– Stewart*

The third is that liability under this California statutory scheme is strict, as Kirk mentioned in passing. That is to say, if a corporation makes its very best effort to tell the truth in its statements, that is not a defense. If there is an accidental misstatement, no matter how well-intentioned, that nonetheless gives rise to liability. In the past it has always been understood that speech, particularly speech in this kind of forum, was actionable only if there was recklessness – that there was, in fact, a purpose to lie, that at least the company wasn't making its best efforts. That's no longer a defense.

> "The Kasky decision applies to speech on any subject about a corporation's practices that could influence consumers. (The complaint) was about labor practices but it would apply just as clearly to statements about environmental practices or community affairs."
>
> *– Goldstein*

Fourth, as Kirk mentioned, the plaintiff need not have suffered any harm. Under state false advertising statutes and unfair trade practices statutes in other states, it is almost universally the case that if you are going to be sued you can only be sued by someone who read your statement and actually was induced to purchase a product as a result. That's no longer the case.

Fifth, the decision applies even if the statement is actually true but is later determined by a court to be misleading. To step back to what I said about strict liability, even if you try your very best to tell the truth, and in fact even if you do tell the literal truth, if somehow the statement is regarded as misleading, including misleading by omission, you nonetheless are subject to liability.

Sixth, liability specifically applies to statements made by a company to reporters and reviewers. The California Supreme Court went out of its way to say that even if a company is not speaking directly to consumers, when it does speak to third parties who are likely to repeat the statement to the consuming public, then liability can attach. That's particularly important, of course, because when a company speaks to a reporter it's not aware of the context in which its remarks actually will ultimately be reported.

Seventh, the decision applies, notwithstanding that the overriding purpose – the singular purpose – of the statement was not actually to influence consumers. The statements here, for example, about Nike's labor practices or the labor practices in contract facilities had just as much as their consequence not that consumers would make purchasing decisions, but would not support or would, in fact, oppose governmentally imposed boycotts of Nike products. But the California Supreme Court said that made no difference.

Eighth, and Kirk mentioned this as well, it makes no difference that the statements were not uttered in California. The statute explicitly applies whenever the statements are received in California. California has 34-plus million residents, and the decision applies expressly to a statement that's on the Internet, such that if the statement is on a Web site in Kuala Lumpur, this decision applies fully.

Ninth, the decision applies even though it's not a California company; Nike, of course, is not a California company. All that's required is that the company sell products in California, and California is the world's fifth largest economy standing alone, and virtually every multi-national enterprise does sell products in California.

Finally, 10th, the remedy that the statute provides is potentially quite expansive. It includes a disgorgement of all profits or all revenue actually that could be traceable to the statement, and it includes the possibility of a court-imposed speech campaign in which the speaker will be required to make statements to California residents saying that it had previously misled them. While we haven't gotten to the damages stage in this case – and hopefully never will – that, too, is potentially very problematic. In any event, it is at the very least the cost of the litigation, which will frequently run in the millions and millions of dollars, that is almost as troubling as the possibility of an actual damage award.

Holmes

Thank you, Tom. That was very comprehensive, and probably didn't do anything to assuage anybody's concerns here. Kirk, why don't you tell us a little bit about what Nike's reaction to this has been and some of the ways in which your communications have changed while this plays itself out?

Stewart

I think, obviously, as Tom described it, given the statute and given the ruling in the state of California, one could easily come to the opinion that it's far riskier to say anything than it is to remain completely silent. I think that the reality is we couldn't continue to run our business if we went completely and totally silent, although under this ruling, it would certainly be the far less risky thing to do.

This decision has had a fairly profound effect on how we've been trying to communicate with the media, with our college partners and on our Web site. We have basically been limiting our interaction with California media, and clearly limiting our interaction with national and international media that is read, seen or heard in the state of California, and largely in the context of our work in corporate responsibility.

