CHAPTER 1

Dr. Jekyll & Mr. Skilling: How Enron's Public Image Morphed from the Most Innovative Company in the Fortune 500 *to the Most Notorious Company Ever**

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Prior to its collapse into bankruptcy, only a few people knew Enron Corp, or any of its various subsidiaries ("Enron"), from direct dealings with the company. Most people, however, were familiar with Enron from what they had read or heard.[1] Following disclosure of the company's accounting problems and of the California electric market manipulation in 2001, the company's public image—as well as its stock price—plummeted. It is the ebb and flow of Enron's public perception that we scrutinize in this essay.

After reading about the various corporate and accounting scandals and watching former managers do their "perp walks" on television, we have had an opportunity to consider how a company that was once placed on a pedestal and

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1 For example, during his 12 years practicing in the utility law arena, Mr. Van Niel had many opportunities to interact with Enron personnel (including its lawyers) on numerous issues, including retail competition and the deregulation of the natural gas and electric industries.

touted as the most innovative company in the United States for six years in a row[2] could deteriorate into a seething mass of accounting scandals, civil litigation, and criminal indictments. What struck us most was the apparent dramatic shift in the public perception of Enron—at least that was the premise when we started writing this essay. As with most academic pieces, we thought we knew what we wanted to say. Unfortunately, our research provided a different conclusion from the one that we had expected.

What do we mean? Simply put, everything that happened to Enron in 2001 was predicted—and used as a reason to avoid the company—as early as 1996.[3] A careful reader of Enron-related articles in the press might have seen this coming and avoided Enron like the plague.[4]

So what happened between 1985 and 2001 that launched Enron on the road to becoming the fifth largest company in the FORTUNE 500?[5] Why, that meta-

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[2] *See, e.g.,* Harry Hurt III et al., *Power Players Enron Has Shaken Up the Sleepy Gas Pipeline and Power Businesses by Aggressively Embracing Risk and Continually Remaking Itself. So What's Not to Like?,* FORTUNE, Aug, 5, 1996, at 94 [hereinafter *What's Not to Like*] ("Competitors voted Enron the most innovative company in the U.S. in FORTUNE's poll of "Americas Most Admired Corporations" this year, ahead of high-tech highfliers like Intel and Microsoft."); *America's Most Admired Companies,* FORTUNE, Mar. 3, 1997, at F1; *America's Most Admired Companies,* FORTUNE, Mar. *2,* 1998, at F1; *Americas Most Admired Companies,* FORTUNE, Mar. 1, 1999, at 68; *Americas Most Admired Companies,* FORTUNE, Feb. 21, 2000, at F1; *America's Most Admired Companies,* FORTUNE, Feb. 19, 2001, at F1.

[3] So aside from envy, what's not to like about Enron? According to some critics, the very things that have made the company a success: management's penchant for risk taking and innovation; the parent corporation's aggressive accounting practices and allegedly Byzantine methods of "managing earnings" via no fewer than six separately traded subsidiaries; an alleged overemphasis on short-term performance, symbolized by the daily posting of stock prices in the headquarters building; and the unusually complex intracompany transactions needed to drive profit growth. "Enron's just got too much hype in it for us," says a member of a multibillion-dollar Houston- based investment firm that specializes in blue-chip stocks. "A few years ago, they were promoting natural gas-powered automobiles. Then they dropped that idea like a hot potato, and started building power plants and spinning them off. It's hard to figure out what the fresh feed for this month is going to be."

What's Not to Like, supra note 2, at 94.

[4] In feet, some very high-profile investors stayed away from Enron stock because Enron's financial statements were simply not making sense. *See, e.g.,* MIMI SWARTZ WITH SHERRON WATKINS, POWER FAILURE: THE INSIDE STORY OF THE COLLAPSE OF ENRON xi–xiii (2003) [hereinafter POWER FAILURE]; LYN M. FRASER & AILEEN ORMISTON, UNDERSTANDING THE CORPORATE ANNUAL REPORT: NUTS, BOLTS, AND A FEW LOOSE SCREWS 17–21 (2003).

[5] *Fortune 500 Largest U.S. Corporations,* FORTUNE, Apr. 15, 2002, at F1 (listing Enron fifth, even though by then it was in Chapter 11). For an explanation of why it still made the list, *see* Carol J. Loomis, *And the Revenue Games People (like Enron) Play; Got energy trading contracts?,* FORTUNE, Apr. 15, 2002, at 190 ("We will explain these wacky revenue leaps. But first, an explanation as to why the Greatest Leaper of them all, Enron, is fifth on our 2001 list. . . .[W]e decided to rank Enron based on its nine-months['] revenues [because Enron had yet to release fourth quarter results]."). However, the irony of Enron's high ranking was not lost on the editors of FORTUNE who, in the same issue, published a poem with the concluding stanza:

> Oh, somewhere the sun is shining, somewhere the stars are bright;
>
> Somewhere there are investors who sleep like logs at night;
>
> Consider these 500—how they grow! They burn! They strive!

mantra of the late 1990s and early 2000s: "thinking outside the box." Enron was considered the best company at identifying talented employees who were willing to be innovative.[6] By 1996, Enron was creating a new business every other year.[7] Ken Lay, Enron's CEO both before and after Jeffrey Skilling, explained the company's changed focus (from a stodgy natural gas pipeline company to a cutting-edge entrepreneur and moving force in electric deregulation) in an August 5, 1996 FORTUNE magazine interview by pointing out that 40% of the company's earnings in 1995 came from businesses that did not exist in 1985.[8] Lay was confident that the trend would continue: "We expect that 5 years from now, over 40% of our earnings will come from businesses that did not exist 5 years ago. It's a matter of re-creating the company and the businesses we're in."[9] Enron re-created its businesses right into the ground.

1. Enron Before the Fall—The Public Perception

Enron started out as a somewhat sleepy natural gas utility in 1985, when Houston Natural Gas Corp. and InterNorth Inc. merged. It is safe to assume that, other than the people being directly served by that utility in 1985, most people still had never heard of Enron. Seven years later, virtually everyone had heard of Enron.[10] By 1992, Enron owned the largest natural gas pipeline network in the country and had already begun its efforts to revolutionize the natural gas industry. Finally, Enron stepped out of the shadows and into the spotlight with its revolutionary concept for the "Gas Bank."[11] With the Gas Bank, Enron forever altered not only the gas industry, but also the company itself.

And could someone please explain here—Exercise your brain here!

Can someone please explain here—Why is Enron still No. 5?

Stanley Bing, *The Auditor,* FORTUNE, Apr, 15, 2002, at 402.

