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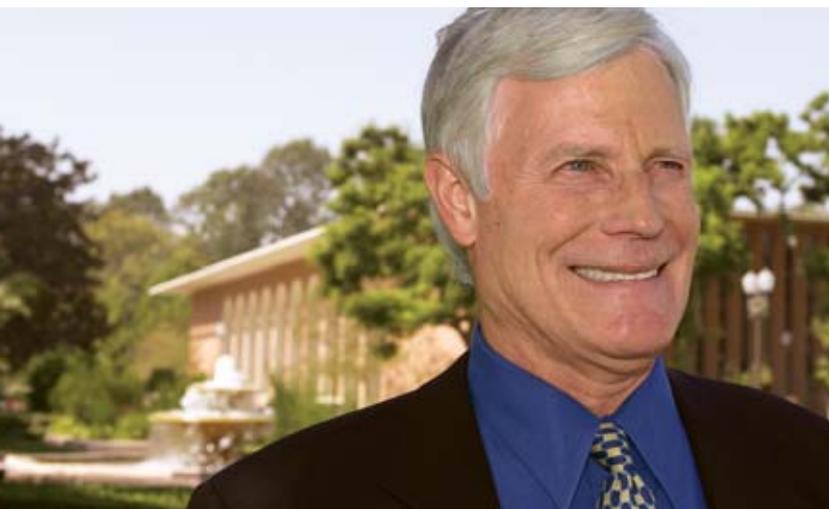
Students in a corporate ethics course hear first-hand accounts of the decade's biggest scandals from a top-notch instructor and impressive guest speakers

Lessons learned the hard way

By Gilien Silsby

When USC Law student Sven Kaludzinski enrolled in "Understanding the Enron Era: Lessons Learned," he knew the class would be a unique experience. One look at the course description proved that.

Still, nothing prepared him for what he would learn — or who he would encounter — during the 14-week course taught by Robert Fairbank, a highly respected attorney retained by the Regents of the University of California to consult in the Enron, WorldCom, AOL/Time Warner and Dynegy securities fraud cases.



Bob Fairbank

Launched in 2004 at the height of the Enron securities scandal, the course focuses on corporate ethics and, during the semester Kaludzinski took it, followed the daily legal proceedings of the former energy giant, which crumbled into bankruptcy proceedings in late 2001 after years of accounting fraud. The course also has examined the collapse of several other corporations that met similar fates.

“No two class sessions were ever the same,” says Kaludzinski, who took the course this spring. “Whoever was lecturing on any given day was likely the best in their field. Hands down, it was the best class I have taken at USC Law by a long shot.”

Often, even the instructors didn’t know exactly how the course would unfold. But semester after semester, the 25-student class has witnessed first-hand what happens when executives have lapses in ethical judgment and how poor decisions can spin out of control.

“We watch the news on a daily basis and design our course in response to what is exploding,” notes Fairbank, who for the first two years taught the course with Rock Hankin, an investment banking and damages consultant for the Regents. “We wanted to do this class differently. We wanted to bring in the best people in the field and teach it as it was developing.”

That meant no textbooks, no set syllabus — simply lectures delivered by a Who’s Who of securities fraud litigation. Students

have heard from investment bankers, judges and attorneys, including Bill Lerach, lead attorney in the Enron case; Joe Cotchett, lead attorney in the Homestore.com case; Marshall Grossman, who represented Arthur Andersen in a major fraud trial; and retired federal judge Lawrence Irving ’63, also consulting with the Regents in the Enron case.

In addition to legal analysis of the issues, the speakers discuss investment banking elements, accounting components, and governance concerns associated with the collapse of several multinational companies.

Reading assignments often are just-released plea agreements, legal analyses, recent court decisions or articles from the day’s *Wall Street Journal*.

“QUITE A COUP”

Fairbank and Hankin themselves are well-known names in corporate law circles and have impressive credentials. According to USC Law Dean Edward J. McCaffery, attracting them to USC Law was “quite a coup.”