> "Liability applies to statements made by a company to reporters and reviewers...Even if the company is not speaking directly to consumers, when it does speak to third parties who are likely to repeat the statement to the consuming public, then liability can attach."
>
> *– Goldstein*

We've also taken a much more limiting view of the interaction that we have with our college partners in the state of California and with speaking engagements that we may get from time to time in the state of California. We're essentially passing on almost every one of those opportunities in the state, and outside the state in forums that are covered by media that's read, seen or heard in the state of California. And clearly, as Tom mentioned, being very cautious about the kind of material that we post on our Web site.

I think that the singly most important impact that it's had to date from a communications perspective is that we have made the decision not to produce our second annual corporate responsibility report for distribution externally. We do plan to produce that document for employees, but will not be releasing it on our Web site or issuing it to the media or to other third parties as we have done in the past.

So this ruling has made it fairly tricky, cumbersome, and difficult to communicate. Again, I think that goes to the chilling effect that this ruling has on corporate speech.

Holmes

Finally, Peter, I'd like to get your perspective on how other companies are reacting to this. Obviously your expertise is in the broader corporate social responsibility movement and also on the international front, so I'd be interested to hear from you what other companies are doing, and what you think they're likely to do if this ruling stands.

Peter Clarke

Several points. In the first instance I can only speak for myself because as you mentioned, Paul, that while awareness of the Nike case is relatively low in the United States, I can say that in Europe I'm only aware of two media organizations, ourselves and *Ethical Corporation* magazine that picked up on this issue quite late. So if we take a look at the potential audience here of investor relations and public relations professionals, let me urge you, when you're drafting communications in general, to consider your European and global audience in those communications.

I have to also, by way of disclaimer, say I speak for myself and my company, *SRiMedia.* I don't speak for many of the entities I'm about to reference. Generally in Europe, corporate reporting on social, environmental, and other issues is of far more concern to European investors, consumers, governments, and other stakeholders than in the United States. For example, in Europe the European Commission has initiatives to integrate corporate social responsibility reporting by companies with an earmark of 2010 to accomplish that objective.

Many, many funds in Europe screen on social, environmental and other issues. We also have here stock market indices which are quite developed. For example, the Dow Jones Sustainability Index, the FTSE4 Good Index, and Euronext are actual stock market indices comprised of companies that are considered to be more socially responsible.

Other players in the debate over here include the OECD, and there is specific legislation in Europe, which is impacted by this decision. This European legislation has no counterpart in the United States. One consideration is recent changes to French law, which require to a certain extent that corporations in their stock exchange filings report on social, environmental and other issues. These disclosures are mandatory. So what happens to those French companies that do business in the state of California? The likelihood is that the French will disclose their social, environmental and other policies to the minimum extent required by law, to avoid litigation under the Kasky regime. As such, French investors might receive less transparency than contemplated by the relevant French statute.

There's also an initiative right now before the U.K. Parliament called CORE, again to make CSR, corporate social responsibility reporting more mandatory. So how are European institutions going to consider their positions facing a November 15th U.S. Supreme Court deadline?

Further, company reputations in Europe are more tied to share price than in the United States. So the impact of this decision is going to be a split one. Generally, for those European companies that do not sell in California, particularly extracting sector companies, mineral companies, electricity grid companies, those companies will enjoy a competitive advantage over their counterparts that sell in the state. They are exempt from the Kasky regime.

> "This decision has had a fairly profound effect on how we've been trying to communicate with the media, with our college partners and on our Web site."
>
> *– Stewart*

So in terms of approaching the capital markets those exempt companies, it would seem, can continue to publish their CSR reports with impunity. They do not need to consider as much the liability under the Kasky regime as other big European companies that do sell in California; obvious ones being British Petroleum, DaimlerChrysler, Mercedes-Benz. The list is endless.