[6] Some of Enron's mechanisms to obtain innovative thinking were draconian in nature. Every employee was ranked within his or her group each year, and the bottom 20% were let go. The pressure to produce was intense, and the internal competitions were brutal and cutthroat. *See infra* note 47 and accompanying text. Notwithstanding these factors, potential employees beat down the doors to get placed with Enron, including the "best and brightest," 20% of which would be ground into next year's compost.

[7] *What's Not to Like, supra* note 2.

[8] *Id.*

[9] *Id.*

[10] Early in 2003, NBR taught a group of 10th graders at the Schlenker School in Houston. Almost all of the students had heard of Enron and could describe in some detail what had happened to the company.

[11] [I]n 1989, Skilling, who was still working at McKinsey as an Enron consultant, realized that there was plenty of gas available—from producers who were being freed from federal price controls—and there was plenty of demand, from new utilities that wanted to burn gas to make electricity. But there was no intermediary that could aggregate—and more important, *balance*—the gas supplies coming from the producers with the demand coming from consumers. Why not create a mechanism that would allow them to hook up? Skilling called his idea the Gas Bank.

A. The Puff Pieces

To the casual reader of business weeklies, Enron was riding high at the turn of the 21st century. In 1996, the WASHINGTON POST referred to Enron as a "titan in the natural gas industry."[12] In 1998, FORTUNE called Enron "the world's leading integrated natural- gas and electricity giant."[13] In 2000, FORTUNE again fawned over Enron, ranking it 25th among "the world's most admired companies."[14] In early 2001, THE ECONOMIST still referred to Enron as "a highly successful energy brokerage."[15] Enron symbolized everything that was glitzy and go-go-go—the perfect morphing of a staid energy company into an *uber*-dot.com business.

The early 1990s were times of explosive change in many areas, including the development and use of personal technology and computerization, communications and mobile phones, and most important, the perceptions of workers and their intellectual capacity (and capabilities as company assets). These changes accelerated in the mid- and late 1990s, with the advent of the dot.com bubble. Simultaneously, Enron was evolving as well—creating new businesses, pushing the envelope and morphing itself from an energy utility to a growth company.[16] Here's the question—how do you make your energy utility look as good as a dot.com growth stock? Hindsight helps us respond with the obvious answer: you cook the books. Some people knew that Enron's accounting was

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ROBERT BRYCE & MOLLY IVINS, PIPE DREAMS: GREED, EGO, AND THE DEATH OF ENRON 54 (2002) [hereinafter PIPE DREAMS].

[12] Daniel Southerland, *You've Heard of Big Oil. This is the Story of Big Gas. . . and It Begins with Enron Corp., Which Wants to Be No. 1 in World,* WASH. POST, Feb. 4, 1996, at H1.

[13] Erin Davies, *Enron: The Power's Back On,* FORTUNE, Apr. 13, 1998, at 24.

[14] Nicholas Srein, *The World's Most Admired Companies,* FORTUNE, Oct. 2, 2000, at 182.

[15] *The Slumbering Giants Awake,* ECONOMIST, Feb. 10, 2001, at 6.

[16] Enron originally wanted to become "The World's Leading Energy Company," *see* POWER FAILURE, *supra* note 4, at 112, but eventually, even that sobriquet was too limiting. According to Cokie Roberts at ABC, "You start back in January of 2001. There was a big party, lavish party in San Antonio where Kenneth Lay declared Enron the 'world's greatest company.' " *ABC News: This Wk.* (ABC television broadcast, Feb. 10, 2002). It's not far to go from calling yourself "The World's Greatest Company" to being the butt of jokes like this one:

> Making the rounds of Wall Streeters while markets were in the dumps this week was a recording from the following number: 510-809-4466: "Thank you for calling Enron, please listen closely to the following options as our menu has changed.
>
> If you wish to serve a subpoena on a current or former Enron executive, press 1; If you are an Enron shareholder, and would like to learn how to turn your Enron stock certificates into decorative origami, press 2; If your Enron 401(k) plan is worthless and you'd like some tips on how to survive your retirement eating nothing but mac and cheese, press 3; If you are an Enron executive and would like to find out which prison inmate will be making you his b***h, press 4; If you would like to invoke your constitutional right against self[-]incrimination, press 5. If you are Dick Cheney, press 6 and thanks for nothing[,] Dick.
>
> Thank you for calling Enron, the World's greatest company."

Beth Piskora et al., *Bull's Eye,* N.Y. POST, Feb. 24, 2002, at 31.

questionable long before Skilling abruptly retired as CEO and Enron's world came tumbling town.

B. The Early Critiques

Remember the old adage, "if it looks too good to be true, it usually is"? Enron illustrated that adage perfectly, and some very smart people figured out that Enron's financials were a sham. Others might not have known that Enron was cooking the books, but they looked askance at those books anyway. Even the normally effusive FORTUNE ran a story describing the impenetrability of Enron's financial information.[17] And the publication INSIDE F.E.R.C.'S GAS MARKET REPORT noted that, on December 21, 1995, Robert Christensen Jr. had downgraded Enron from a "buy" to a "hold," warning that "[t]he thin trading liquidity of these [gas derivatives] products can cause financial windfalls as well as huge potential losses. From the outside looking in, we cannot tell which way it will go for [Enron]."[18] A few outsiders looked at Enron and did not like what they saw.

There were clues as early as 1995, when FORTUNE reported Enron's losses on the power plant in Dabhol, India.[19] Also in 1995, there were rumors that Enron was "facing margin calls of hundreds of millions of dollars because it had a 'short' position on contracts to deliver natural gas in January."[20] Mind you, these problems only involved Enron's hard assets, rather than its later, "asset-lite"

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[17] To skeptics, the lack of clarity [in Enron's financials] raises a red flag about Enron's pricey stock. Even owners of the stock aren't universally sanguine. "I'm somewhat afraid of it," admits one portfolio manager. And the inability to get behind the numbers combined with ever higher expectations for the company may increase the chance of a nasty surprise. "Enron is an earnings- at-risk story," says Chris Wolfe, the equity market strategist at J.P. Morgan's private bank, who despite his remark is an Enron fan. "If it doesn't meet earnings, [the stock] could implode."

Bethany McLean, *Is Enron Overpriced?,* FORTUNE, Mar. 5, 2001, at 122.

[18] *Huge Spread in Basis Differentials Complicates Hedging*, *Say Analysts,* INSIDE F.E.R.C.'S GAS MARKET REP., Dec. 29, 1995, at 9.

[19] Rajiv M, Rao, *Enron's power outage in India*, FORTUNE, Oct. 2, 1995, at 34.

