



Senator Feinstein Calls on Attorney General Gonzales to  
Appeal Dismissal of Convictions of  
Enron's Former Chairman and CEO Ken Lay

- Senator Feinstein also announces intention to introduce legislative fix to this issue -

October 20, 2006

*Washington, DC – U.S. Senator Dianne Feinstein (D-Calif.), a member of the Senate Judiciary Committee, today called on Attorney General Alberto Gonzales to appeal the dismissal of the criminal convictions of former Enron Chairman and CEO, Kenneth Lay. Senator Feinstein believes that this decision, issued by U.S. District Court Sim Lake of the Southern District of Texas earlier this week, denies the victims of Enron appropriate restitution.*

*In a letter to Attorney General Gonzales, Senator Feinstein expressed concern that the Justice Department failed to notify all members of the House and Senate Judiciary Committee in seeking a legislative fix to the issue of dismissal of Mr. Lay's convictions, instead turning only to Vice President Dick Cheney and Speaker of the House of Representatives Dennis Hastert (R-Texas). Senator Feinstein also announced her intention to introduce legislation to address this question when Congress returns in November for a "lame duck" session.*

*Below is the text of the letter sent by Senator Feinstein to Attorney General Gonzales:*

October 20, 2006

The Honorable Alberto Gonzales  
Attorney General  
United States Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530-0001

Dear Mr. Attorney General:

The dismissal of Kenneth L. Lay's conviction by U.S. District Court Sim Lake of the Southern District of Texas is disconcerting and demands immediate attention. I urge the Justice Department to seek an appeal of Judge Lake's decision, so that the Government can fight to preserve Enron victims' hard-fought right to obtain restitution.

I was also dismayed to learn that the Justice Department delivered its request for emergency legislation on this issue only to Vice President Cheney and Speaker Hastert, failing to notify all members of the House and Senate Judiciary Committees.

As you know, I have long held a keen interest in the Enron case, given my role as a Senator representing the State of California. I have also worked actively to protect the rights of crime victims over many years. If Justice Department officials had approached my office about this issue earlier, I could have worked with your Administration to pass legislation.

Prior to his death, Mr. Lay was found guilty beyond a reasonable doubt of all ten counts of the Enron Task Force's indictment. These charges included conspiracy, bank fraud, securities fraud, and wire fraud involving false and misleading statements.

All of those convictions have now been dismissed, based on the sole fact that Mr. Lay has died. Under the common-law doctrine of abatement, if a criminal defendant dies before his direct appeal is completed, any conviction is vacated and the indictment is dismissed. Following the precedent of United States v. Estate of Parsons, 367 F.3d 409 (5<sup>th</sup> Cir. 2004) (en banc), Judge Lake dismissed all of these convictions against Mr. Lay, even though the Justice Department's Enron Task Force had noted that they "provided the basis for the likely disgorgement of fraud proceeds totaling tens of millions of dollars."

The Fifth Circuit holding in Parsons went far beyond traditional notions of abatement. While the common-law doctrine of abatement has historically wiped out "punishments" following a criminal defendant's death, the Supreme Court has never held that it also must wipe out a victim's right to "compensatory" relief such as restitution. As the six dissenters in Parsons noted, the majority's "'finality rationale' is a completely novel judicial creation which has not been embraced or even suggested by ... other courts." And the Third and Fourth Circuits have expressly refused to abate a restitution order after a criminal defendant's death.

The dismissal of Kenneth Lay's convictions effectively leaves the victims of Enron without appropriate financial restitution. That's why I urge you to appeal Judge Lake's dismissal of Mr. Lay's convictions. I also encourage you to continue to fight for these Enron crime victims by seeking resolution of this Circuit split from the U.S. Supreme Court.

I also plan to introduce legislation when Congress returns from recess to address the issue of abatement after a criminal defendant's death. We should do everything in our power to protect not only the victims of Enron, but also other victims who may be harmed by this unfair principle of law.

Sincerely,

Dianne Feinstein  
United States Senator

Cc: Members of the Enron Task Force