The next view is that because corporate social responsibility is very much embraced in Europe but still at an early stage, this decision might impact companies on the fence in taking the decision to report on their corporate social, environmental, and like policies. That is, if we can consider so-called hawks and doves in the corporate boardroom, the doves saying, "We need to publish CSR reports because it'll appease our European markets" versus the hawks that will say, "There's just far too much litigation risk."

This California decision might create a pretext for those companies to hide behind that decision so as not to go forward and publish their CSR reports. Of course, this is particularly relevant to the larger end of small- to medium-sized enterprises in Europe where they just simply cannot afford a $10 million legal defense team in the event that they're sued.

Over here people are debating what they can do. Some of the suggestions in Europe go from the sublime, that is putting up a functionality on people's Web sites to require disclaimers by users which might say, "I am not a California resident," to stop reporting altogether, or engage in a cost benefit analysis of the costs of potential new litigation risk versus a share premium put on companies that are perceived to be good companies in the corporate social responsibility context.

In conclusion, what we're faced with here in Europe is the fact that this California decision, whatever its implication, is the law in the United States at this time being. I would like to end my presentation by actually citing a particular example, and then turning it over to the panel to see how they would respond to this particular circumstance.

Very recently Morgan Stanley, the investment bank, was highly criticized because it was part of an underwriting group that underwrote some $830 million in bonds for the China Development Bank. Some of those funds were earmarked for the engineering of something called the Three Gorges Dam Project. There was an immediate campaign in the United Kingdom and in Europe, that is my belief, against Morgan Stanley, including boycotts against its credit cards because this particular dam project is considered to be extremely environmentally unfriendly, and also there were concerns about human rights abuses and like things by protestors.

In response to being under attack, Morgan Stanley put out this release and this came, as we understand it, from Morgan Stanley's London office. So we're talking about the London-based arm of Morgan Stanley doing a deal in China, and I quote. "Morgan Stanley is not participating in, does not control, and has not been directly involved in financing for the Three Gorges Dam Project. Please note that our firm has no plans to participate in any Three Gorges financing."

Now if it were that the Chinese Development Bank were to use some of the money underwritten by Morgan Stanley, would that fall in the misleading the public, confusing the public, accidental misrepresentation or whatever the test is under the Kasky regime? With that I'll leave it.

Holmes
Tom, I think you're probably the best person to take a shot at that one.

Goldstein
I do think it fits within the four corners of the California Supreme Court's decision; that is, in the statement, Morgan Stanley is not advertising a particular product. It's issuing a press release that I'm sure was received in California. I'm sure it was on Morgan Stanley's Web site or made its way there somehow. It's a statement of fact and it's a representation that would influence a person's decision whether or not to do business with Morgan Stanley.

> "(European companies) that do business in the state of California are likely to disclose their social, environmental and other policies to the minimum extent required by law to avoid litigation under the Kasky regime."
> *– Clarke*

So putting aside the question whether the statement is accurate or not, something that I don't have any idea about, and in fact assuming it's accurate but nonetheless has the capacity to mislead because Morgan Stanley, let's assume for a moment, is more closely tied to Three Gorges than that statement might suggest, I would think there would be no question at all that it's among the many hundreds of examples that our callers can also conceive of that people could be sued, and quite likely held liable under the Kasky decision.

Clarke
If I may just say then, you basically answered what my assumption would be. Of course, as I understand it, since the California law provides that the offending corporation is actually subject to a misdemeanor, that is far more serious for a financial institution. I'm certainly not suggesting it's not serious for a large corporation, but a misdemeanor would be far more serious for a financial institution, given that it has fiduciary licensing and other requirements than an oil company.

Goldstein
That's an excellent point.

Holmes
At this point we're certainly able and willing to take questions from any of the listeners to the call. So if you have any questions let us know.

Let me start off with one. In rendering the California Supreme Court decision, Judge Joyce Kennard said, "Speech is commercial in its content if it is likely to influence consumers in their commercial decisions. For the significant segment of the buying public, labor practices do matter in making consumer choices."