[20] Bill Mintz, *Enron shares recover as buyback announced,* HOUS. CHRON., Dec. 23, 1995, at B1.

businesses.[21] And don't get us started on Enron's political maneuverings, both in the U.S. and abroad,[22] or its manipulation of the California energy markets.[23]

Why didn't more people question Enron's financial statements and business plans? Enron was well-known for bullying analysts who disagreed with Enron's

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[21] Skilling often touted his "asset-lite" philosophy. A mere two months before his sudden resignation, Skilling argued, " 'Today the key to success is we don't need to own assets, as long as we can use [them] to acquire information such as knowledge about gas pipelines and natural gas. Once we have the information and knowledge, we no longer need to own the assets." Dr. Nikolai Dobberstein, *Creating Global Winners,* MALAYSIAN BUS., June 1, 2001 (quoting Jeffrey Skilling and encouraging Malaysian companies to follow similar business models). Skilling was a master at convincing people of this doubtful logic. For example, this interview on CNBC:

> HAINES [Newscaster]: . . . Joining us now is Enron's CEO, Jeffrey Skilling. And in spirit of full disclosure, I have some shares of Enron in my IRA. Mr. Skilling, how does revenue go up so much and the bottom line doesn't benefit more?
>
> MR. JEFFREY SKILLING (Enron CEO): Well, we had a net income increase, Mark, of over 40 percent and earnings per share up 32 percent, so I—I think it was a—a real good quarter.
>
> HAINES: Yeah, but that doesn't answer the question: Well, how can revenue go up, like 150 and—and—and the bottom line only benefit 40—40 percent?
>
> MR SKILLING: What—what drives our net income, Mark, is the increase in physical volumes delivered. Revenues are impacted by price levels and price revel—levels really don't impact us because we don't own the generation facilities, we don't own gas production assets. So prices move up and down. That impacts our revenue. But …—what really matters to us is, how much volume are we delivering to customers? And our volumes this quarter are up 58 percent, which drove that increase in our wholesale income.

CNBC: Squawk Bax (CNBC television broadcast, July 12, 2001).

[22] For a discussion of Enron's political influence in the U.S., *see* Kevin Phillips, *The Company Presidency; Enron and the Bush family have boosted each other up the ladder of success. But have their ties created a Teapot Dome?,* L.A. TIMES, Feb. 10, 2002 at M1 (detailing the exchange of money and favors between various political figures and Enron); Eliane S. Povich, *Gramms and Enron: A Mutual Aid Society; Rules backed by senator, wife helped company,* NEWSDAY, Feb. 10, 2002, at A6 (explaining that as chief of the Commodities Futures Trading Commission, Wendy Gramm drafted rules exempting energy trades from government regulation, then shortly afterwards accepted a lucrative position on Enron's board of directors; and noting Enron "donated almost $100,000 to Sen. [Phil] Gramm [(R-Texas), and Wendy's husband] over the past decade."). Apparently, Enron attempted similar tactics abroad. However, Enron wasn't always popular overseas, and not just because of its failed businesses worldwide. A particularly colorful example of nasty press overseas occurred in 1998:

> In the hurt tone of a nun rejecting accusations of Satanism, executives and Government propagandists denounced our revelation last week that Enron, a US energy company which has bought American politicians wholesale, was sponsoring the Labour Party conference. Their protestations of injured innocence grew louder on Thursday when, as we predicted, Peter Mandelson allowed the multi-national accused of complicity with the beating and false imprisonment of Indian peasants to take over the Wessex Water monopoly in southern England.

Nick Cohen, *Hold on a minute. . . .* OBSERVER, Sept. 13, 1998, at 32.

[23] *See, e.g.,* Rebecca Smith & John R. Wilke, *Leading the News: Enron Ex-Trader Admits to Fraud In California Crisis,* WALL ST. J., Oct, 18, 2002, at A3 ("The former head of Enron Corp.'s Western energy trading desk admitted he conspired to manipulate California's electricity market and extract illegal profits for his employer, giving federal prosecutors a valuable witness who will help them develop cases against executives at Enron and ocher big energy-trading companies."); Robert Gavin, *Did Utilities Aid 'Ricochet' Trades?,* WALL ST. J., May 24, 2002, at B4 (explaining "the so-called Death Star strategy in which Enron scheduled fictitious electricity deliveries on overburdened transmission lines, in order to receive congestion relief payments . . .").

own rosy pictures of its financial health.[24] Still, a smattering of analysts and reporters stood firm in their criticism of Enron's murky financial statements—enough to convince us that our original theory (that no one knew about Enron's risky business model until after Skilling resigned as CEO) was wrong.[25] After Skilling resigned, of course, everyone began to understand what these few analysts had been saying all along.

2. Enron After the Fall—The Public Perception

Enron seemed to go from "most admired" status to "most despised" status in record time, once the revelations about the company's behavior became public. Nightly news broadcasts depicted the very real tragedy of retirees (and those close to retirement age) whose lives were forever changed by Enron's plummeting stock price.

Even in the midst of tragedy and anger, some were able to find humor in the situation:

Enron Business Haikus

Business model
Too complex to understand
It's a house of cards.

Buy low and sell high.
Our intermediations
Raise energy costs.

Our profits are made
At the consumer's expense
Pass the caviar.

Stock price fell today.
Management says, "Don't fear."
I am still afraid.

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24 PIPE DREAMS, *supra* note 11, at 249–56.

25 *See, e.g.,* Todd Mason, *Houston Oil Analyst Wouldn't Buy Enron's Story,* FORT WORTH STAR-TELEGRAM, Apr. 11, 2002, at A1 (describing John Olson's negative views of Enron and Enron's use of pressure to get him to retract his views); Jeff Donn, *Rise and Fall of Enron; Energy Giant Fed on Chaos and Change; Did Arrogance Boomerang?,* COM. APPEAL, Jan. 22, 2002, at B7 (same); Tom Fowler, *The Fall of Enron; A Year Ago, Enron's Crumbling Foundation was Revealed to All When the Company Reported Its Disastrous Third-Quarter Numbers. It's Growth-At-Any-Cost Culture Led It to Bankruptcy—and Ignominy,* HOUS. CHRON., Oct. 20, 2002, at A1 (John Olson fired by Merrill Lynch for refusing to change his views on Enron); *Courageous Warnings on Enron,* ST. PETERSBURG TIMES, Jan. 27, 2002, at 2D (Bethany McLean, a reporter for FORTUNE, wrote an article critical of Enron despite Enron's attempts to get the magazine to quash the story).

Chaos reigns within.
Reflect, repent and sell short.
Even down can be up.[26]

These jokes, and others like them, indicate how much Enron's demise—as well as the demise of other companies after Enron—has entered the public consciousness.[27] We can trace Enron's entry into the world of late-night TV jokes[28] starting roughly after Jeffrey Skilling, Enron's CEO, resigned on August 14, 2001.

