UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA	§	
VS.	§	**CR-H-04-25 (S-2)**
RICHARD A. CAUSEY	§	
JEFFREY K. SKILLING	§	
KENNETH L. LAY	§	

KENNETH L. LAY'S PROPOSED SCHEDULING ORDER

To the Honorable Sim Lake:

Proposed Schedule. By separate and formal motion Mr. Lay has requested a speedy trial. To that end, he also offers to **waive a jury** (Rule 23) and **forego reciprocal discovery** (Rule 16) in order to move expeditiously. (In addition, for reasons argued below, he has filed Motion for Speedy Trial, Motion for Severance and Relief from Prejudicial Joinder and Memorandum in Support Thereof and Motion to Waive Trial by Jury.) He suggests **September 14, 2004** as a firm trial date. He requests that the President's Task Force respond to his motions (filed on August 9th) within seven days of the conference, *i.e.*, **August 18, 2004** and that a hearing be held expeditiously in order to complete all pretrial matters. Further, he suggests that compliance with local rules governing marking of exhibits and exchanging of pedagogical devices be done at the

Court's pleasure but in no case later than **September 10.** Total length of trial will be a function of whether the President's Task Force has nerve enough to join Mr. Lay in his jury waiver request. It, of course, has a right of veto. Since a fair fact-finder is the *sine qua non* of a fair trial, and because an uncontaminated jury will be difficult to achieve, Mr. Lay urges the President's Task Force to seriously consider his suggestion that we forego a jury and get immediately to the issues. Without a jury, the *total* case could be tried within three weeks; with the attendant complications of a jury, the trial would require closer to eight weeks.

Why this proposed order is superior. ***(Equities)*** On the day this second superseding indictment was unsealed the Attorney General of the United States (acting), supported by FBI Director Mueller, SEC Director Thompson and IRS Commissioner Everson unburdened himself, in pertinent part, as follows:

> COMEY: Good morning, folks. Today we announce *the most significant charges to date* in the historic investigation into the collapse of Enron. This investigation began in January of 2002, just weeks after the company collapsed of its own weight, *like a house of cards.*
>
> Enron as you know, had a spectacular *fall from grace*, becoming *one of the largest and most highly touted companies to collapse in the wave of corporate scandals* that we've seen over the last two or three years.
>
> Now a federal grand jury in Houston has indicted the former chairman of the board of that company and its former chief executive officer Kenneth Lay and *charged him with a variety of crimes related to the phenomenal collapse of that one-time energy giant.*
>
> The Enron investigation, which is the most prominent among the investigations being *overseen by the President's Corporate Fraud Task Force*, is also one of the most complicated and challenging matters that we have dealt with.
>
> Since January of '02 *we at the Justice Department have worked tenaciously to pursue the wrongdoing at Enron that resulted in so much harm to so many individual*

> *investors and did so much harm to the confidence of the American public in our markets.*
>
> This investigation we believe has served to *reestablish the rule of law, that no one is above the law...(emphasis supplied)*

Seized in a fit of self-laudatory triumphalism and unable to determine whether he was announcing an indictment or holding a political rally, the Attorney General of the United States (acting) decided on the latter and continued:

> ...the collapse of Enron was devastating to tens of thousands of *innocent people who lost their jobs.* Beyond that, that collapse, perhaps more than any corporate scandal we have seen in this country, shook the *confidence of ordinary Americans in corporate America.*
>
> *I wish we could bring back the jobs and the savings, but we can't.*
>
> What we can do, and what the *President's Corporate Fraud Task Force* has set about to do for two years—*it's second anniversary being tomorrow—is to work like crazy* to make sure that those who commit crimes are brought to justice and that people hear about it and learn about that justice, in an effort to *restore public confidence*, not just in the markets, but in *what we do for a living* in the criminal justice system.

* * *

General Comey (acting) concludes,

> And we also thank FBI Director Bob Mueller and our friends at the Securities and Exchange Commission who are here today and the Internal Revenue Service for their usual *outstanding contributions* to our work, our joint mission *to bring corporate criminals, corporate crooks [Mr. Lay] to justice in this country.*

Well, yes, but not quite. One more thing is needed. A trial.

