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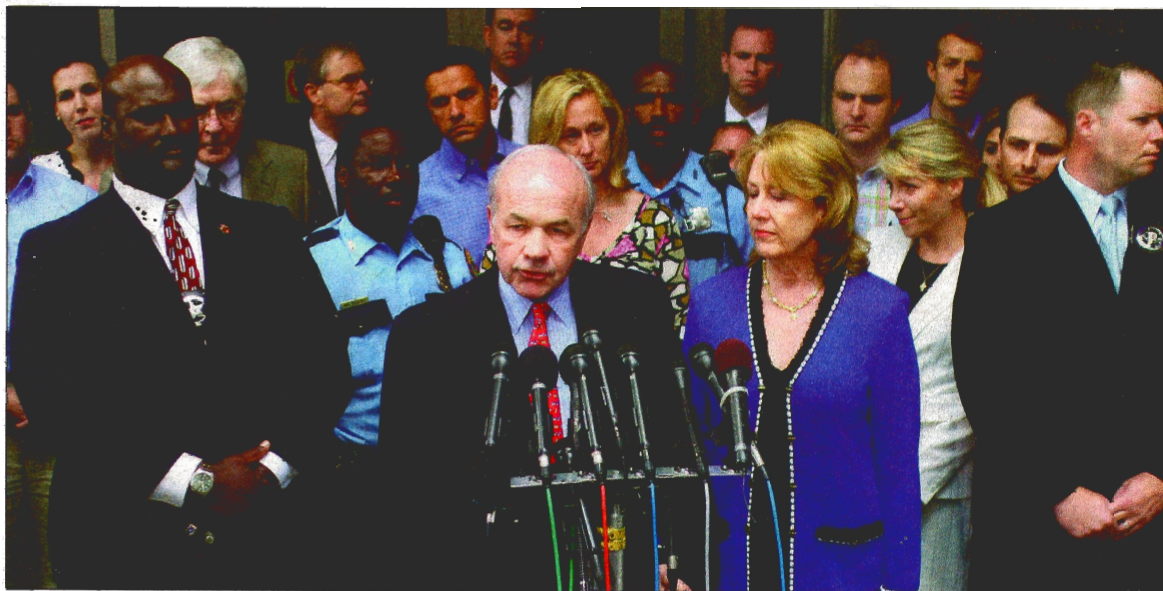
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IT'S NOT OVER: Ken Lay, with wife Linda, outside federal court in Houston on the day of his conviction.

## Lay case ignites asset issue

DOJ effort to seize assets faces hurdles.

By Marcia Coyle  
STAFF REPORTER

WASHINGTON—A Department of Justice proposal to keep a dead criminal defendant's conviction alive for purposes of asset for-

feiture raises constitutional and practical problems that neither Congress nor the courts may want to face, according to forfeiture and criminal law experts.

The department on Sept. 6 asked a federal judge in Houston to delay action on a motion by the estate of former Enron Chief Executive Kenneth L. Lay to dismiss his indictment and to

vacate his conviction for his role in one of the largest corporate frauds in American history.

The Enron Task Force sought the delay, it said, in order to give Congress time to consider the department's proposal to limit the so-called abatement doctrine and to create a special new retroactive civil forfeiture proceeding. Such a proceeding ultimately would allow the gov-

## Changes in deferred comp tax roil the bar

Lawyers confused, M&A costs go up.

By Sheri Qualters  
STAFF REPORTER

NEARLY TWO YEARS after taking effect, a sweeping tax code regulating many deferred-compensation plans favored by private companies—including stock options—has confused attorneys and increased legal costs for mergers-and-acquisitions work.

Both tax and corporate attorneys add that the new law is strewn with pitfalls and complexities that hinder corporate deal-making and expose executives to many costly and unnecessary penalties.

But the news isn't all bad. The new code is a cash cow

## ■ AVIATION LAW

## TWA crash records to be viewed

In a first, judge grants access to some CIA records on 1996 flight.

