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DIRECTORS AND THE FEDERAL SECURITIES LAWS

An Address By

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It is axiomatic to say these days that society is demanding constantly more from those who occupy positions of trust and who have control over the resources of the nation. Despite the recurrence of shameful events in the political world, still one cannot help but be struck by the contrast between our standards today and those of yesterday. At the turn of the century corruption of people in public life was all but taken for granted and high officials were commonly "bought." We may still have instances of such corruption, but at least we expect more of those in public life, even if occasionally our expectations are disappointed.

Similarly in corporate life, expectations are constantly rising. We no longer tolerate conflicts of interest that in the twenties were epidemic; we demand of everyone concerned with corporate life adherence to high standards of integrity and honesty and increasingly we use the word "fiduciary" to summarize the sort of conduct we expect. These expectations extend throughout the process. Accountants are under frequent attack in the courts because of charges that they failed to measure up in their work -- not that they were dishonest, or venal, or corrupted (and it should be noted that in those particulars the accounting profession certainly has an enviable record of integrity) but because they failed to afford the public the protection their skills and and positions are expected to provide.

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Similarly attorneys are increasingly called upon to serve broader interests than just those of their clients, at least when they are involved in the disclosure process under the federal securities laws. The public, speaking through regulatory bodies like the Securities and Exchange Commission, the courts, and Congress, is asking more and is seeking expensive compensation when it secures less than it expects.

Increasingly the focus is upon those who, at least theoretically, have the ultimate control over the vast corporate wealth of this country -- the directors of publicly-held corporations. In the wake of the horrendous debacles of the last decade -- Webb and Knapp, Penn Central, Equity Funding, IOS, and countless others -- innumerable pillars of the business community who served with pride on the boards of public corporations find themselves defendants in scores of lawsuits seeking millions upon millions of dollars in damages.

This flood of litigation, flowing from the increased demands upon everyone having responsibility, has spotlighted the role of directors to an extent not seen since the early thirties when the sordid events of the twenties called American corporate enterprise before those ultimate judges, the American people.

In general I think it fair to say that historically directors have not been held to an excessively high, or even very high, standard of conduct. The landmark case, decided by Judge Learned Hand in 1924, Barnes v. Andrews, has over the years been a source of consolation to corporate directors. In it Judge Hand spoke with his customary eloquence of the dangers of placing too heavy a burden of care on directors.

This case has clearly been in the mainstream of the law since there are very few decided cases which suggest that directors be held monetarily liable for simple negligence in the performance of their duties.

State corporation laws do not appear to erect an unreasonably, or again, even very high, standard for directors. The relatively recently enacted New Jersey Corporate Law specifies that:

> "Directors . . . shall discharge their duties in good faith and with that degree of diligence, care and skill which ordinarily prudent men would exercise under similar circumstances in like positions."

The tough questions concerning the responsibilities and liabilities of directors have not in recent times arisen under state statutes, but rather have their origins in federal securities law. The impact of these federal cases has led to a renewed interest in the statutory delineation of directors' duties and responsibilities. The Corporate Laws Committee of the ABA Section of Corporation, Banking and Business Law has appointed a special panel on Functions and Responsibilities of Directors. This group is considering the frightening generality of such statutory notions as that usually expressed in corporation codes that directors must "manage" the corporation, as well as the other anomalies posed by the analytical work of Myles Mace describing what directors really do.

There have been suggested recently fascinating proposals for rather significant changes in the traditional structure of the board. Some have suggested a two tier approach similar to that common in Europe, with management constituting one board responsible for running the corporation and another board consisting of non-employees exercising a very general oversight function.

Arthur Goldberg made headlines with his proposal after serving on the TWA board that there be established in publicly-held corporations a staff to assist the outside directors in carrying out their responsibilities, a proposal that, as you might expect, met with prompt and, in many instances, very thoughtful repudiation in many quarters.

Some corporations have done more than talk about these problems. Texas Instruments has established a post called "officer of the board." This is an outside director who is selected to function you might say halfway between an active board member and an officer of the corporation. In this role he has special responsibilities and resources for monitoring for his fellow board members the conduct of the officers. General Foods, I understand, has an assistant secretary assigned the duty of securing such information as the directors wish in connection with their roles. And I am sure other corporations have moved imaginatively to make the role of director more meaningful.