That to me seems to be a fairly straightforward explanation of why this qualifies as commercial speech, and at least on the face of it, it's not an illogical explanation. So I guess I have a question for Kirk and then a question for Tom.

The question for Kirk is, to what extent is your motivation in discussing labor practices commercial, and to what extent are you, in fact, defending your market share against a potential threat?

To Tom, why does this so radically alter the definition of what commercial speech is, and expand on that?

Stewart
Our point of view is simply this, that the responses that we were making or statements we were making around our overseas labor practices were statements that were being made in response to attacks from a variety of different critics. Those statements were made as part of an ongoing public debate about a highly visible and public issue of general interest. As such, that speech should be protected.

Holmes
Tom.

Goldstein
Now the question directed to me is, what is "commercial speech" under what we thought were the rules set down by the U.S. Supreme Court, before the California Supreme Court's decision in this case. The U.S. Supreme Court has said that commercial speech is speech directed solely to the economic interest of the speaker and of the listener.

The contrast here is that when Nike doesn't speak about the quality or price or the other intrinsic qualities of Nike products, it actually (and I think this has to be undisputed) is engaging in a fundamentally moral debate. To be sure, these are the factual components of a moral debate. But the line of thinking of the California Supreme Court's own decision is that when listeners hear Nike's statements or read Nike's statements, those statements influence judgments about what good moral and ethical corporate practices are, and whether Nike engages in those practices. It is only then that the consumer or the listener makes a judgment about whether or not to buy Nike's products.

First and foremost, this is an ethical judgment. It's very much unlike anything that the U.S. Supreme Court has deemed to be commercial speech in the past. The U.S. Supreme Court has described those as statements that "I will sell you product X at price Y." It's in that instance where, in effect, the statement is, as the Supreme Court has said, "intrinsically tied to a commercial transaction."

That is to say, for example, "I'm telling you what my Nike shoes cost or how they perform," because you're right then and there making a decision about whether or not you want to purchase those shoes. It's that type of statement that the Supreme Court has regarded as commercial speech.

Taking and putting all of that even to the side for the moment, it's important to recognize that Nike's position is not that because this isn't "commercial speech" that Nike is free to say whatever it wants; that is absolutely not the case. Nike firmly believes that there is an important role for the government to play when it comes to ensuring that consumers aren't misled.

The difference here is that when you're not making statements about the intrinsic qualities of products, you can't shut off debate. You can't chill debate with the fear of strict liability and liability for even truthful statements. The Supreme Court has said that you can hold someone liable when they have been reckless about the truth of their remarks and you've been harmed. I think those standards set by the U.S. Supreme Court will end up applying here because they will both protect consumers and will give what the Supreme Court has called "sufficient breathing room" for free speech.

> "European companies that do not sell in California...will enjoy a competitive advantage over their counterparts that sell in the state."
>
> *– Clarke*

Holmes

Do we have any questions?

Clarke

I have one directed to any of the three other panelists. Why wouldn't this decision, if it were allowed to stand, mean that corporations who are serious about corporate responsibility be absolutely thoroughly careful and truthful in what they say?

Stewart

Tom, maybe you should take this one, but again I think going back to what Tom said earlier, truth is not necessarily a defense. If the statement is misleading or misleading by omission, or one of 34 million California residents believes it's misleading by omission, one can bring a lawsuit and essentially haul a company into court to prove that the statement wasn't misleading.

Goldstein

I agree with that. Peter, I think your point is precisely what the California Supreme Court was hoping to achieve. That is, it ruled based on the model of an unfair trade practice and a false advertising statute. That model has always said that you can be held strictly liable if you say something in an advertisement that's false.

What the U.S. Supreme Court has said, and it makes perfect sense, is that there is a fundamental difference when it comes to the statements about the quality of your product or the price of your product. That is information that is completely within your control. You control the placement of the advertisement, for example; you set the price of the product. In that circumstance you can hold speakers to an extremely high standard because the information is completely in their control. They won't be chilled from speaking.