What may have triggered the media's focus, in part, was the unlikely proposition that Skilling would have resigned "for personal reasons" and to spend

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[26] TIM BARRY, THE TOTALLY UNAUTHORIZED ENRON JOKE BOOK 18 (2002) [hereinafter JOKE BOOK]. Another part of the book describes:

Shareholder Haikus From Enron's Last Days

CNN today
Says Enron distress increased.
This is not good news.

Dynegy retreat
Leaves few options available.
My foreboding grows.

The merger now dead.
Hope fades to a mere glimmer.
Chapter 11 looms.

The official news
Now has tolled. Enron is gone.
So is my money.

Id. at 29.

[27] We can't resist this one, describing "Enronism" as different from capitalism and communism:

> You have two cows. You write down and set aside the debt incurred by one of the cows to an off-sheet entity. You sell all three of them to another publicly listed joint trading venture company, using equity derivative transactions created by your brother-in-law at the bank. The trading company sells to a vehicle that is capitalized with a promise of Enron stock based on the increased valuation of the third cow, with the understanding that the first 33% of the future profit is returned to the partners of the venture in the form of more cows. Then execute a debt/equity swap with an associated general offer so you get all four cows back, with a tax exemption for five cows (debt depreciation of the first [cow]). The recognized future milk funds flow of the six cows are brought forward and transferred via an intermediary to a Cayman Island company secretly owned by the majority shareholder, who "enhanced" the capital structure by selling the rights to all seven cows back to your listed company. You hire Arthur Andersen to audit your books. The annual report says the company owns eight cows, with an option on one more.

Iconoclast website, http://www.iconoclast.ca/issue/9001,3,0402,17,l.html (last visited Jan. 12, 2003).

[28] For a sampling of these jokes, *see* http://politicalhumor.about.com/library/blenronscandal.htm (last visited July 22, 2003). *See also* JOKE BOOK, *supra* note 26, at 87 (listing Enron jokes by late-night comedians). Other corporate scandals have also gotten late-night notice. *See, e.g.,* http://members.aol.com/mrdejim/oct02.html (quoting Jay Leno: "Martha Stewart's stockbroker's assistant is going to testify against her. She may have sent a coded message to him on her show today when she demonstrated how a canary with a broken neck can't sing.") (aired on *The Tonight Show with Jay* Leno (NBC television broadcast, Oct, 2, 2002)) (last visited July 22, 2003).

more time with his family.[29] Did anyone really believe that such a hard-driving, aggressive CEO was leaving in order to stop and smell the roses?[30]

The news stories kept coming fast and furious (both literally and figuratively furious), and our morning ritual of reading the newspapers while eating breakfast expanded from 15 minutes to 30 minutes to sometimes over an hour, just to keep up. Politicians started incorporating Enron references into their speeches.[31] Late-night comedians continued their assault on Enron's executives, many of whom (Skilling, Fastow, Lay) were now household words.[32] And, appropriately enough,

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[29] Skilling's resignation was the triggering event that caused Sherron Watkins to write her now-famous one-page anonymous memo to returning CEO Ken Lay. *See* POWER FAILURE, *supra* note 4, at 275–89.

[30]

> There were problems with Skilling's story. To begin with, Skilling was never considered much of a family man. He was divorced. He and his ex-wife had three children. Skilling loved his kids, but few saw him as a fanatical family man. Second, by quitting, Skilling left lots of money on the table. In 2000, Skilling's pay package had totaled some $10.1 million, more than double the amount he'd been paid in 1999. By leaving early, he was forgoing millions of dollars—perhaps tens of millions. Finally, it just didn't fit. Skilling had always been in it for the power, for the glory, for the thrill of having people think he was important. And *now,* now that he was finally in charge of the whole enchilada, he was throwing in the towel? No way.

PIPE DREAMS, *supra* note 11, at 293. *Compare* Dan Balz & Mike Allen, *Hughes to Leave White Home; Key Bush Aide Wants to Return to Texas with Family,* WASH. POST, Apr. 24, 2002, at A1 (reporting that Presidential Counselor Karen Hughes is resigning to focus on her family and rediscover her Texas roots); Bill Sammon, *Hughes to Leave Bush White House; Key Advisor Will Give Up Position in Summer, Focus on Her Family,* WASH. TIMES, Apr. 24, 2002, at A4 (describing Hughes's devotion to her family and her resolve to put their happiness ahead of her service to the government); Jim Vanderlei & Jeanne Cummings, *Bush Counselor Karen Hughes Will Step Down,* WALL ST. J., Apr. 24, 2002, at A5 (noting that while Hughes will officially resign, Bush asserts that she will remain in his "Inner circle").

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> As all of you know, life is about more than the 30-second soundbites on television or slogans in campaigns. Life is about choices, and so is politics when practiced properly. And one of the first things worth fighting for is fairness, fundamental fairness. And Enron, Enron makes it crystal clear: No worker in America should be robbed of years of labor by unconscionable personal greed. No employee, no employee should see retirement savings wiped away by arrogant executives who live by special privilege. One of my colleagues compared the executives of Enron to the Corleone family. I think that's an insult . . . to the Corleones.

Senator John F. Kerry, Remarks at the California Democratic Party State Democratic Convention (Feb. 16, 2002), *available at* http://www.gwu.edu/-action/2004/kerry/kerry021602sp.html (last visited July 23, 2003). Even a local Democratic Committee inserted Enron jokes into its meeting minutes:

> Attorney General Bill Lockyer and his top 10 elements of the new periodic table:
>
> . . . .
>
> 7. Fundraisium: combines with Graydium to make governium.
>
> 6. Enronium: unstable, only attracts subpoenas.
>
> . . . .
>
> 1. DickCheneyum: Must be stored in a remote location; used to extract fundraisium from petroleum.

Minutes of the Santa Clara County Democratic Central Committee Meeting (Mar. 7, 2002), *available at* http://www.scc-democrats.org/minutes/020307.html (last visited July 23, 2003).

[32] JOKE BOOK, *supra* note 26, at 87.

editorials[33] and political cartoons made short shrift of Enron's willingness to sacrifice employees at the altar of executive greed. We've kept several of these cartoons, and one of them nicely expresses the public's denunciation of Enron.[34]

Even before Enron Filed for bankruptcy, books on Enron began to crop up everywhere.[35] Since the bankruptcy filing, of course, Enron books (yes, we're counting this one, too) have become their own cottage industry.[36] Of all of the

[33] One of our favorite articles begins this way:

> There's a great and honorable tradition about disaster at sea: Women and children first, and the captain goes down with the ship. For Enron, it's been just the opposite. Kenneth Lay and the rest of the top executives paid themselves an average of $5 million apiece as the huge corporation staggered toward bankruptcy. And ordinary employees lost their jobs and most of their savings. The best they have been able to negotiate so far is severance pay capped at $13,500 apiece.

Enron's Disaster, BANGOR DAILY NEWS, June 22, 2002, at 8.