In many instances corporations are seeking this more meaningful participation, not simply to insulate their directors against unwanted liabilities, but to afford them the opportunity to contribute more fully to the functioning of the corporation. After all, the notion of the outside director is founded on the idea that he will bring to the corporation's affairs a different perspective that will be helpful to the officers whose insights may be foreshortened by the intimacy of their involvement in the day-to-day affairs of the corporation. Many an alert management is realizing the potential that exists around the board table. Fewer and fewer, I would suggest, are doing what an officer of a multi-billion dollar corporation dominated by a very aggressive chief executive officer told me happened at their board meetings. He said that upon entering the board room each member found at his place a formidable stack of attractive appearing documents. While the members leafed through them out of curiosity, the chairman ran through the agenda of the meeting and usually had it timed to be completed about the time the directors got to the bottom document in the stack.

Unfortunately, notwithstanding heightened concern with liability and effectiveness of directors, in many instances the words of the Michigan Supreme Court in 1926 remain sadly apropos:

> "It is the habit in these days for certain well-to-do men with influence in their respective communities to accept positions on boards of directors of corporations as honorary directors, and then never render any service except to sign on the dotted line, vote as requested by the one in charge and afterwards to cash their director's check for attending the meeting. They give no thought to the affairs of the company, exercise no judgment upon questions of business policy, and make no investigation of the real financial condition of the company. It is this kind of service by directors that helps to extract such a tremendous annual toll out of the public who happen to own industrial securities. The law requires a different kind of service of them."

As I mentioned the current attention to directors and their responsibilities has had its principal stimulus in litigation arising under the federal securities laws.

Consequently, I think it would be helpful to review the problems of directors as they have been developing under federal law .

To the best of my knowledge, the only place in the 1933 and 1934 Acts where "director" is mentioned as such is in Section 11 of the 1933 Act. That section provides that the director of a corporation may be held liable for a deficient registration statement unless he establishes that after a reasonable investigation he had reasonable grounds to believe, and did believe, that the registration statement did not suffer from the alleged deficiency. It was this section that was involved in the BarChris case.

However, it is not the 1933 Act which has been the source of most of the concern of directors. It is that voracious demon, Rule 10b-5. And neither that Rule, nor the statutory provision from which it derives, makes any mention of directors as such.

Rule 10b-5 makes it unlawful for "any person" to do certain things, and of course, that includes directors whether acting as such or not. Unfortunately, the problem is much subtler than that and involves a good deal more complexity than might be indicated by the simple words of the Rule.

First, of course, is the very generality and vagueness of the language of the Rule. This vagueness has given rise to the mountain of litigation involving the problem of scienter, the degree of knowledge required for liability and the amount of care which must be exercised. This varies considerably depending upon the type of action (injunctive relief sought by the Commission generally requires no showing of scienter), the identity of the defendant, the circuit in which the action is brought. This problem has, as will be seen in a moment, been of particular moment in determining the responsibility of directors under the Rule.

Then there are the provisions of the 1933 and 1934 Acts which hold those in control of a wrongdoer liable unless they can establish the statutory defenses. This concept of control has also given rise to litigation with varying outcomes, all the way from the conclusion of the court in Myzel v. Fields that all directors per se are in control of the corporation, to the opposite conclusion in Mader v. Armel and Moerman v. Zipco that whether a director is in control depends not simply on the office, but the circumstances of the case, the relationship of the individual to the corporation, and the extent of control by others.

Add to these uncertainties the common law doctrines of conspiracy and aiding and abetting and it is little wonder that there is confusion, uncertainty, and concern.

Like beauty, I suppose the import of cases involving directors under the federal securities laws is in the eye of the beholder. Viewed in one way, they do not appear disconcerting; viewed another, they are troublesome. Certainly they can be described as inconclusive, but then that word could be applied to most of the problems under these laws.