“One of the most important things we do is teach our students about law and corporate ethics,” McCaffery says. “We have some of the best people — right from the frontlines — helping students see that.”

The course initially focused on Enron, but as corporate accounting scandals grew, Fairbank and Hankin expanded the class to look at such companies as WorldCom, Homestore.com and AOL/Time Warner.

Because Enron is nearly resolved, the course name will be changed to “Major Corporate Civil and Criminal Fraud: Lessons of Enron” when it is taught next, in spring 2007. Today, Fairbank is the class’ sole teacher, although Hankin continues to be a guest lecturer.

The course was developed after Hankin casually mentioned to USC President Steven B. Sample that he and Fairbank were consulting on Enron for the Regents.

FROM THE FRONTLINES

Past and future speakers in the USC Law course “Major Corporate Civil and Criminal Fraud: Lessons of Enron” include the following:

Terry Bird

- Criminal defense attorney and trial lawyer in Homestore.com, Qwest, L90 and Salomon Smith Barney

Joe Cotchett

- Class action plaintiffs’ attorney and trial lawyer in Lincoln Savings & Loan and Homestore.com; large institutional plaintiff’s attorney in Enron and WorldCom

John Emshwiller

- Co-author of *24 Days: How Two Wall Street Journal Reporters Uncovered the Lies that Destroyed Faith in Corporate America*

Mark Epstein

- Defense attorney and trial lawyer in Disney/Eisner/Ovitz case

Doug Fuchs and Michael Wilner

- Criminal prosecutors in Homestore.com

Stanley Gold ’67

- Chairman of the USC Board of Trustees; president and CEO of Shamrock Holdings

Marshall Grossman ’64

- Defense attorney and trial lawyer in major Arthur Andersen trial

Rock Hankin

- Consultant to the UC Regents in Enron, WorldCom, AOL/Time Warner and Dynegy fraud cases

John Hueston

- Prosecutor for Enron criminal trial of Jeffrey Skilling and Ken Lay

Mark Holscher

- Defense lawyer for Jeffrey Skilling

Judge J. Lawrence Irving ’63 (retired)

- Head of team of consultants to the UC Regents in Enron, WorldCom, AOL/Time Warner and Dynegy fraud cases

Ken Klee

- Bankruptcy expert and member of Irving team in Enron and WorldCom fraud cases

Richard Koppes

- Corporate governance expert and institutional investor ex-general counsel

Bill Lerach

- Class action plaintiffs’ attorney in Enron and Dynegy; large institutional plaintiff’s attorney in WorldCom and AOL/Time Warner fraud cases

Martinn Mandles

- ABM Industries chief administrative officer and chairman of the board

Jessica Rigley Puathasnanon

- SEC attorney in Homestore.com

Robert Monks

- Author of *Corporate Governance and Power and Accountability*

“They were talking, and President Sample said this would be an ideal class for USC,” Fairbank says. “We made a proposal, and President Sample called to say it would be a great law and business class. We were given a lot of flexibility and decided to teach it in a very real-world way.”

Fairbank and Hankin taught the class by drawing from their personal encounters in the dot-com era.

“On tax day 2002, I got a call from a famous mediator — Judge Lawrence Irving,” Fairbank recalls. “He said the Regents may have a very interesting case for me to work on. That ended up being the understatement of the year.”

Fairbank was retained by the Regents as an independent consultant in the Enron class action. Irving and Fairbank ultimately created a multidisciplinary team, which included Hankin and Ken Klee, a prominent bankruptcy attorney. To date, the Regents have been awarded \$7.3 billion in settlements, the largest civil payout in history.

“The Regents oversee one of the largest pension plans in the United States,” Fairbank explains. “This was a tremendous assignment for a lawyer. We’re being paid hourly — we’re troubleshooting and figuring out where problems may arise. It was a different role than I’ve ever had in the past, but a wonderful role.”

THE REAL WORLD

One of Fairbank’s goals for the class is to give students a taste of the real corporate legal world.