[34] Cartoon reprinted with permission of the Houston Chronicle. HOUS. CHRON., June 21, 2002, at 32A.

[35] HUMAN RIGHTS WATCH STAFF, THE ENRON CORPORATION: CORPORATE COMPLICITY IN HUMAN RIGHTS VIOLATIONS (1999); ICON GROUP LTD., ENRON CORP.: LABOR PRODUCTIVITY BENCHMARKS AND INTERNATIONAL GAP ANALYSIS (2000); ICON GROUP, ENRON OIL & GAS COMPANY: INTERNATIONAL COMPETITIVE BENCHMARKS AND FINANCIAL GAP ANALYSIS FINANCIAL PERFORMANCE SERIES (2000); ICON GROUP, ENRON OIL & GAS COMPANY: LABOR PRODUCTIVITY BENCHMARKS AND INTERNATIONAL GAP ANALYSIS LABOR PRODUCTIVITY SERIES (2000); JOEL KURTZMAN & GLENN RIFKIN, RADICAL E: FROM GE TO ENRON—LESSONS ON HOW TO RULE THE WEB (2001); ABHAY MEHTA, POWER PLAY: A STUDY OF THE ENRON PROJECT (2000); VAULT REPORTS, ENRON: THE VAULTREPORTS.COM EMPLOYER PROFILE FOR JOB SEEKERS (1998).

[36] The books vary in terms of audience (popular culture genre versus business analysis genre), quality (some are self-published—need we say more?), and viewpoint. As of May 27, 2003, we found these books listed at Amazon.com via an "Enron" search: *See, e.g.,* ALVIN A. ARENS ET AL., AUDITING AND ASSURANCE SERVICES AND ENRON CASE PACKAGE (9th ed. 2002); RICHARD E. BAKER ET AL., ADVANCED FINANCIAL

ACCOUNTING (5th ed. 2002); DIRK J. BARREVELD, THE ENRON COLLAPSE: CREATIVE ACCOUNTING, WRONG ECONOMICS OR CRIMINAL ACTS? A LOOK INTO THE ROOT CAUSES OF THE LARGEST BANKRUPTCY IN U.S. HISTORY (2002); JOKE BOOK, *supra* note 26; GEORGE J. BENSTON ET AL., FOLLOWING THE MONEY: CORPORATE DISCLOSURE IN AN AGE OF GLOBALIZATION (2003); DANIEL L. BERGER, ACCOUNTANTS' LIABILITY AFTER ENRON (2002); ARTHUR L. BERKOWITZ, ENRON: A PROFESSIONAL'S GUIDE TO THE EVENTS, ETHICAL ISSUES, AND PROPOSED REFORMS (2002); CRISTA BOYLES, ENRON PROOF YOUR 401(K): STEPS TO KEEP YOUR MONEY SAFE (2002); JULIA K. BRAZELTON & JANICE L. AMMONS, ENRON AND BEYOND: TECHNICAL ANALYSIS OF ACCOUNTING, CORPORATE GOVERNANCE, AND SECURITIES ISSUES (2002); LYNN BREWER & MATTHEW SCOTT HANSEN, HOUSE OF CARDS: CONFESSIONS OF AN ENRON EXECUTIVE (2002); PIPE DREAMS, *supra* note 11; HENRY R. CHEESEMAN & MICHAEL BIXBY, BUSINESS LAW—ENRON CASE STUDY (2003); CHARLES J. CICCHETTI ET AL., RESTRUCTURING ELECTRICITY MARKETS: A WORLD PERSPECTIVE POST-CALIFORNIA AND ENRON (2003); CORPORATE AFTERSHOCK: THE PUBLIC POLICY LESSONS FROM THE COLLAPSE OF ENRON AND OTHER MAJOR CORPORATIONS (Christopher L. Culp & William A. Niskanen eds., 2003); BRIAN CRUVER, ANATOMY OF GREED: THE UNSHREDDED TRUTH FROM AN ENRON INSIDER (2002) [hereinafter ANATOMY OF GREED]; LOREN FOX, ENRON: THE RISE AND FALL (2002) [hereinafter RISE AND FALL]; PETER C. FUSARO & ROSS M. MILLER, WHAT WENT WRONG AT ENRON: EVERYONE'S GUIDE TO THE LARGEST BANKRUPTCY IN U.S. HISTORY (2002) [hereinafter WHAT WENT WRONG]; CHERYL DE MESA GRAZIANO, ENRON AND THE POWERS REPORT; AN EXAMINATION OF BUSINESS AND ACCOUNTING FAILURES (2002); JOE BEN HOYLE, ADVANCED ACCOUNTING, UPDATE EDITION WITH ENRON POWERWEB (2002); ARIANNA HUFFINGTON, PIGS AT THE TROUGH; HOW CORPORATE GREED AND POLITICAL CORRUPTION ARE UNDERMINING AMERICA (2003); IDC, ENRON: A REMINDER OF FREE MARKET FUNDAMENTALS (2001), *available to download* at http://www.amazon.com; GREG JENKINS, ENRON COLLAPSE (2002); PAUL JORION, INVESTING IN A POST-ENRON WORLD (2003); STANLEY KELLER, DISCLOSURE AND OTHER LESSONS LEARNED AFTER ENRON: WHAT YOU NEED TO KNOW NOW TO FILE 10-K AND OTHER FORMS (2002); E. JOHN LARSEN, MODERN ADVANCED ACCOUNTING WITH POWERWEB: ENRON (9th ed. 2002); BETHANY MCLEAN & PETER ELKIND, SMARTEST GUYS IN THE ROOM: THE RISE AND FALL OF ENRON (2003); WILLIAM F. MESSIER, JR., AUDITING & ASSURANCE SERVICES: A SYSTEMATIC APPROACH WITH ENRON POWERWEB (2002); DANIEL QUINN MILLS, BUY, LIE, AND SELL HIGH; HOW INVESTORS LOST OUT ON ENRON AND THE INTERNET BUBBLE (2002); CATHY PETERSON, FLASHLIGHT WALKING: THE INSPIRING STORY OF ONE FAMILY'S STRUGGLE THROUGH CANCER AND THE ENRON LAYOFF (2003); JAMES POST ET AL., BUSINESS AND SOCIETY: CORPORATE STRATEGY, PUBLIC POLICY, AND ETHICS (10th ed. 2003): VIJAY PRASHAD, FAT CATS AND RUNNING DOGS: THE ENRON STAGE OF CAPITALISM (2002): PRABIR PURKAYASTHA & VIJAY PRASHAD, ENRON BLOWOUT: CORPORATE CAPITALISM AND THEFT OF THE GLOBAL COMMONS (Signpost 6) (2002); JACK C. ROBERTSON ET AL., MP AUDITING AND ASSURANCE SERVICES W/APOLLO SHOES CASEBOOKAND POWERWEB: ENRON (10th ed. 2002); PETER S. ROSE, MONEY AND CAPITAL MARKETS (8th ed. 2002); ANTHONY SAUNDERS & MARCIA MILLON CORNETT, FINANCIAL INSTITUTIONS MANAGEMENT: A RISK MANAGEMENT APPROACH (4th ed. 2002); ANTHONY SAUNDERS ET AL., FINANCIAL MARKETS AND INSTITUTIONS: A MODERN PERSPECTIVE (2d ed. 2003); RICHARD J. SCHROTH & A. LARRY ELLIOTT, HOW COMPANIES LIE: WHY ENRON IS JUST THE TIP OF THE ICEBERG (2002); CHRIS SEAY & CHRISTOPHER BRYAN, THE TAO OF ENRON: SPIRITUAL LESSONS FROM A FORTUNE 500 FALLOUT (2002); REBECCA SMITH & JOHN R. EMSHWILLER, UNCOVERING ENRON (2003); THEODORE F. STERLING, THE ENRON SCANDAL (2002); J. DAVID SPICELAND ET AL., INTERMEDIATE ACCOUNTING (UPDATE EDITION) WITH COACH, ESSENTIALS OF ACCOUNTING, ALTERNATE PROBLEMS AND S&P PACKAGE W/POWERWEB (2d ed, 2002); J. DAVID SPICELAND ET AL., INTERMEDIATE ACCOUNTING VOLUME 1 WITH COACH CD-ROM AND POWERWEB: FOCUS ON ENRON, ALTERNATE EXERCISES, PROBLEMS AND NET TUTOR (3d ed. 2002); J. DAVID SPICELAND ET AL., INTERMEDIATE ACCOUNTING VOLUME 2 WITH COACH CD-ROM AND POWERWEB: FOCUS ON ENRON AND NET TUTOR (3d ed. 2002); IRIS STUART & BRUCE STUART, ETHICS IN THE POST-ENRON AGE (2003); POWER FAILURE, *supra* note 4; U.S. GOVERNMENT, 2002 COMPENDIUM OF MAJOR FINANCIAL REPORTS TO THE SEC BY TWELVE COMPANIES UNDER SCRUTINY OR IN THE NEWS: ADELPHIA COMMUNICATIONS, AOL TIME WARNER, ENRON, GLOBAL CROSSING, HALLIBURTON, IMCLONE SYSTEMS, MARTHA STEWART LIVING OMNIMEDIA, MERRILL LYNCH, POLAROID, QWEST, WORLDCOM, AND XEROX (PROGRESSIVE MANAGEMENT (CD-ROM 2002); U.S. GOVERNMENT, 21ST CENTURY COMPLETE GUIDE TO ENRON: SECURITIES AND EXCHANGE COMMISSION [SEC] FORMS AND FILINGS FROM 1994 PLUS HOUSE AND SENATE HEARING ON THE books listed in footnote 36, a few have emerged as useful, mass-market studies of Enron's culture as well as its downfall.[37]