The concern with the California Supreme Court's decision is that it goes too far. It applies to statements made to a reporter in the middle of a debate, on a short deadline, and statements made in letters to the editor. That material, and debates about what is going on at contract facilities on the other side of the planet, is far more likely to engender in the corporate speaker the sense that, "I can't be perfectly certain. I can tell people to the best of my knowledge." But under the California Supreme Court's decision to say something to the best of your knowledge is simply not good enough.

The reason this decision is going to chill free speech is that it creates too great a risk of liability. It goes too far in saying that you have to be absolutely certain of the accuracy of your remarks in order to speak, and relatedly but still separately, it really opens the door too widely to plaintiffs to bring suit.

We have here, as Kirk mentioned, somebody who never read the statements by Nike, who doesn't know anything about them, who disavows any personal knowledge, yet purports to seek a remedy; a person who was never damaged, but purports to seek a remedy on behalf of 34 million citizens of California. The notion is that liability is like the Sword of Damocles – it does its harm, not merely by dropping but merely by hanging.

Holmes
Do we have questions from any non-panelists, from any of the listeners?

Teleconference Coordinator
We do have a question from Michael Fanning. Please go ahead.

Michael Fanning
I'm Michael Fanning with Michelin North America. First of all, Kirk, I find it really incredibly disturbing that Nike is trying to do the right thing, and is being stymied by such a restrictive ruling, and hope the U.S. Supreme Court will turn it over.

Just a couple of questions. First, I think one of the panelists said there was a disgorgement of revenues attributed to whatever the particular campaign or article is purported to be, the guilty statement or whatever. I'm just wondering practically how can that be applied? That's the first question.

The second question, which is related, is how would you expect the plaintiff's bar, for instance, to react to this? Do you see just a ton of nuisance suits coming up in California or is this so esoteric that it's only going to be very few and far between that people take advantage of it? I'll just get off of this call now and take a listen to the response.

Holmes
I'm not a lawyer, and Tom can probably address the second half of that question better than I can, but my feeling is that this is the very opposite of esoteric. Based on some discussions that I've had with people on the consumer end, an environmental activist side of the fence, my suspicion is that there's going to be a group of people who are pawing over everything a company says looking for an excuse to bring a suit. If the history of securities litigation, for example, is any guideline, there isn't going to be a particular shortage of attorneys lining up to take those kind of cases almost on spec. Tom, what's your feeling on that?

Goldstein
I agree with that. I don't think it's necessary for anyone to suggest that people would bring the suits for anything other then the purest of motives. This is a tool that's been provided by California law. If the U.S. Supreme Court declines to consider the case, then it's a tool that comports with the First Amendment until the U.S. Supreme Court gets another chance to review it.

We have seen one other such suit, and I think we haven't seen many more because I think the plaintiff's bar is being quite tactical about it, in holding off filing suit until the U.S. Supreme Court makes a decision, because I think they recognize that if there was an onslaught of these cases then the U.S. Supreme Court would step in.

I think it's very fair to expect that, putting aside even the notion of nuisance suits, there will be more. I agree with Paul's comment, that this is the opposite of esoteric because it really does affect all statements on every environmental, labor, and community issue – everything that goes to a corporation's notion that it is a good citizen which is, as I understand it, an emerging element of public relations, and one that has the collateral benefit that if corporations want to paint themselves as a good corporate citizen, then they're going to need to be good corporate citizens. So we may see an unfortunate side effect there as well.

> "(The California judgment) is very much unlike anything that the U.S. Supreme Court has deemed to be commercial speech in the past."
> *– Goldstein*

To get to the participant's first question on exactly how will this damages remedy work: it's simply unclear. There are going to be all kinds of economic models for allegations about how people are induced to purchase Nike's products on the basis of a sense that it was an ethical corporation. I think it will be very difficult for the trial court to separate out one statement that's made in a letter to the editor of *The New York Times*. I think it would have to be on a larger scale, or a cumulative effect of multiple statements.