Earlier that morning the President's Task Force had arranged to have Mr. Lay photographed in handcuffs, which created a loop of videotape as a backdrop to General

Comey's remarks. That loop of tape has been run hundreds of times throughout the city, state and nation. Although all the professionals—journalistic, legal and law enforcement—know the "handcuffed tape" to have been a stage-managed political contrivance, it made boffo show biz. In a word, the entire morning was political showmanship in its fullest, most florid flower, filled with bluster and bombast performed by the highest political law enforcement officials in the Administration accompanied all the while by cut-aways on television to the loop of tape. It was a great triumph in news management, and a fine day for the Administration.[1] The once proud traditions of the United States Department of Justice may, however, have seen better.

But, as observed by that great American philosopher John Unitas, "Words are cheap." According to the President's Task Force, Mr. Lay has one hundred seventy-five years in prison at stake. But the Attorney General (acting or not) speaks for the nation and when he misspeaks the people deserve to know. Thus, on his side, and on the side of the President's Task Force, a matter of national honor and credibility is at stake. If in fact "the rule of law" is in jeopardy, if in fact there is a "crisis of confidence" in corporate America, if in fact there is a need to "restore public confidence", then what is

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[1] FBI Director Mueller's remarks were outstanding: "...a devastating loss to tens of thousands of people...the *public confidence* in corporate America was shaken *as a result of this case.* ...I am confident that we can *restore the public confidence* in the public markets that are so important to America's future."

SEC Deputy Director Thompson observed that the "...President's Corporate Task Force which celebrates its second anniversary today [has demonstrated that] just the mention of the name Enron *evokes images of duplicity and greed.*"

IRS Commissioner Everson was able to contribute "but the corporate culture of Enron *guided by Mr. Lay* is now synonymous with corporate fraud and greed at its worst. And Enron's crooked "E" logo depicts the corporate management team at Enron—crooked."

A skeptic might wonder whether these remarks were made in aid of a dispassionate prosecution of crime or as part of a political campaign.

needed is more than a speech loaded with platitudes and a contrived piece of tape; what is needed is more than the secret deliberations of a Grand Jury which provides for neither cross- examination nor public exposure nor rules of evidence nor judicial supervision and certainly does not provide for appearance by opposing counsel. What is needed is a public trial, in which both sides can be heard and issues contested before a Court in broad daylight.

Mr. Lay, aware of all that is at stake, points out to the President's Task Force that if both sides disenthrall themselves of *unnecessary* entanglements and encumbrances of criminal procedure—if they are willing to act as well as speak—then such a trial can be had sooner rather than later. Will the President's Task Force join him in a timely trial?

Why this proposed order is superior. (Realities) One who doubts, after the performance of the various political appointees cited above, that Mr. Lay was added as a trophy defendant has but to examine the structure of the latest iteration of the indictment. To a trained and skeptical eye, it is but a strained, stretched and jury-rigged instrument which "trailer-hitches" Mr. Lay to a pre-existing pleading. The sutures are clearly visible.[2] Rules 8 and 14 exist for a reason. One tap of the judicial gavel will separate the pleading into its discreet, tightly circumscribed constituent parts. It does not, in fact, contribute to judicial economy when Messrs. Causey and Skilling are called upon to pause their trial concerning the collapse of Enron while Mr. Lay defends alleged "Reg-U" violations in connection with an entirely separate and private banking

[2] Mr. Lay's counts overlap those of Messrs. Skilling and Causey only three of fifty-three times; with Mr. Skilling, but one time in fifty-three. In time, Messrs. Skilling and Causey's allegations stretch over one hundred and two weeks; Mr. Lay only seven weeks. Mr. Skilling and Mr. Lay share no overt acts.

