SECURITIES AND EXCHANGE COMMISSION
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AN ADDRESS BY

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ASSOCIATION OF THE BAR
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Some 20 years ago, I was detailed from the law firm for which I then worked to serve as acting counsel for a brand new public transit authority created to purchase two private bus lines. My job was to approve each check until a new set of guidelines could be written.

Within two weeks I had a call from a state legislator who demanded his "regular" check (He had learned that I had disapproved a check made out to him). I said that a public authority could not make the same political contributions that the private companies used to make. He snapped back incredulously

"You read your books again, Sonny."

"The law may say you don't have to pay taxes anymore."

"But you still have to pay us."

Such marvelous training it was for the weekly releases we now make at the SEC.

Each day the papers, Congressional committees and newscasters parade a series of corporate misadventures contained in filings made with us before a public which now gives the American business community a credibility rating of only 19%. Since most of us live in, around, or off of the business community, it is good that we put these recent disclosures in a framework that can be dealt with in a meaningful fashion.

What, have we found?

What, if anything, has changed as a result of the disclosures?

What kind of further change is needed?

- - New Laws

- - New Lawyers or

- - New Business Leaders?

How do we judge SEC action to date:

- - Too Tough,

- - Too Soft,

- - Too Naive, or

- - Too Vague?

and finally,

What are the implications of all of this to the capitalistic freely competitive democracy that we believe we have?

WHAT HAVE WE FOUND

The record to date can be expressed in painfully simple terms. Approximately 80 publically owned companies have voluntarily or involuntarily disclosed corporate payments of a questionable nature. The total sales of these companies are about $225 billion and they include about 60 of the so-called fortune 500 companies.

The extent of the questioned practices varies substantially with each corporation. Some corporations paid millions of dollars each year. Other corporations made far smaller payments. Some payments were clearly designed to cause illegal actions by government or business officials; some were to persuade persons to do the job they were supposed to do without “tips”. Some were authorized, or at least known of, by top corporate officials who deliberately permitted corporate books to be distorted, to deceive outside directors, lawyers and accountants and shareholders; others were carried out by low-level officials, either in violation of general corporate policy or under corporate

procedures that carelessly permitted the practices to continue and grow. Some were intentional and vulgar examples of corporate arrogance, some resulted from careless disregard of elementary standards of responsibility and others were the result of boyish intrigue with the lure of mysterious and supposedly potent foreign agents.

Further disclosures surely will be made in the near future as we complete the proxy season, as corporations submit reports to their shareholders and seek the election of the directors. Additional voluntary disclosures can also be expected in the annual 10-K reports of companies.

WHAT HAS CHANGED

What good have these disclosures done? Well, again in simple terms, I can assert with some assurance and only minor exceptions, that the 80 some companies reporting questionable payments to date, have taken effective action to stop them. Most have completed investigation of their past actions and have installed workable guidelines to prevent repetition. The remarkable report produced by the Gulf Oil Committee chaired by my distinguished co-speaker underlines the success of our program. The report states with eloquent certainty

> "The reality is that the long practices of illegal corporate contributions by Gulf is effectively at an end."

You may ask, as has Congress, have these companies made sufficient disclosure -- have we gotten to the bottom of the problem -- and is their conversion permanent?

No one can be sure, but I am persuaded that we have the tools and American business has the will, to cause a permanent change in methods of doing business abroad.

Accounting firms now make far greater efforts, and independent directors now recognize far better their obligation to inquire into such matters. A large percentage of publically held companies now have audit committees of outside directors that meet privately with the outside auditors.

Most important, the Commission's Enforcement Division has the capacity to test the depth of the disclosures from time to time and from company to company in such a manner as to give us assurances that the disclosures will be sufficient.

When we look back on this filing season in a few months we will see, I believe:

- - Something over one hundred large companies that have disclosed past practices of making questionable or obviously illegal payments here and abroad.

- - Substantially all of them will have firmly declared their intention to stop such practices and will have either codes of conduct or instructions to their auditors that will effectively enforce the cessation.

- - A few companies will disclose their intention to continue some kinds of payments. Most of those will be so-called "facilitating or "grease" payments to cause public or private people to do what they are supposed to do anyway.

- - Probably, but not necessarily, these payments will not be large and probably no significant amount of business will depend upon them.

- - A few will proclaim their intention to continue to bribe for licenses or to violate local laws and their excuse will be local custom.

- - Sadly, we must know that there will still be some who will not disclose, and we will, therefore, have more enforcement actions from time to time.

Where the practices have stopped and where we can be satisfied with the depth of the company's study of its past practices, there should be little concern over the type of disclosure required so long as past practices are at least generically displayed.

Where we are uncertain of the study we will order further investigation by our enforcement decisions. Where the disclosures are both full and voluntary there is little need for further SEC action.

Where the disclosures are involuntary, as they were in Gulf Oil, the integrity of the investigation and of the commitment to stop past practices will be backed up by civil injunctions obtained either by consent decrees, as in Gulf Oil, or by litigation.

Where a company persists, for what management and its board has decided is good reason, in making payments of a questionable nature, we will require some form of disclosure. The extent of that disclosure will depend on the materiality of the transactions and the nature of the business objective.

WHAT FURTHER CHANGES OR LAWS ARE NEEDED

Are there good reasons for any of the new laws now suggested in Congress or elsewhere? I doubt it. Perhaps, a law imposing greater and more automatic civil and criminal sanctions for corporate officers who direct or permit false records to be kept is needed. But, if my assumptions as to what is happening now are correct, we can correct the deplorable practices we have seen with the tools we now have.

Surely, we will not pass a law that prohibits American companies from violating foreign laws. Each of us who know the difficulties of understanding the federal, state and local laws of this country appreciate how fool-hardy it would be to attempt to make our agency and our courts understand and enforce laws are applied elsewhere in the world.