I think that even if the court said, "I just don't know how much money I'll require you to disgorge," just as troubling is the idea that Nike would be required to engage in this campaign of corrective speech. Then, of course, the plaintiff will have prevailed and Nike would be required to pay not just its own attorney's fees, but the attorney's fees of the other side. So we're now talking several additional million dollars.

Clarke
My understanding is that 20 lawsuits have already been filed under the California false advertising statutes in connection with the Saipan child labor cases parallel with federal actions brought under the Alien Tort Claims Act. Can you comment on that, Tom?

Goldstein
That's actually the one lawsuit that I was referring to. Yes, that's absolutely right. A number of major apparel retailers were sued not only for their practices on Saipan, but for their statements regarding their practices on Saipan.

Holmes
Any other questions from listeners?

Coordinator
We have a question from Frank Ovaitt. Please go ahead.

Frank Ovaitt
Actually I have two. One I think probably for Kirk and for Tom, and the other for Paul. The first one. There was reference made to securities laws and the care with which we have to make our financial communications. Accepting that that kind of protection is a good thing, nevertheless it clearly has not had the impact intended if you look at the experience of the last few years. The question is will this, in fact, be about the same as that in terms of the effect it has on what we say, how we say it, how we get it approved in the first place or will it be far worse than that? That's the first question.

Second question for Paul. A really cynical reading of the industry's view in this could be that what we're fighting for is our right to lie. I was concerned that might be a little too extreme, except it turns out that one of your competitors in the PR publishing field actually has an op ed from a member of PRSA, who is arguing that PRSA should not be involved in this because here is something that clearly serves the interest of some of their members, being the corporate members and the agency members, but nevertheless that this ruling is in the interest of some of its other members; i.e., non-profit members who are involved in social issues of one sort or other. So I'd just be interested, Paul, in any observations you may have on that.

> "The reason this decision is going to chill free speech is that it creates too great a risk of liability. It goes too far in saying that you have to be absolutely certain of the accuracy of your remarks in order to speak."
> *– Goldstein*

Holmes
My reaction to that was twofold. First, as I think this discussion makes clear, you don't actually have to lie in order to fall prey to the statute. As an example, I was talking to somebody who is a member of a PR watchdog group about this, and the subject of BP's corporate advertising came up. They're running an ad right now, it's on a billboard just outside my office building here in New York, that simply says "Solar and natural gas, wind, hydrogen, and, oh yes, oil."

It's part of their campaign to show that they've diversified beyond simply being an oil company. His claim is that the ad is thoroughly misleading. There's nothing in there that one could say was an actual lie, but certainly it could be interpreted as saying that oil is now only a small part of BP's activity when in fact it's the lion's share.

So the first thing is that this is not simply about the truth. The second thing is that intellectually I've been a huge opponent of, for example, veggie-libel laws that say that you can be sued for slandering asparagus if you go on a TV show and say it's not safe, the way the Texas cattlemen sued Oprah, for example, after she said she'd never eat beef again.

There are a lot of subjects, whether it's food safety or environmental performance or labor laws, that I'd much rather see discussed, debated, and decided upon by the public than ruled on in a court of law.

Just quickly before I turn the other subject over to Tom, there is a big difference, it seems to me, between the litigation and the financial securities arena in litigation here, which is that financial information has to be disclosed by law. So the potential for securities lawsuits to suppress financial communication is not that great. The potential for this law to suppress issues-related speech is much greater.

I suspect that there are a lot of people in Corporate America who think that putting out social responsibility reports, and otherwise pandering to consumer and environmental activists, is a waste of the company's money anyway. This law is going to embolden them to say, "See? It's just stupid to try and take any kind of leadership position on this because it's the people who are in the leadership position who are sticking their necks up above the parapet who are going to be the first ones to get shot at." I think it's a very different situation than securities litigation, but, Tom, you may have a different or broader opinion on that.