By Amanda Bronstad  
STAFF REPORTER

LOS ANGELES—A retired United Airlines captain who sued the National Transportation Safety Board, the Central Intelligence Agency and the National Security Agency has won a partial victory in the first ruling granting public access to records in the investigation of TWA Flight 800, which crashed a decade ago off the coast of New York's Long Island.

The recent ruling, in a case brought by H. Ray Lahr, also establishes a guideline for aviation lawyers and others seeking records under the Freedom of Information Act (FOIA).

In the years following the crash, the families of the 230 victims of TWA Flight 800 settled lawsuits for undisclosed sums.

Meanwhile, dozens of FOIA requests were made and about a half-dozen lawsuits were filed seeking access to the records of the investigation, which concluded that the plane was destroyed by a fuel tank explosion. The suits allege that a missile, rather than mechanical failure, destroyed TWA Flight 800 minutes after takeoff.

## A FOIA avalanche?

The recent ruling grants Lahr, who lives in Malibu, Calif., access to seven of 12 records requested primarily from the CIA. *H. Ray Lahr v. National Transportation Safety Board*, No. 2:03-cv-08023 (C.D. Calif.).

Massachusetts granted summary judgment to the Federal Bureau of Investigation in a suit filed by Graeme Sephton, then head of an organization representing families of the crash victims, who sought a more complete search of records related to debris found in the bodies of some victims.

The 1st U.S. Circuit Court of Appeals affirmed in a July 2006 decision. *Sephton v. FBI*, No. 3:00-cv-30121 (D. Mass.).

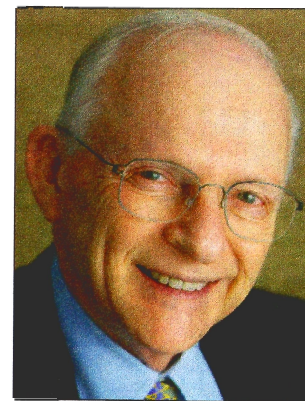
Lahr, a former Navy pilot who assisted in seven airplane crash investigations for the NTSB, said TWA Flight 800 could not have climbed thousands of feet after

the explosion.

He sued in 2003 for more than 100 FOIA requests, many of which have been withdrawn. Among the records requested are formulas, e-mails, charts and computer simulations explaining how the government came to its conclusion.

Lahr, who received some documents with redactions, sought full records.

In his ruling, Matz recognized Lahr's numerous reasons for believing that the government participated in a massive



RONALD GOLDMAN: A signal that those withholding records will face a "tougher standard."

cover-up, such as conflicting eyewitness testimony and the physically impossible "zoom-climb" theory on which the investigation is based.

The judge said that "taken together, this evidence is sufficient to per-

mit Plaintiff to proceed based on his claim that the government acted improperly in its investigation of Flight 800, or at least performed in a grossly negligent fashion. Accordingly, the public interest in ferreting out the truth would be compelling indeed." **NLJ**

U.S. District Judge A. Howard Matz granted access to the identities of eyewitnesses and flight characteristics of the aircraft but denied access to portions of an e-mail and an National Security Agency computer simulation. The judge is expected to rule in the next 30 days on two other pending motions, which involve at least 23 more records, according to John Clarke, a solo practitioner in Washington who represents Lahr.

"We're hoping this ruling will start an avalanche of FOIA suits," said Clarke.

Charles Miller, a spokesman for the Civil Division of the Department of Justice, declined to comment while government lawyers review the decision.

The 55-page ruling sets the bar higher for the government, said Ronald L.M. Goldman, a partner and aviation attorney at Los Angeles-based Baum Hedlund.

"This is a significant ruling because of the care with which the court approached the issues," said Goldman, whose firm represented the families of more than a dozen victims of TWA Flight 800.

"As a practical matter, it signals to those who would prefer to withhold documents they'll be held to a tougher standard," Goldman said.

TWA Flight 800, bound for Charles de Gaulle International Airport in Paris, crashed into the Atlantic Ocean minutes after taking off from John F. Kennedy International Airport in New York City.

In 2000, the National Transportation Safety Board (NTSB) produced its accident report, but the cause of the crash was questioned years later.

In March 2005, a federal judge in