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Corporate Fraud Crackdown Gone Too Far?

By LARA JAKES JORDAN Associated Press Writer
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WASHINGTON — A former top Justice Department official who wrote the government's policy to crack down on corporate lawbreaking said Thursday that prosecutors appear to have overreached when targeting some businesses.

Former Deputy Attorney General Larry Thompson defended the policy's overall goal, which was crafted in the aftermath of widespread fraud and illegal scheming at corporate giants such as Enron and WorldCom. But prosecutors now may be too aggressive when pressuring businesses to cooperate with investigations of wrongdoing by company executives or employees, he said.

The legal tactics outlined in the "Thompson Memo" in 2003 were intended for very limited use, Thompson said.

"There seems to be a sort of a disconnect," Thompson told an audience at the Heritage Foundation, a conservative think tank in Washington.

He said his former Justice Department colleagues claim they rarely pressure businesses to disclose confidential attorney-client information in exchange for more lenient prosecutions, but defense lawyers say such demands happen in many cases.

The Justice Department is discussing whether to roll back some of the harsher guidelines in the Thompson Memo, which suggests that companies failing to cooperate with prosecutors will be more readily indicted — a death knell in an ethics-sensitive business era. Those changes could come as early as next week.

"We may be entering an era where the department should consider perhaps making appropriate revisions to the memo," said Thompson, now general counsel at PepsiCo.

Changes sought by defense attorneys, business lobbyists and other critics include:

— Ending the prospect of tougher prosecution of corporations that refuse to turn over, or waive, confidential discussions and information between attorneys and clients. The Justice Department is considering requiring prosecutors to get the Attorney General or his top deputy to approve waiver requests.

— Eliminate penalties for firms that continue to pay legal fees for their employees. In June, a federal judge in New York ruled the policy violates employees' rights to fair trials.

— Stop criminal prosecutions of businesses with standards similar to those used against company executives and other individuals.

The call to ease the legal crackdown on corporate fraud mirrors a similar push by the financial community to relax rules for business financial controls that area a key part of the 2002 Sarbanes-Oxley anti-fraud law.

The movement has gained traction with Treasury Secretary Henry Paulson, who has questioned whether the costly regulations are hurting the competitiveness of U.S. financial markets by driving some companies away from them.


Outgoing Senate Judiciary Chairman Arlen Specter, R-Pa., said he plans to propose legislation next week that would bar the Justice Department from putting undue pressure on companies to cooperate. He described the current policy as "coercive."

On the Net:

Thompson Memo: http://www.usdoj.gov/dag/cftf/corporate_guidelines.htm

Heritage Foundation: <http://www.heritage.org/>



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