One such book, PIPE DREAMS, helps to put the Enron scandal in perspective, albeit in an admittedly liberal perspective:

> The Enron failure is the biggest political scandal in American history. Teapot Dome—a scandal about payoffs to Secretary of the Interior Albert Fall by a couple of greedy oilmen—was memorable, but involved very few people. The Watergate scandal was bigger and more pernicious than Teapot Dome, but it, too, involved relatively few people: Tricky Dick Nixon, a dozen or two of his henchmen, and a few inept plumbers. Enron was different. By the time of its bankruptcy, Enron owned—or perhaps was just renting—politicians in the White House, Congress, state courts, state legislatures, and bureaucrats at every level.
>
> It's the biggest scandal ever to hit Wall Street. The problems at junk-bond trading house Drexel Burnham Lambert in the 1980s were tiny in comparison to Enron. That scandal involved Michael Milken (who went to jail for securities fraud) and a handful of others. The Enron debacle has ensnared every major investment bank in New York, including Merrill Lynch, Citigroup, J.P. Morgan Chase, UBS, and dozens of others. . . .
>
> Enron is the biggest derivatives-trading firm to go bust since the failure of the hedge fund Long-Term Capital Management in 1998. . . . [Long

COLLAPSE OF ENRON AND ITS IMPACT ON PENSIONS AND AUDITING, WITH REPRODUCTIONS OF INTERNAL DOCUMENTS (Progressive Management CD-ROM, 2002); U.S. GOVERNMENT, 21ST CENTURY GUIDE TO ENERGY AND COMMERCE POLICY AND OVERSIGHT; LAWS, LEGISLATION, HEARINGS, HOUSE ENERGY AND COMMERCE COMMITTEE—ENRON, HEALTH CARE, HDTV, TELECOMMUNICATIONS, ENVIRONMENT, HAZARDOUS MATERIALS, TOBACCO INDUSTRY (Core Federal Information Series Progressive Management CD-ROM, 2003); U.S. GOVERNMENT, ENRON'S CREDIT RATING: ENRON'S BANKERS' CONTACTS WITH MOODY'S AND GOVERNMENT OFFICIALS: REPORT (2003); U.S. GOVERNMENT, THE ENRON COLLAPSE AND ITS IMPLICATIONS FOR WORKER RETIREMENT SECURITY: HEARINGS BEFORE THE COMMITTEE ON EDUCATION AND THE WORKFORCE, HOUSE OF REPRESENTATIVES (2002); U.S. GOVERNMENT, THE FINANCIAL COLLAPSE OF ENRON: HEARING BEFORE THE SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS OF THE COMMITTEE ON ENERGY AND COMMERCE, HOUSE OF REPRESENTATIVES (2002); GORDON YALE, ENRON: AN ACCOUNTING ANALYSIS OF HOW SPES WERE USED TO CONCEAL DEBT AND AVOID LOSSES (2002); YANKEE GROUP, BANDWIDTH TRADING AFTER ENRON (2002), *available to download at* http://www.amazon.com; *see also* Frank Partnoy, F.I.A.S.C.O.: Blood in the water on Wall Street (1997); FRANK PARTNOY, F.I.A.S.C.O.: THE INSIDER STORY OF A WALL STREET TRADER (1999); FRANK PARTNOY, GUNS, BOOZE AND BLOODLUST: THE TRUTH ABOUT HIGH FINANCE (1998); FRANK PARTNOY, INFECTIOUS GREED: HOW DECEIT AND RISK CORRUPTED THE FINANCIAL MARKETS (2003).