In the BarChris case, which might be characterized as the first in the modern series of cases involving directors under federal laws, the court determined that all of the directors were liable under Section 11 of the 1933 Act, including two directors who had relatively recently joined the board and whose presence on the board appeared to have something of a self-serving motivation. In my estimation, given the facts of that case, the outcome was not surprising; what is perhaps more surprising is the reaction to the case by many commentators who seemed to feel that the court imposed an excessively strict obligation on the outside directors. It should be noted that in a Section 11 case there is no necessity of showing any control: all that must be shown is that the director was such at the time the registration statement became effective and then the burden is upon him to prove he made a reasonable investigation and had a reasonable belief that the registration statement was in compliance with the law. Judge McLean in the BarChris case rather clearly established that under the 1933 Act directors are held to varying degrees of responsibility depending upon their closeness to the affairs of the corporation, their skills and other such factors. Thus, Mr. Grant, who was outside counsel for the corporation and who had participated in preparing not only the defective registration statement but others as well, was clearly held to a higher standard of care than his fellow outside directors because of those circumstances. The case also indicated rather clearly that directors cannot satisfy their responsibility under Section 11 by relying upon the representations of management, but rather have some responsibility to make their own investigation of material facts. How far this investigation should extend, the depth to which it must be pushed, is left largely unclear by the BarChris case, although commentators have sought to explicate these matters. Certainly it would appear that a casual leafing through a registration statement is not sufficient.

Does the BarChris case, and for that matter Section 11 of the 1933 Act, have any relevance with respect to the day-to-day functioning of directors, particularly under Rule 10b-5? I would suggest they do. James M. Landis stated succinctly that "much of what is ordinarily regarded as 'common' law finds its source in legislative enactment."

It seems to me that there are evidences in the cases that indicate some disposition on the part of the courts, without even articulating it in these terms, to import into other contexts the standard of care that it expressed in the 1933 Act, although I would emphasize again that this has not yet been made explicit.

Two recent cases point up rather clearly, in different ways, the problems of directors under the federal securities laws. In the first case, Gould v. American Hawaiian Steamship Company, a federal district court in Delaware held three outside directors of McLean Industries liable for material omissions from a proxy statement circulated to shareholders of the company. The court analyzed the proxy rules, came to the conclusion that negligence was sufficient to establish a claim for damages as a consequence of a misleading proxy statement, and thus established a very high standard of responsibility for directors in connection with proxy solicitations.

In the other case, Lanza v. Drexel & Co., the Second Circuit, sitting en banc, by a six to four vote and speaking through Judge Moore, concluded that under the facts of that case, Mr. Coleman, a partner of Drexel & Co. who was on the board of BarChris, was not liable in damages to plaintiffs who had received BarChris stock in exchange for stock in a company acquired by BarChris. The court articulated the issue in this manner:

> "What duty, if any, does Rule 10b-5 impose on a director in Coleman's position to insure that all material, adverse information is conveyed to prospective purchasers of the corporation's stock where the director does not know that these prospective purchasers are not receiving all such information?" (Emphasis supplied.)

In this case it appeared that Coleman had an awareness that the company was moving into troubled waters and as a matter of fact not long before the acquisition was closed there had been a dramatic meeting at which the ills of the company were fully ventilated. Notwithstanding Mr. Coleman's awareness of the declining fortunes of BarChris, the court held that he was blameless for the failure of BarChris' management to make proper disclosure to the company to be acquired.

Judge Hays in a strong dissent took issue with the majority and concluded that Mr. Coleman should have been held liable on the grounds that his financial sophistication coupled with his awareness of the increasing misfortunes of BarChris should have made him viligant enough to at least <u>inquire</u> (not <u>insure</u>, be it noted) whether the company being acquired by BarChris was fully informed. Judge Hays said:

> "Despite Coleman's experience, important corporate position, and knowledge of corporate adversity, he made no attempt to inquire as to the course of the negotiations Kircher was conducting with plaintiffs and Shulman or as to the information about BarChris being conveyed to the Victor shareholders on which the negotiations were based. He did not inquire at the 'point of crisis' meeting or subsequent thereto, whether the Victor shareholders had been informed of the unfavorable position of BarChris."

And Judge Timbers, who also dissented, said:

> "The following facts in my view demonstrate that Coleman acted in reckless disregard for the truth. He was added to the BarChris board of directors at the behest of Drexel to protect its substantial investment in BarChris. He was the most experienced member of the board with regard to financial and business matters. He was aware that BarChris was acquiring Victor through an exchange of stock since he had voted for the acquisition in his capacity as a director. He was aware that BarChris has suffered many business reversals and that it suffered from severe intra-corporate dissension. Yet he did not know whether this unfavorable position had been disclosed to Victor.
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> "It became clear at the 'point of crisis' meeting held on December 6, 1961 that one of the symptoms of BarChris' lack of effective leadership was a 'refusal to accept the fact that basic problems exist[ed] within the Company.' Until that time not even the board of directors had openly recognized 'the management's inability to cope with the existing problem.' Moreover, it was revealed at that meeting that only recently had certain mistakes and problems 'come to light.' Coleman's experience should have told him that, since neither the board nor the management of BarChris would openly admit to themselves until the 'point of crisis' meeting that they had serious problems, and since certain mistakes and problems had just recently been discovered, management obviously had not revealed these matters to outsiders such as Victor. But Coleman made no effort whatsoever to discover whether such information had been disclosed."