Goldstein
No, I have little to add. I would say on the second question, which Paul addressed first, just to come back to the point that I think is important. That is, Nike does not claim that its statements are immune from liability, or that that ought to be the law. (Incidentally, it doesn't have to be a corporation but could be any people who sell products.) Rather, Nike's point is that they cannot be held strictly liable. Or if the speaker is reckless about the truth of his statements, then it can be held liable to anyone who is harmed.

On the question of the relationship between this model of liability to what happened in the securities area, I do think that there is the possibility that you're going to end up with corporations only willing and able to engage in these sorts of discussions and statements when accompanied by the kinds of details and disclosures that we now see in the securities context, in which they are grossly over-lawyered and seriously interfere with anybody actually learning anything at all substantive.

Paul is certainly right that if we had a legal regime requiring CSR reporting, then the chilling effect of this decision would be much less. First, the market force that's exerted by the possibility of liability would not overbear the desire to disclose information because disclosure would be required. Second, if there were a federal requirement to disclose this information, it's very unlikely that state law could give rise to liability because it would be preempted, much like we see in the securities area now.

I don't still think that anyone honestly believes this form of liability is a good thing. I think that's true even for those who are environmental community activists who want to see corporations engaged and want corporations to see that they can succeed in the marketplace better when they engage in and talk about their good practices.

> "There is an absolutely principled and ideologically consistent point to be made that as public relations people we ought to believe the disagreements about issues should be settled in the political and public domain rather than in the legal domain."
>
> *– Holmes*

I do think that this was a best-intentioned effort to accomplish that result.

The question is whether that effort fails by tilting the scales entirely in one direction in favor of liability by using this – what Peter points out is a criminal misdemeanor – by imposing strict liability, even for innocent mistakes, by imposing liability for even truthful statements that are deemed misleading, by not using government regulation, as in the securities context, but putting it in the hands of private people and conceivably private plaintiffs' lawyers who have other interests and goals than the government would. The question is whether or not things have just gone too far.

Clarke

I can actually comment specifically about BP. Obviously, BP is a British company and listed on the U.K. exchange. This is a scenario where the Kasky decision is far more serious for BP, from a securities law point of view, than any U.S. counterpart. In the first instance, BP and other companies are rated and included in the FTSE4Good Index so they are part of a corporate social responsibility stock exchange. To the extent that they have to put out information in their U.K. filings, there will be an impact of this California decision on BP's appearance to its analysts and its U.K. investors who look at the FTSE4Good as a way of measuring BP's environmental track record. So there I see a train wreck between BP's obligations domestically and its operations in California.

I'd also like to add there are many French companies who are required by law to, as I said earlier, disclose to the French exchanges their social, environmental, and other policies, and those companies are going to seriously consider, to the extent they operate in the California market, a diminimous disclosure under their French securities regimes in order to balance the minimum disclosure required to investors against a potential liability in California So I would say certain EU companies are prejudiced by this decision.

Holmes

Let me just add one more element to my response to Frank's question because there is some unfairness in terms of supporting Nike and corporate members of PRSA, and not supporting non-profit and all activist members of PRSA. I don't think that's entirely a spurious issue. What I would say to those people is that rather than not supporting Nike, I would have liked to have seen the PRSA and other trade associations step forward when some of the laws that were designed to chill corporate critics were being passed, and making the same case that they're making now. There is an absolutely principled and ideologically consistent point to be made that as public relations people we ought to believe the disagreements about issues should be settled in the political and public domain rather than in the legal domain.

These issues are better understood and better solved when they're solved by the community at large through free and open debate than in a courtroom setting. So I don't think the answer is to not support Nike. The answer is to be a little more consistent when other issues come up that raise the same questions from the other side.