[37] These books include PIPE DREAMS, *supra* note 11; POWER FAILURE, *supra* note 4; WHAT WENT WRONG, *supra* note 36; RISE AND FALL, *supra* note 36; ANATOMY OF GREED, *supra* note 36; *see also* BARBARA LEYTOFFLER, FINAL ACCOUNTING: AMBITION, GREED, AND THE FALL OF ARTHUR ANDERSEN (2003).

> Term's] positions involved so many banks that the New York Federal Reserve organized a multi-bank, $3.6 billion bailout, lest Long-Term's failure cause a global financial meltdown. And though Long-Term was big, Frank Partnoy, a law professor at the University of San Diego, told Congress in January 2002, that Enron's derivatives business made Long-Term "look like a lemonade stand."[38]

Bryce goes on to note that Enron's collapse also was "the biggest scandal ever to hit accounting,"[39] as well as "the most egregious example of executive piracy in American corporate history."[40]

Ultimately, corporations don't make mistakes—their leaders do. And Enron is more a tale of greed and ego run amuck than it is a tale of why certain business models fail. When the people at the top lose their moral grounding (or, worse yet, if they never had any moral grounding), that's when Enron-sized scandals are likely to occur. Someone at the top has to provide a moral compass for the organization.

Character shapes an organization's culture. It always has, and it always will. For every executive willing to take responsibility for bad decisions[41] or willing to go above and beyond for his employees,[42] there's one who is willing to sacrifice his employees or customers. Take a look at one glimpse into Skilling's character in WHAT WENT WRONG:

> A story from Jeffrey Skilling's HBS [Harvard Business School] student days may provide a telling glimpse into his character. HBS classes are typically conducted using the case method. Most cases are based on real business incidents, and students are presented with the problems that a

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[38] PIPE DREAMS, *supra* note 11, at 5–6 (footnotes omitted).

[39] *Id* at 6.

[40] *Id* at 7.

[41]

> "Overall," he tells holders, "you would have been better off last year if I had regularly snuck off to the movies during market hours.". . . Mr. Buffett says, "Here, I need to make a confession (ugh): The portfolio actions I took in 1998 actually decreased our gain for the year." In particular, he says his decision to sell McDonald's Corp. shares, a process Berkshire began in 1997, has proven to be "a very big mistake." McDonald's shares have risen 82.7% since January 1998.

James P. Miller & Joseph B. Cahill, *Buffett Says Berkshire Would Have Benefited If He Hadn't Made Any Stock Actions in 1998,* WALL ST. J., Mar. 15, 1999, at C2; James P. Miller, *Buffett Offers A Mea Culpa For Bad Year,* WALL ST. J., Mar. 13, 2000, at C1 (" 'Even Inspector Clouseau could find last year's guilty party: your Chairman,' Mr. Buffett told investors in the letter.")

[42] *See, e.g.,* Mitchell Pacelle, *Through the Mill: Can Mr Feuerstein Save His Business One Last Time?—Textile Owner Overcame Fire and Changes in Fashion; Creditors May Be Tougher—Needed: $92 Million by July 31st*, WALL ST. J., May 9, 2003, at A1; Carey Goldberg, *A Promise Is Kept: Mill Reopens,* N.Y. TIMES, Sept. 16, 1997, at A14 (congratulating Aaron Feuerstein for keeping his employees on payroll while he rebuilt his burnt-down factory).

> business faced and must come up with solutions for themselves. Discussion of the cases, which helps determine a student's grade, is led by the professor in a pitlike classroom. A forceful student unsure of the facts is quick to be ripped to shreds by other students looking to make their mark. In one such class, Jeffrey Skilling was asked what he would do if his company were producing a product that might cause harm—or even death—to the customers that used it. According to his professor at the time, former Congressman John LeBoutillier, Jeffrey Skilling replied: "I'd keep making and selling the product. My job as a businessman is to be a profit center and to maximize return to the shareholders. It's the government's job to step in if a product is dangerous." In an Enron culture seemingly obsessed with *Star Wars,* Skilling's bloodless demeanor led his colleagues to refer to him as "Darth Vader" behind his back.[43]

Keep in mind that, after Skilling joined Enron, Enron focused on hiring relatively young[44] people who were considered to be the "best and brightest," both in Enron's estimation and in their own.[45] Young people have the relative advantage of cutting- edge training, but they have the relative disadvantage of less experience in a variety of situations. Imagine the pressure on brand-new, inexperienced Enron employees to behave like their leaders:[46] to act like them, to dress like them, to drive the same cars that they do, and to disregard the same social mores that they did.[47] (The pressure to conform to expected "Enron" codes of behavior was

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[43] WHAT WENT WRONG, *supra* note 36, at 28. Skilling was tone-deaf when it came to insensitive comments. One of his legendary comments during the California energy crisis was " 'You know what the difference is between the state of California and the *Titanic?* At least when the *Titanic* went down, the lights were on.' " *Id.* at 112.

[44] *See id.* at 50.

[45] *See id.* at 43. Contrast Skilling's focus with that of Enron's old guard, represented by Richard Kinder. Kinder's group represented the "old Enron": pipelines that were real assets that made real cash profits. *See* PIPE DREAMS, *supra* note 11, at 123.

[46] " 'It *is* just a small group of people . . . but those people were created by the Enron System—a system that also creates hundreds of other sheep who are easily led by others.' " *See* ANATOMY OF GREED, *supra* note 11, at 180.

[47] One of Enron's most well-known secrets was its tolerance of sexual escapades, whether adultery, sexual harassment, or just plain poor caste. *See* PIPE DREAMS, *supra* note 11, at 144–48. As Robert Bryce puts it so succinctly, "[f]ish rot at the head. . . . Enron failed because its leadership was morally, ethically, and financially corrupt." *Id.* at 12.

reinforced by Enron's "rank and yank" system of evaluating employees.[48]) The profligate spending at Enron,[49] the self-dealing and selfishness,[50] and the

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[48] "Enron employees were ranked every six months on the same 1-to-5 scale as new recruits; however, 15 percent of all employees were required to be in the lowest category (1), and they were yanked from Enron." WHAT WENT WRONG, *supra* note 36, at 51. For those of you more statistically inclined, imagine that you are selecting your employees from the right-most hand of a bell-shaped curve (the best and the brightest); now take that small group of employees and spread them out over a 1-to-5 scale. What you've done is take people who are roughly the same and use meaningless distinctions to separate them, yanking those on the left-hand side of this second curve out of the organization. Moreover, you're taking the glue of the organization—not the flashy superstars but the reliable team-players—and throwing them out. *See* PIPE DREAMS, *supra* note 11, at 129. Robert Bryce explains it well:

> Although the process was designed to advance the careers of top performers and punish the low performers, it quickly mutated into a numbers game. . . . The people who were rated 1's and 2's were golden. "It was all based on how much money you were able to make," said one source. With millions of dollars at stake in each annual rating, the fights over individual rankings became intense. "It was a pit of vipers. You can't believe how brutal that process could be. You had people attacking other people's integrity, morality, and values. It wasn't about supporting up, it was about tearing down."
>
> . . . .[Most of the benefits of the ranking system went to the deal-makers, not to the administrative staff. And most of the deals were ranked on profits.]
>
> Perhaps most insidious, the [rank and yank] committee gave Enron's Masters of the Universe a baseball bat they could use to intimidate the people who might stop one of their bad deals—and therefore limit their bonuses.