In an end-of-semester assignment, Fairbank requires students to simulate a legal presentation to a corporate board of directors. The students come to class in business suits and are given 30 minutes to argue a corporate fraud case. The class plays the board of directors, and Fairbank is the chairman of the board.

“After we’ve spent the semester studying several cases, each team of four students is assigned a different corporate fraud case that hasn’t been discussed in class,” Fairbank says. “The overriding purpose is to work in a team to analyze a major legal problem and present it to a corporate client. All semester long, I bring in top people in the field who talk to students about this. At the end, the students themselves experience what it’s like to be a lawyer.”

The team project is incredibly time-consuming but worth it, according to students.

“I really liked the intersection of the corporate sphere with the legal world. By creating a presentation for a board of directors, I was able to build on skills I know I will use later in my career,” says Surjansu Kundu, a student who took Fairbank’s course this spring.

In a separate assignment, they also are required to write an individual analysis of an assigned corporate fraud case.

“I know the class is tough, but my goal is to prepare students for real-life situations and show that one ethical lapse can wind up in total destruction,” Fairbank says.

“I tell students to find what they love doing and to not worry about the resume so much or the money they’re going to make,” he adds. “My secret to getting exciting work is having enthusiasm and throwing your all into it. That also means walking away when you see something that may be lucrative but unethical. If you do good work, the resume always develops itself.”



From left: Joe Shew; Edward McCaffery, Shew and Bob Fairbank

FORMER HOMESTORE CFO TALKS TO USC LAW STUDENTS ABOUT PLEADING GUILTY TO SECURITIES FRAUD CHARGES

Looking back, his actions were truly egregious. But at the time — in 2001, when Homestore was at the top of the dot-coms — company CFO Joe Shew couldn’t see that.

During USC Law’s inaugural “Conversations with the Dean” speaker series Oct. 12, Shew and attorney Bob Fairbank cautioned students to keep their moral compasses intact amid many pressures of the legal and corporate worlds.

“It’s got to start here, and you’ve got to internalize it,” said Shew, scheduled to be sentenced in November to as much as five years in prison for securities fraud. “You’ve got to be able to say, ‘This isn’t right.’ Always have a presence at the table: Assert yourselves and become decision-makers with the heads of development.”

Shew pleaded guilty in 2002 to inflating Homestore’s revenues by millions of dollars in what is referred to as “round-trip” transactions, which flowed cash from Homestore through vendors and third-party advertisers — then back to Homestore. The company then used the “revenue” to meet Wall Street expectations.

“Here’s a guy of good quality, who worked at Disney and PriceWaterhouseCoopers before he worked at one of the top Internet companies of all time,” said Fairbank, Shew’s lawyer and a USC Law adjunct professor. “The point of this lecture is to say, don’t kid yourself, you could be in exactly this situation.”

The Homestore case and other major corporate scandals, including Enron, WorldCom and Dynegy, are examined in Fairbank’s USC Law course, “Major Corporate Civil and Criminal Fraud: Lessons of Enron.”

“The behavior involved in each of those cases was clearly wrong, not in a gray area,” Fairbank noted. “There’s not a case I’ve been involved in where you could objectively write it down and have it pass the red-face test.”

In response to a question from USC Law Dean Edward J. McCaffery, Fairbank said it has been uncommon for executives like Shew to admit their wrongdoing and actively cooperate with prosecutors and civil plaintiffs. He noted, however, that former Enron CFO Andy Fastow recently was sentenced to just six years in prison after helping prosecutors and civil plaintiffs build cases against former Chairman Kenneth Lay, former CEO Jeffrey Skilling and the bank defendants (in the civil case).

For his part, Shew said he finds that talking about his act of securities fraud not only is the right thing to do in business dealings, but also cathartic for him and a lesson for others.

“Even if just one person makes the right decision because I’m speaking out, it’ll make me proud like you wouldn’t believe,” Shew said.

— Lori Stuenkel