We have a couple of minutes left so what I'd like to do is just ask each of the panelists if they have any closing comments or remarks that would clarify some points that we've gone over or cover some ground that we've missed. Do you want to go first, Kirk?

Stewart
I don't think I have too much more to add. I think it's been an interesting discussion, and I think we have gotten the major issues out on the table. I think that again, just to go back to the question that Frank asked, and that is that if people view this ruling as nothing more than us trying to fight for our right to lie, they clearly do not understand the ramifications of this decision.

The second point I would make is that I think, Paul, your points about supporting all organizations faced with First Amendment issues are valid. The thing I would add is that I know there's been some celebration in the NGO community over this decision in California, but what I would say is be careful what you wish for. Some NGOs that I'm aware of also sell products and services in the state of California, and they are just as subject to this ruling as we are. So I think the celebration in that community is a result of not fully understanding the ultimate ramifications of this ruling for every organization, not just for corporate speakers.

Clarke
My view is that this decision significantly impacts corporate social responsibility reporting in Europe, where the movement is more in favor of "soft laws" for voluntary CSR reporting, recognizing that it takes years to implement across a supply chain effective CSR reporting. So we are very troubled by this decision.

> "My view is that this decision significantly impacts corporate social responsibility reporting in Europe."
> *– Clarke*

Holmes
Finally, Tom, maybe I'll ask you one last question, which is to give me your best, presumably very educated guess on where the U.S. Supreme Court is likely to come down on this and when?

Goldstein
Much will turn on what Kasky has to say on Friday, which is when he gets his briefing in, and what our *amici* have to say on our behalf. There will be many *amicus* briefs on our side urging the U.S. Supreme Court to take the case, including a prominent brief by PRSA, Arthur Page, and others, and hopefully a group of European institutions that we're trying to put together in the short term.

Holmes
The ACLU is still onboard?

Goldstein
The ACLU does not participate in U.S. Supreme Court cert. petition *amicus* briefs. They have a pretty blanket policy about that. So, while they supported us below and will support us if the U.S. Supreme Court grants cert., they won't participate at this stage just because it's their general policy.

So Kasky may have some brilliant arguments. He has obviously excellent lawyers and so we'll have to see. Anticipating what we'll see in that brief and what we will see in our *amicus* briefs, I think that I would put odds at somewhere on the order of 70 percent of the U.S. Supreme Court will agree to take the case – somewhere between 50 and 70 percent.

Clarke
Can I quote you on that, Tom?

Goldstein
Absolutely. You can take it to the bank for the good it'll do you. The Supreme Court will meet, assuming that Kasky does not take an extension, the justices will meet on December 13th to decide whether to hear this case and many others, of course. They will either make an announcement on the afternoon of December 13th or the morning of December 16th. If they do hear the case, it would likely be argued in either late-March or mid-April, as Kirk was suggesting, with the decision in late June. I would say that the odds are – and I think that even Kasky's lawyers would say this – that the Supreme Court will take the case and they will reverse, but we are certainly a long way from being at that point.

Holmes
Okay. Thank you very much, gentlemen. Thank you to those of you who tuned in to listen to this. We appreciate the questions. Maybe you'd like to wrap up, Paul.

Basista
Thank you very much. I would like to thank our panelists for a very lively and informative discussion this afternoon, and thank our members of the Page Society who joined us today. I'd also like to once again thank AT&T for under-writing this call and underwriting the calls we've done in the past. Until the next time we meet, thank you all very much.

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Arthur W. Page Society
32 Avenue of the Americas – 6th Floor
New York NY 10013
Phone 212/387-4259
Fax 212/387-4028
www.awpagesociety.com

Paul Basista, CAE
Executive Director

Diana Maureen Delgross
Administrative Coordinator

Arthur W. Page Society Journal
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Editors: Edwin F. Nieder, Patricia K. Nieder
63 Highland Avenue, Montclair NJ 07042
Phone/Fax 973/744-6772
E-mail: nieders@comcast.net

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