Id at 129–30.

[49] Bill Murphy, *The Fall Of Enron; Enron's art hopes just a pipe dream; Buying spree now drawing fire,* HOUS. CHRON., July 29, 2002, at A1 (art committee at Enron Corp. given $20 million budget); Carol Vogel, *Enron's Art to Be Auctioned Off,* N.Y. TIMES, Apr. 16, 2003, at C6; Paula Span, *The Gavel Falls on Enron Artworks; Auction Puts Tiny Dent in Company Debt*, WASH. POST, May 16, 2003, at C1.

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> [T]he independence and objectivity of the Enron Board had been weakened by financial ties between Enron and certain directors. These financial ties, which affected a majority of the outside Board members, included the following.
>
> —Since 1996, Enron paid a monthly retainer of $6,000 to Lord John Wakeham for consulting services, in addition to his Board compensation. In 2000, Enron paid him $72,000 for his consulting work alone.
>
> —Since 1991, Enron paid Board member John A. Urquhart for consulting services, in addition to his Board compensation. In 2000, Enron paid Mr. Urquhart $493,914 for his consulting work alone.
>
> —Enron Board member Herbert Winokur also served on the Board of the National Tank Company. In 1997, 1998, 1999, and 2000, the National Tank Company recorded revenues of $1,035,000, $643,793, $535,682 and $370,294 from sales to Enron subsidiaries of oilfield equipment and services.
>
> —In the past 5 years Enron and Kenneth Lay donated nearly $600,000 to the M.D. Anderson Cancer Center in Texas. In 1993, the Enron Foundation pledged $1.5 million to the Cancer Center. Two Enron Board members, Dr. LeMaistre and Dr. Mendelsohn, have served as president of the Cancer Center.
>
> —Since 1996, Enron and the Lay Foundation have donated more than $50,000 to the George Mason University and its Mercatus Center in Virginia. Enron Board member Dr. Wendy Gramm is employed by the Mercatus Center.

rudeness[51] all signaled to Enron's employees what sorts of behavior were rewarded. Is it really so hard to figure out why Enron, as an organization, was willing to lie and cheat?

When Enron was flying high, there were some who remained skeptical about all of its claims of greatness and brilliance,[52] During Enron's prominence as one of FORTUNE magazine's "most innovative" companies,[53] it bought, cajoled, and bullied to get what it wanted, from favorable deals to exemptions from rules. Once Enron began its downward slide, all of those over whom Enron had run roughshod enjoyed Enron's comeuppance. The gloves came off: aggrieved employees, customers, and competitors were happy to talk to any and all who asked about how Enron had behaved. Even those who had never spent a millisecond of their time thinking about Enron before the scandal broke came away from all of the stories with a horrible impression of a company that had also, in fact, had some very good business ideas, hired some wonderful people, and given widely to the Houston community.

> —Since 1996, Enron and Belco Oil and Gas have engaged in hedging arrangements worth tens of millions of dollars. In 1997, Belco bought Enron affiliate Coda Energy. Enron Board member Robert Belfer is former Chairman of the Board and CEO of Belco.
>
> —Charles Walker, a noted tax lobbyist, was an Enron Board member from 1985 until 1999. In 1993–1994, Enron paid more than $70,000 to two firms, Walker/Free and Wallter/Potter, that were partly owned by Mr. Walker, for governmental relations and tax consulting services. This sum was in addition to Mr. Walker's Board compensation. Enron was also, for more than 10 years ending in 2001, a major contributor of up to $50,000 annually to the American Council for Capital Formation, a non-profit corporation that lobbies on tax issues and is chaired by Mr. Walker.

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS OF THE COMMITTEE OF GOVERNMENTAL AFFAIRS, THE ROLE OF THE BOARD OF DIRECTORS IN ENRON'S COLLAPSE, S. Rep. No. 107–70, at 51–52 (2002); *see also* PIPE DREAMS, *supra* note 11, at 256–66 (use of corporate jets for private business).

[51] On April 17, 2001, analyst Richard Grubman (of Highfields Capital Management) participated on a conference call run by Jeffrey Skilling to discuss Enron's first-quarter results. Grubman pointed out that Enron hadn't

> provide[d] the analysts with more information prior to the conference call . . . [including cash flow statements and balance sheets]. Skilling responded that Enron had never provided those reports before analyst calls. Grubman wasn't satisfied. "You're the only financial institution that can't produce a balance sheet or a cash flow statement with their earnings" prior to conference calls, he said.
>
> "Well, thank you very much," replied Skilling. "We appreciate that. Asshole,"

PIPE DREAMS, *supra* note 11, at 268–69.

[52] *See supra* notes 17–45 and accompanying text; *see also* ANATOMY OF GREED, *supra* note 36, at 19 (quoting a research analyst explaining to a friend, and recent Enron hire, that the company had serious financial problems based on a close examination of the company's 2001 Annual Report).

[53] "At its zenith, Enron was named the 'most innovative' company in the United States by FORTUNE magazine *every year* between 1996 and 2001." Jeffrey D. Van Niel, *Enron—The Primer,* in NANCY B. RAPOPORT & BALA G. DHARAN, ENRON: CORPORATE FIASCOS & THEIR IMPLICATIONS 11 (2004) (citing WHAT WENT WRONG, *supra* note 36, at 172; Daniel Altman, *Finding Gems of Genius Among Enron's Crumbs,* N.Y. TIMES, Feb. 3, 2002, at D6).

The lesson? Remember that phrase that you learned when you were a kid: the bigger they are, the harder they fall.

NOTES

1. When you add up all of the essays in Chapter 1, you can see how hard it is for companies to innovate while still "coloring inside the lines" of regulation. Is it always the case that true innovation *has* to be linked with a disregard for the letter of the law (or at least the spirit of the law)? What kind of regulatory scheme could you envision that would encourage true innovation while discouraging the type of regulatory game-playing that has, historically, accompanied that innovation?

2. Assume that you are the chair of a board of directors and you are looking for a new CEO. What characteristics would you like that CEO to have? Would you want different characteristics for your CEO depending on the nature of the company's business, or maybe its place in the market? During your interview with aspiring CEO candidates, how would you go about ascertaining that your CEO has the characteristics that you want? Would you ask for a personality test? A psychological profile? Testimonials from business partners or from other companies in the same market?