transaction.[3] It is not "in the interest of justice" that Mr. Lay, accused of minor, collateral and tissue thin offenses be forced to await the conclusion of Messrs. Causey and Skilling's proper and necessary struggle for appropriate discovery. The President's Task Force cannot be heard to argue that they are able to hide behind the legitimate needs of Messrs. Causey and Skilling in order to avoid trial in what the Attorney General (acting) has said are the "...most significant charges to date...". Mr. Lay was the Chairman of the Board and Chief Executive Officer of Enron. He requests, as he should, to go first. He wishes to invoke his Constitutional right to a Speedy Trial. He is ready for trial and his lawyers are prepared.[4] The President's Task Force should not be permitted to avoid their duty to enforce the Speedy Trial Act by the device of tacking Mr. Lay onto the tail end of a potential mega-trial. The lawyers for the President's Task Force must have read Rule 8. Why did they commit a calculated and deliberate misjoinder if not to avoid, indeed, hide from their clear duty? Even the appearance of political contrivance must be avoided and the way to do so is clear—by an open, public and expeditious trial. Unique cases call for unique remedies. In this case only severance of parties will resolve the tensions and contradictions referred to above.

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[3] Remarkably, although "Reg-U" has been on the books since the Great Depression, there are no reported cases using it as the foundation for criminal charge pursuant to a 18 U.S.C. 1344 violation and only one, unhelpful case involving Section 18 U.S.C. 1014.

[4] Always assuming that the President's Task Force complies with their *Brady* obligation in a timely fashion.

Respectfully submitted,

MICHAEL RAMSEY
State Bar No. 16521000
2120 Welch
Houston, Texas 77019
713-523-7878
713-523-7887 (Fax)

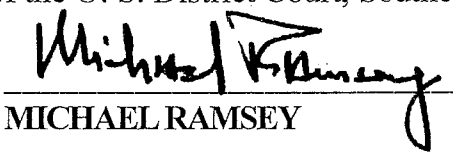
S/
BRUCE W. COLLINS
State Bar No. 04604700
CARRINGTON, COLEMAN,
SLOMAN & BLUMENTHAL, L.L.P.
200 Cresent Court, Suite 150
Dallas, Texas 75201
214-855-3000
214-855-1333 (Fax)

S/
GEORGE McCALL SECREST, JR.
State Bar No. 17973900
BENNETT & SECREST, L.L.P.
808 Travis Street, 24th Floor
Houston, Texas 77002
713-757-0679
713-650-1602 (Fax)

Attorneys for Defendant,
KENNETH L. LAY

CERTIFICATE OF CONFERENCE

The undersigned counsel conferred by telephone with Linda A. Lacewell, Special Attorney, Enron Task Force, who opposes this Proposed Scheduling Order; however, attorneys for Mr. Skilling and Mr. Causey do not oppose, so long as severance is granted. *See* Cr.L.R. 12.2 of the U. S. District Court, Southern District of Texas.



MICHAEL RAMSEY

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Proposed Scheduling Order was delivered to Linda A. Lacewell, Special Attorney, Enron Task Force, and all counsel of record on this 9th day of August, 2004:

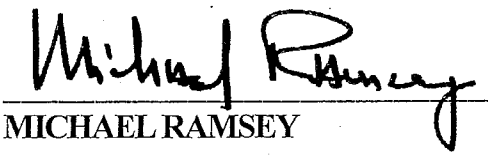
Linda.Lacewell2@usdoj.gov
Sean.Berkowitz2@usdoj.gov
Kathy.Ruemmler2@usdoj.gov
John.Hueston@usdoj.gov

Daniel M. Petrocelli
Mark Holscher
O'MELVENY & MYERS, L.L.P.
1999 Avenue of the Stars, 7th Floor
Los Angeles, CA 90067-6035

Ronald G. Woods
5300 Memorial, Suite 1000
Houston, TX 77007

(Attorneys for Jeffrey K. Skilling)

Reid H. Weingarten
Mark J. Hulkower
STEPTOE & JOHNSON, L.L.P.
1330 Connecticut Avenue, NW
Washington, D.C. 20036
(Attorneys for Richard A. Causey)



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ORDER

NO ORDER NECESSARY FOR THIS FILING.