The <u>Lanza</u> case has been a source of great comfort to the corporate bar and their director clients. I would respectfully suggest that perhaps it is not as strong a reed to lean upon as many think. And I would suggest that subsequent developments may very well find the better rule -- a duty of inquiry if nothing more -- in Judge Hays' dissent.

Of all the outside directors of BarChris, Mr. Coleman should have been the most sensitive to the affairs of the corporation and to what was involved in the issuance of stock by the company. He was aware that the company was troubled, that there was internal dissension and this should have given rise to the conclusion that anyone accepting BarChris stock in exchange for value was making a highly risky investment decision. In fact, I would suggest that perhaps he should have wondered how, if all the facts were known to the shareholders of the company being acquired, they were ever induced to take stock of BarChris, and shouldn't this wonderment have led him to some skepticism with regard to whether all the facts had been told to the soon-to-be shareholders of BarChris? Mr. Coleman was an investment banker and as such it is likely that his counsel was of particular value to the company in connection with acquisitions. I suggest that the court dealt too gently with Mr. Coleman.

The majority discussed Mr. Coleman's potential liability largely in terms of negligence, recklessness and wilfulness. Judge Hays in his dissent dismissed such analysis:

> "It is not profitable in considering a case such as this merely to characterize the allegedly unlawful conduct as either negligent or wilful and to impose liability only if the conduct was wilful. Neither the Act nor the Rule creates such a simple dichotomy. The purposes of the Act and the Rule are not furthered by a mechanical application of labels. The relationship of the parties and the transaction involved must be analyzed in order to determine whether the Act and the Rule impose a duty on one party with respect to the other and the nature of that duty. . . ."

I would agree that the question is not whether the appropriate standard is negligence or recklessness or what have you. Regardless of the name that is put on his conduct, I would suggest that in the circumstances posed by the Lanza case there was indeed a duty on a director with Mr. Coleman's skills, experience and insights to take some measures to determing whether those who were accepting the corporation's stock had been apprised of the risks inherent in that act.

I would emphasize, and I think it is becoming apparent in the cases, that directors cannot be dealt with on an undifferentiated basis under the federal securities laws. In his dissent, Judge Hays emphasized those characteristics of Mr. Coleman which should have made him responsible:

> "He was probably the most sophisticated member of the board in terms of financial and business experience."

Judge Timbers commented similarly.

To some extent the difference between the opinion of the majority and the opinions of Judges Hays and Timbers stems from the fact that the majority and minority judges asked different questions. Judge Moore inquired whether Mr. Coleman had a duty to convey to the company to be acquired what he knew about the affairs of BarChris and "to insure" that they received the information; Judges Hays and Timbers, on the other hand, focused upon whether he had any duty to inquire concerning the information which the BarChris management had furnished to the shareholders of the company to be acquired.

I would respectfully suggest that the considerations which motivated the minority judges in the Lanza case will, in the long run, be better guides as to the responsibility of directors in publicly-held companies than the discussions of scienter, negligence and recklessness contained in the majority opinion. It seems clear to me that in any situation in which the liability of directors under federal securities law is of moment, there should be a very careful effort made to determine which of the directors, because of experience, knowledge, relationship to the corporation and its officers, intimacy of involvement in its affairs, awareness of the consequences of the complaints of corporate acts, should reasonably have been expected to sound the tocsin. I would suggest that this is not an excessive or unduly harsh standard. Just as I think it would be completely unfair to suggest that in every case where a corporation has violated the federal securities laws all of the directors, simply because of their position, have liability, so I would suggest that it is equally unrealistic and unfair to contend that no outside director has any affirmative duties to investigate or monitor or inquire about the conduct of officers of the corporation with respect to compliance with federal securities laws. I would not suggest that as a consequence of what I am saying directors have a responsibility for a corporation's Form 10-K like that which they have for a 1933 Act registration statement, but I do suggest that in many circumstances, including certainly circumstances in which securities are being issued, there is a duty to do more than simply approve the transaction.