Whatever urge there may be now for new laws and whatever their merit, Congress will, I trust, wait for new laws until we can provide an overall report of what we have found.

What about the lawyers? Obviously, much of what we now see has been suffered to continue by inside and outside counsel. But here we can only stress that if lawyers wish to preserve their stature in our society they must do more to preserve their independence from clients. How much longer will it be, for example, before our profession recognizes the inherent conflict that is created when a lawyer serves his client both as a director and as corporate counsel?

The sad fact is that accountants have worked far harder at preserving their capacity to give independent advice than have we.

Finally, should government force the resignation of top management that has permitted serious political bribery to occur, as has been suggested by political leaders and some commentators? The answer again is no. But how long can that answer stand if large corporations do not preserve in the composition of their Board of Directors the realistic capacity to change top management?

A board's primary responsibility is to make certain it knows what is happening in the company and to ask itself each year whether it is time for a change. I suggest that stockholders in particular and the public generally have the right to demand of large complex corporations that the decision as to whether to keep or replace management be made by responsible persons who have sufficient independence from management – as a practical matter – to make that decision.

In too many cases, we find boards dominated by present and former employees.

HOW DO WE EVALUATE THE SEC POSITION TO DATE

There are widely different opinions about what we are doing. Last week I received a handwritten note, purportedly from a state circuit judge. It said:

> "I read your bureaucratic blurb in the Wall Street Journal today (about foreign payments). You are out of your mind. Stockholders don't give a good damn."

He quotes from a recent article by a noted columnist who says that these corporate officials

> "Are being shaken down. They were told greasing the palms of local bigwigs was a necessary condition of doing business."

"No tickee, no laundry," is the quaint, but I think offensive, phrase that the judge and the noted columnist use to describe the purpose of all corporate bribery abroad.

We, of course, always appreciate short cuts to getting at the evidence and if the whole problem is that simple -- we can save ourselves a lot of troubles, but I suggest the facts are far more complicated.

Look at the Lockheed case because that was the focus of the columnist. He says the Japanese Airline decided to buy some new planes. Lockheed, Douglas, maybe Boeing, and maybe a French concern were competing. The columnist said that Lockheed had to give $333,000 in bribes to get the business. But what would have happened if none of the American companies had offered a bribe? Does he know whether the others were offering bribes? Does he know whether the offer or the solicitations came first? Lockheed board members say they didn't know.

We only know that the Lockheed stockholders did not know and we do know that our relations with a major country are jeapordized by the unilateral and secret act of some company official.

Is it too naïve or too tough to say that our country's security should not be left to such secretive conduct?

We have after all the largest, strongest and most competitive business organizations in the world. If these companies renounce bribery will West German, French, English or even Russian companies risk the scandal of perpetuating them?

I submit that I do not see the hard evidence that American business will lose major contracts abroad to other countries if they compete with price and product along and give up bribes and grease.

I also submit that those who have bribed have been unwilling to prove their case to their own boards, and I will guess that most bribes have been the foolish, ineffective, wasteful nonsense of poor management unwilling to accept the risk of true competition.

There are, however, good grounds for those who claim our rules about questionable payments are too vague -- that disclosure of minor, even trivial and legal foreign payments are overwhelming filings now being made with the Commission. Indeed, some newspapers accurately report some disagreement among the five of us who are commissioners as to how to deal with some factual situations.

Since it is still not clear to me how to deal with some categories of payments and to decide what degree of disclosure should be displayed, I can only plead guilty to the charge of uncertainty.

But unlike many of the uncertainties perpetuated by our commission and by so many governmental agencies, I have confidence that we shall be able to provide better guidance in the near future. We have undertaken to report to the Senate Banking Committee on the results of our action soon after the present peak of the filing season has passed. Through this report and other means we will meet our obligation to provide clearer guidance to the business community.

WHAT ARE THE IMPLICATIONS OF ALL THESE DISCLOSURES FOR OUR SOCIETY

Confidence in our business community and its capacity to compete fairly has been badly shaken, perhaps destroyed at least temporarily. We must -- for this reason alone -- as a government and a society, condemn bribery anywhere. If bribery will get a contract for a manager in a foreign country, and if he is permitted to try it: Who will be convinced that the company that bribes abroad will compete fairly at home.

Disclosure alone cannot restore confidence in our institutions. Indeed, disclosures carried to an irrelevant degree would only obscure its true value, but the discipline of disclosure will be a power catharsis for much of our present cynicism.

We are face to face today with the disagreeable fact that too many of our people in government and out do not believe in our free-enterprise, capitalistic system; because they do not believe it's competitive, they do not believe it's free, and the word "capitalist" sounds like another one of those fellows who won't tell the truth.

Different people will understandably react in different fashion to what we now see. Some will condemn all of American business, others may deplore the revelations as self-flagillation in a world that needs a strong America.

I take the middle ground. As disheartened as it is to see how some firms have intentionally or negligently done business abroad, I prefer to be optomistic about the way in which American business will respond.

We will, by any standard, continue to have the best business community in the world and when this saga is complete, I trust that both the Congress and the people will have a better opinion of the ability and willingness of that business community to compete fairly.

That private industry spurred by the SEC can right the wrong is dramatically evidenced by the remarkable Gulf Oil report.

Allow me to leave you with a quote from recent comments by an Ivan Hill of North Carolina:

> "The predominance of honesty throughout a free society is essential to justice and to the effectiveness of law. Without an overwhelming pattern of honesty among its citizens, a free society cannot function and becomes unmanageable. We should know that without a high degree of honesty, government will be expensive and inefficient. We have already seen the effects of the law of the seesaw -- when honesty and ethics sink down, centralized authority and coercive regulations rise up."