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WORLD NEWS

Supreme Court Overturns
Arthur Andersen Conviction

By JESS BRAVIN

Staff Reporter of THE WALL STREET JOURNAL

May 31, 2005 3:51 p.m.

The Supreme Court reversed the criminal conviction of Arthur Andersen LLP, ruling that jurors used too loose a standard of culpability against the onetime accounting giant, which fell alongside its notorious client, Enron Corp.

The unanimous opinion, by Chief Justice William Rehnquist, is a rebuke to prosecutors who have responded aggressively against corporate fraud allegations, suggesting that in ambiguous cases the government may have a heavier burden to meet. Although it comes too late for Andersen, which collapsed in the wake of its conviction, and after Sarbanes-Oxley legislation that tightened accounting responsibilities, the ruling came as a relief to corporate attorneys who feared a government victory would effectively criminalize what they consider routine legal advice.

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ACCOUNTING CASE

- **Read** the Supreme Court's [opinion](#) in *Arthur Andersen v. U.S.*, and get the [case docket](#) and other [background material](#) on the case, by arrangement with FindLaw.com ([www.findlaw.com](#)). **Also**, see [key excerpts](#) from the opinion.
- [Recap of Proceedings in the Andersen Jury Trial](#)
06/17/02
- [Enron-Andersen timeline](#)

incrimination" or a lawyer advised a client to withhold documents under attorney-client privilege.

Andersen's June 2002 conviction in a Houston federal court hinged on advice from an in-house attorney, Nancy Temple, for employees to follow the firm's "document retention" policy -- which in fact led to the destruction of tons of Enron financial records.

That advice, offered in October 2001, came amid escalating news

The justices clearly took seriously such concerns, expressed in several friend-of-the-court briefs by business, accountants and lawyers organizations. Persuading a person to withhold damaging information from the government is not "inherently malign," Chief Justice Rehnquist wrote, citing instances where a mother might urge her son "against compelled self-

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accounts of Enron's problems and the likelihood that a Securities and Exchange Commission probe would follow. After SEC subpoenas arrived on Nov. 8, 2001, an Andersen official sent an email saying "no more shredding ... we have been officially served." Prosecutors argued that in such a context, Andersen had broken a law against "knowingly ... corruptly persuading" others to destroy evidence.

Andersen countered that there was nothing inherently illegal about the document-destruction policy and that, since it would have been lawful for Ms. Temple herself to destroy the records, there was no crime in her advising others to do so. A trial gave the government its expansive reading of the statute and the federal appeals court in New Orleans upheld the conviction.

But it wasn't a close case for the Supreme Court, which heard the case five weeks ago, on its last day of oral arguments, and rendered its opinion well ahead of other cases argued months earlier. At argument, the justices were uniformly skeptical of the government's position, and the reversal came as no shock to legal observers.

Already, lawyers appealing the obstruction-of-justice conviction of Frank Quattrone, the former investment banker at Credit Suisse First Boston, have cited the Andersen case.

The Andersen verdict is the latest challenge to the government's recent efforts to crackdown on financial fraud.

Federal regulators and prosecutors, who got tough on corporate crime in the wake of frauds at companies like Enron and WorldCom, have come under pressure in recent months from business groups who say the government has gotten too aggressive in its pursuit of wrongdoers.

Business trade groups have criticized the enforcement approach at the SEC, which has been hitting businesses with stiff sanctions and record-setting fines. And they have also challenged a key part of the Sarbanes-Oxley corporate-reform law intended to improve internal controls at the nation's public companies. Many companies have argued that the rule, intended to prevent fraud and financial misstatements, costs too much time and money. Regulators have indicated they agree with those concerns and recently issued guidance on how to perform more cost-effective internal-control reviews.

Adding to the pressure earlier this year were comments by President Bush, who cautioned "balance" among regulators and said government shouldn't "freeze investment."

The concerns seem to be resonating. Earlier this month Attorney General Alberto Gonzales, who oversees the Justice Department, noted the need for balance in a recent speech, saying "we also understand that irresponsible or overreaching exercise of investigatory and prosecutorial powers -- in addition to being unjust -- can create its own problems, through overdeterrence." (*Andersen v. U.S.*)

Accommodating Inmates' Religious Practices

The high court upheld the constitutionality of a federal law requiring state prisons to accommodate inmate religions. Justices unanimously sided with Ohio inmates, including a witch and a Satanist, who had claimed they were denied access to religious literature, ceremonial items and time to worship.

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Dow Jones, Reuters

UnitedHealth Group Inc. (UNH)

PRICE	48.58
CHANGE	-0.31
U.S. dollars	4:03 p.m.

Humana Inc. (HUM)

PRICE	36.36
CHANGE	-0.53
U.S. dollars	4:02 p.m.

PacifiCare Health Systems Inc. (PHS)

PRICE	62.83
CHANGE	-0.50
U.S. dollars	4:05 p.m.

* At Market Close

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Justice Ruth Bader Ginsburg said the 2000 law, which was intended to protect the rights of prisoners, isn't an unconstitutional government promotion of religion. "It confers no privileged status on any particular religious sect, and singles out no bona fide faith for disadvantageous treatment," Justice Ginsburg wrote.

The law requires states that receive federal money to accommodate prisoners' religious beliefs unless wardens can show that the accommodation would be disruptive.

Opponents of the law had argued that inmate requests for particular diets, special haircuts or religious symbols could make it harder to manage prisons.

"We do not read [the law] to elevate accommodation of religious observances over an institution's need to maintain order and safety," Justice Ginsburg wrote. "We have no cause to believe that [the law] would not be applied in an appropriately balanced way, without sensitivity to security concerns." Justices left open the door for a future challenge, on grounds that the law as applied overburdens prisons.

The decision overturns a ruling by the Cincinnati-based 6th U.S. Circuit Court of Appeals, which had struck down part of the law, called the Religious Land Use and Institutionalized Persons Act, on grounds it violated the separation of church and state. (*Cutter v. Wilkinson*)

Also on Tuesday, the high court:

- Agreed to consider Kansas' appeal of a state Supreme Court ruling that struck down a 1994 law that said if the evidence for and against imposing a sentence of death is roughly equal, Kansas juries must choose death instead of life in prison. The Kansas court ruling last December invalidated the death sentences of six convicted killers. The high court case involves Michael Marsh II, a Wichita man convicted of fatally shooting and stabbing a woman and setting a fire that killed the woman's toddler. The Supreme Court will consider how juries weigh evidence for and against death sentences, as well as some technical issues, including whether it's proper for the Supreme Court to intervene. (*Kansas v. Marsh*)
- Rejected an appeal from several health-management organizations to block class-action proceedings brought on behalf of 600,000 doctors, while portions of the suit are in arbitration. The doctors' suit alleges the HMOs used automated claims-processing systems to systematically deny payments for medical services. The doctors are seeking damages under civil provisions of the Racketeering Influenced and Corrupt Organizations Act. Several HMOs have been fighting the lawsuit, including [UnitedHealth Group Inc.](#), [Humana Inc.](#) and [PacifiCare Health Systems Inc.](#) In their appeal, the HMOs argued the Federal Arbitration Act required a U.S. District Court to stay a trial, although some of the legal issues aren't going to arbitration. (*UnitedHealth v. Klay*)

--Staff Reporter Deborah Solomon, Mark H. Anderson of Dow Jones Newswires and The Associated Press contributed to this article.

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