It is often suggested that if the standards of conduct for directors move significantly upward, it will be a deterrent for many to serve on boards. Certainly if it were suggested that in some fashion directors were guarantors of the conduct of the corporation, that would be true, but I doubt very seriously whether asking directors to exercise a healthy skepticism -- which really is all I would suggest Mr. Coleman should have had -- is imposing too heavy a burden upon directors, particularly when as I suggest their situation vis-a-vis the corporation and the unlawful act is carefully considered on an individual basis.

But lawsuits are not the final answer to these problems. Forty years ago William O. Douglas suggested:

> "Prevention will prove more wholesome than punishment. It is a rebuke to our skill and judgment if we cannot effect competent police measures without driving from the field of enterprise the men of greatest competence and substance."

You may recall that last April then Chairman G. Bradford Cook of the SEC said that the Commission would in the near future publish guidelines to assist directors in conforming their conduct to the federal securities laws; this was a recognition that often rules and guidelines are better means of securing higher performance than enforcement actions. Those guidelines have not been published and I would be less than candid if I suggested that their appearance is close on the horizon. Although Chairman Garrett has reaffirmed the intention of the Commission to publish these guidelines, it may well be that as we move further down the path toward their finalization we will conclude that their publication is not appropriate or possible. However, the effort to formulate them is going forward.

Meanwhile, I would suggest that there is a great deal that individual corporations and directors can be doing, and should be doing, to be sure that whatever standards of liability are adopted in the courts, they will be immunized from liability.

What can corporations do? I would suggest these as some measures they might take.

First, I would suggest that corporations consider the possibility of elaborating their own guidelines with respect to the conduct of the directors. I would suggest that these guidelines might incorporate some of those that were suggested by Mr. Roger M. Blough, formerly the head of United States Steel Corporation and presently a partner of a prestigious Wall Street law firm, in his address before the Association of the Bar of the City of New York in 1973. Among the guides suggested by Mr. Blough were these:

> "Enough time must be spent in actual director work, in actual meeting hours, and hours outside of meetings to have a firm overseer grasp of the corporation's business and an informed judgment on its more important affairs and the qualities of its officers."

> "Possible conflicts of interest should be disclosed to other directors for independent consideration and unhindered resolution."

> "One of the first and foremost obligations of the outside director is to satisfy himself with organizational structure."

> "Attention to the communications between management and outside directors is also essential."

> "Performance of a director's work also involves making inquiries and volunteering viewpoints rather than only passing on questions advanced by management."

> "A director should be endowed with a certain amount of persistence. Managements are frequently filled with strong minded individuals who are, humanly but unhappily, not always right. It is the job of the director to know, to be heard, and when unconvinced to persist in his point of view until all facets of the matter have had a full airing."

Second, the corporation should furnish to its directors on a regular ongoing basis all of the information that they need to acquire an intimate familiarity with the business and exercise sound judgments. It is not enough in my estimation to simply give them an occasional income statement and a balance sheet. I think it is important that management provide to the directors its own comprehensive interpretations of what the financial information portends -- the trend lines, the significance of nonrecurring items, the effects of changes in accounting practices, and so on. All directors are not financially sophisticated and in many instances companies have added, for very sound reasons, individuals who bring a particular viewpoint or competence to the board which they felt valuable to have available. While these people should not, as Chairman Cook suggested last year, be held to perhaps as high a standard as others, nonetheless they do vote and it is necessary that they have an understanding, which management is in the best position to afford them, of the financial affairs of the corporation.

Third, I would suggest that boards of directors should be peculiarly sensitive to matters relating to the issuance of stock. While the trading markets continue to be of the utmost importance, and I would not minimize the responsibility of directors to see to it that the market for the corporation's stock is an honest, fully and accurately informed market, nonetheless issuances of stock generally require affirmative action by the board and should be the occasion for rather thorough discussion of the manner of disposition, and that discussion should certainly involve some consideration of the informational practices of the officers in accomplishing the issuance of stock.

Fourth, it would be most desirable if corporations uniformly organized audit committees manned by outside directors. This has been advocated previously by the Commission and it has been recommended by the

American Institute of Certified Public Accountants. Many corporations have such committees. I will grant that in many instances they are nothing more than window-dressing and accomplish little, if anything. However, the experience of many has been that such committees afford a splendid opportunity for the board through its members on the committee to gain a much greater insight in the affairs of the corporation and it also serves the purpose of giving the independent accountants entre to the board in a manner which might not otherwise be available. These committees will only be as good as the diligence and vigilance of the people on them. Chairman Cook suggested in 1973 that those who serve on the committee have peculiar and unique responsibilities. That is surely true, but again such should not be a deterrent to someone who takes the task of being a director and committee member seriously.

What should the directors do? I suppose first of all they should be very discerning and selective with regard to serving on boards of directors. I would suggest that soon it will no longer be fashionable to brag about the number of boards upon which one serves and we are not likely to again see the day when prominent men served on as many as fifty boards of directors. There simply is not enough time for a man or a woman to serve adequately on a significant number of boards.

Furthermore, it seems to me that a person invited to serve on the board of a corporation would be well advised to make discreet inquiries as to the policies of the corporation with regard to the board. Is the board simply used as a tool by the chief executive officer, are its meetings unduly truncated, are the members compliant tools of management? Does the corporation furnish adequate financial information to its directors? Does it communicate regularly with them between meetings and afford them the opportunity to remain abreast of the affairs of the corporation day-to-day?

I think the conclusion of Sam Harris, a very distinguished New York lawyer, interpreting a 1967 case involving allegations of directoral neglect, is well justified:

> "The stress in the opinion upon DePinto's sins of omission -- what DePinto did not do and what he might have been able to do if he had done some homework -- provides, in my judgment, a warning that a director cannot supinely rely upon the seemingly good intentions of the person responsible for his election to the Board."

> "I do anticipate that changing conditions -- particularly the availability to the public of an ever-increasing volume of facts and figures concerning companies as a consequence of more detailed SEC filings and the insistence by independent accountants upon fuller financial statements in annual reports to shareholders -- will move the courts to focus more upon the necessity of adequate information in the hands of directors before business judgments can properly be exercised."

A skepticism, an alertness to the possibility of wrongdoing on the part of corporate officers, should be the stock in trade of every director. This is not to suggest that there is a need of hostility, that directors cannot wine and dine with the officers of the corporation, that the good fellowship that characterizes many boards cannot be maintained. But it does mean that if a man assumes a responsibility to the public which a board member does then he must realize that his client, if you will, is not management but the public shareholders and the public market place.

In many respects we have gone far in resolving the legal problems of directors. It is now clear that directors, along with other insiders, may not deal in the securities of a corporation when they are in possession of undisseminated material information. Similarly, by statute they are barred from realizing profits on short-term trading. The proxy rules and the relevant forms under the Securities Act of 1933 and the Securities Exchange Act of 1934 require that their conflicts of interest be disclosed and the corporation laws of most states today have rather precise rules with regard to the validity of transactions when there is a conflict of interest. Today we are concerned with more esoteric matters: the implications of interlocking directorates, a subject that I would suggest will quickly move front and center, and the responsibilities of directors under the federal securities laws. I would emphasize that in my estimation none of the developments on the horizon will deter honest, alert, industrious people from serving on boards of directors. Further, while the compensations paid board members have become increasingly generous, still they will not to many executives be a substantial part of income, nonetheless the mounting directors' fees do suggest the importance that corporations attach to their competency and do provide some incentive for people to serve on boards.

The elevation of standards of conduct in society is invariably accompanied by stresses and forebodings and exaggerated fears of the consequences of reaching to higher levels of performance. It is not surprising that, as the developing concepts of federal securities law reach out to touch corporate directors, there should be tremors and concerns. And yet, out of all this there will surely come greater awareness of the importance of conscientious conduct by corporate fiduciaries and greater attention to the responsibilities which are assumed when one becomes a director.

The Commission is not blind to the concerns of those in critical positions who find themselves the targets of claims and accusations, and consequently I can assure you that in determining whether enforcement proceedings should be brought against directors and corporate officers it will carefully avoid judging by unrealistic standards. But it will also, I am sure, recognize that shareholders and investors are entitled to the benefits of the wisdom, the judgment, the skills of those who impliedly represent that they are faithfully serving those whose resources sustain the corporation's activity. We can do no less consistently with our responsibility under the law.